BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS
AND APPEALS

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

Volume 98, Nos. 1-2 January 16, 2013

DIRECTORY

OFFICE - 40 Rector Street, 9th Floor, New York, N.Y. 10006
HEARINGS HELD - 40 Rector Street, 6th Floor, New York, N.Y. 10006
BSA WEBPAGE @ http://www.nyc.gov/html/bsa/home.html

TELEPHONE - (212) 788-8500
FAX - (212) 788-8769

CONTENTS

CONTENTS

CONTENTS

DOCKETS

New Case Filed Up to January 8, 2013

338-12-BZ
164-20 Northern Boulevard, western side of the intersection of Northern Boulevard and Sanford Avenue., Block 5337, Lot(s) 17, Borough of **Queens, Community Board: 7**. Special Permit (§73-36) to permit the legalization of a physical culture establishment (Metro Gym) establishment located in an existing one-story and cellar 4,154 square feet commercial building. C2-2/R5B zoning district.

339-12-BZ
252-29 Northern Boulevard, southwest corner of the intersection formed by Northern Boulevard and Little Neck Parkway., Block 8129, Lot(s) p/o 53, Borough of **Queens, Community Board: 11**. Variance (§72-21) to permit accessory commercial parking to be located in a residential portion of a split zoning lot, contrary to §22-10. R2A & C1-2/R3-1 zoning districts.

340-12-BZ
81 East 161st Street, northeast corner of the intersection formed by East 161st Street and Gerard Avenue., Block 2476, Lot(s) 56, Borough of **Bronx, Community Board: 4**. Variance (§72-21) to permit a Use Group 6 office located on the third story of an existing three-story building contrary to §§33-121 (commercial FAR), 32-421 (commercial location limitations), and 33-431 (commercial height). C1-4/R8 zoning district.

341-12-BZ
403 Concord Avenue, southwest corner of the intersection formed by Concord Avenue and East 144th Street., Block 2573, Lot(s) 87, Borough of **Bronx, Community Board: 1**. Special Permit (§73-19) to permit a Use Group 3 school to occupy an existing building contrary to §42-00 of the zoning resolution. M1-2 zoning district.

342-12-BZ
277 Heyward Street, through lot 110' east of Harrison Avenue, Block 2228, Lot(s) 11, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) to permit residential use contrary to ZR §32-00. C8-2 zoning district.

343-12-BZ
570 East 21st Street, between Dorchester Road and Ditmas Avenue, Block 5184, Lot(s) 39, 62, 66, Borough of **Brooklyn, Community Board: 14**. Variance (§72-21) to permit the construction of a conforming use Group 3 school for students with special needs. R1-2 zoning district.

344-12-A
3496 Bedford Avenue, between Avenue M and Avenue N, Block 7660, Lot(s) 78, Borough of **Brooklyn, Community Board: 14**. Application seeks to reverse the Buildings Department Borough Commissioner, which denied a request to accept proposed work as an Alt 1 application on the basis that the parameters in TPPN 01/01 and TPPN 01/05 were an application as an Alt 1 were exceeded.

345-12-A
303 West Tenth Street, West Tenth, Charles Street, Washington and West Streets, Block 636, Lot(s) 70, Borough of **Manhattan, Community Board: 2**. Appeal challenging DOB's determination that developer is in compliance with ZR 15-41.

346-12-A
179-181 Woodpoint Road, between Jackson Street and Skillman Avenue, Block 2884, Lot(s) 4, Borough of **Brooklyn, Community Board: 1**. Application is filed under the common law theory of vested rights and seeks a determination that the owner has completed substantial construction and incurred considerable financial expenditures prior to a zoning amendment, and therefore should be permitted to complete construction in accordance with the previously approved plans and the validly issued building permits.

347-12-BZ
42-31 Union Street, easterly side of Union Street, 213' south of Sanford Avenue, Block 5181, Lot(s) 11,14,15, Borough of **Queens, Community Board: 7**. Variance (§72-21) to permit transient hotel (UG5) in residential district contrary to §22-10, and Special Permit (§73-66) to allow projection into flight obstruction area of La Guardia airport contrary to §61-20. R7-1 (C1-2) zoning district.

348-12-A
15 Starr Avenue, north side of Starr Avenue, 248.73 east of intersection of Bement Avenue and Starr Avenue, Block 298, Lot(s) 67, Borough of **Staten Island, Community Board: 1**. Appeal from decision of Borough Commissioner denying permission for proposed construction of two one-family dwellings within the bed of a legally mapped street.

DOCKETS

349-12-A
19 Starr Avenue, north side of Starr Avenue, 248.73 east of intersection of Bement Avenue and Starr Avenue., Block 298, Lot(s) 68, Borough of **Staten Island, Community Board: 1**. Appeal from decision of Borough Commissioner denying permission for proposed construction of two one-family dwellings within the bed of a legally mapped street.

350-12-BZ
5 32nd Street, southeast corner of 2nd Avenue and 32nd Street, Block 675, Lot(s) 1, Borough of **Brooklyn, Community Board: 7**. Variance (§72-21) to permit the construction of a community facility/residential building contrary to §42-00. M3-1 zoning district.

1-13-BZ
420 Fifth Avenue, located on Fifth Avenue beween West 37th Street and West 38th Street., Block 839, Lot(s) 7501, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture establishment at the cellar of an existing building. C5-3 zoning district.

2-13-BZ
488 Targee Street, west side 10.42' south of Roff Street, Block 645, Lot(s) 56, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to permit the legalization of an extension retail use contrary to zoning regulations. R3A zoning district.

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

CALENDAR

JANUARY 29, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 29, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

130-88-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.
SUBJECT – Application August 13, 2012 – Extension of Term of the previously granted 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

103-91-BZ
APPLICANT – Davidoff Hutcher & Citron, LLP for 248-18 Sunrise LLC, owner.
SUBJECT – Application October 18, 2012 – Extension of term and amendment to previously granted variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend the hours of operation contrary to previous BSA approval. C2-1/R3-2 zoning district.
PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103' east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, Borough of Queens.
COMMUNITY BOARD #13Q

20-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich LLC, owners.
SUBJECT – Application January 3, 2013 –Extension of Time to Complete Construction of a previously granted Special Permit (75-53) for the vertical enlargement to an existing warehouse (UG17) which expired on January 13, 2013. C6-2A zoning district.
PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street between Greenwich Street and Collister Street, Block 214, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #1M

APPEALS CALENDAR

265-12-A & 266-12-A
APPLICANT – Jesse Masyr, Watchel Masyr & Missry, LLP, for Related Retail Bruckner LLC.
OWNER OF PREMISES – Ciminello Property Associates.
SUBJECT – Application September 5, 2012 – Appeal from Department of Building's determination that the subject signs are not entitled to continued non-conforming use status as advertising signs. M1-2 & R4/C2-1 zoning district.
PREMISES AFFECTED – 980 Brush Avenue, southeast corner of Brush Avenue and Cross Bronx Expressway/Bruckner Expressway, Block 5542, Lot 41, Borough of Bronx.
COMMUNITY BOARD #10BX

287-12-A
APPLICANT – Zygmunt Staszewski, for Breezy Point Cooperative Inc., owner; Brian Rudolph, lessee.
SUBJECT – Application October 5, 2012 –The proposed enlargement of the existing building located partially with in the bed of a mapped street contrary to General City Law Section 35 and the upgrade of an existing private disposal system is to the Department of Building policy. R4 zoning district.
PREMISES AFFECTED – 165 Reid Avenue, east side of Beach 201 Street, 335' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

JANUARY 29, 2013, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 29, 2013, at 1:30 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

148-12-BZ
APPLICANT – Eric Palatnik, P.C., for Esther Kuessous, owner.
SUBJECT – Application May 8, 2012 – Special Permit (§73-621) for the enlargement of an existing single family semi-detached residence contrary to floor area, lot coverage and open space (ZR23-141(b)). R4 zoning district.
PREMISES AFFECTED – 981 East 29th Street, between Avenue I and Avenue J, Block 7593, Lot 12, Borough of Brooklyn.
COMMUNITY BOARD #14BK

234-12-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1776 Eastchester Realty LLC, owner; LA Fitness, lessee.
SUBJECT – Application July 20, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*LA Fitness*). M1-1 zoning district.
PREMISES AFFECTED – 1776 Eastchester Road, east of Basset Avenue, west of Marconi Street, 385' north of intersection of Basset Avenue and Eastchester Street, Block 4226, Lot 16, Borough of Bronx.
COMMUNITY BOARD #11BX

294-12-BZ
APPLICANT – Eric Palatnik, P.C., for David Katzive, owner; Thomas Anthony, lessee.
SUBJECT – Application October 11, 2012 – Special Permit (§73-36) to permit a physical culture establishment. 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

295-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Laura Danoff and Scott Danoff, owners.
SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit the expansion of a non-conforming Use Group 4 dentist's office, contrary to §52-22. R1-2 zoning district.
PREMISES AFFECTED – 49-33 Little Neck Parkway, Block 8263, Lot 110, Borough of Queens.
COMMUNITY BOARD #11Q

302-12-BZ
APPLICANT – Davidoff Hutcher & Citgron LLP, for YHD 18 LLC, owner; Lithe Method LLC, lessee.
SUBJECT – Application October 18, 2012 – Special permit (73-36) to permit a proposed physical culture establishment (*Lithe Method*) to be located at the ground floor of the building at the premises.
PREMISES AFFECTED – 32 West 18th Street, between Fifth and Sixth Avenues, Block 819, Lot 1401, Borough of Manhattan.
COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JANUARY 8, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

743-59-BZ
APPLICANT – Peter Hirshman for VM 30 Park, LLC, owner.
SUBJECT – Application June 14, 2012 – Extension of Term of a previously approved variance (Section 7e 1916 zoning resolution and MDL Section 60 (1d)), which permitted 20 attended transient parking spaces, which expired on June 14, 2011; Waiver of the Rules. R10/R9X zoning district.
PREMISES AFFECTED – 30 Park Avenue, southwest corner of East 36th Street and Park Avenue. Block 865, Lot 40. 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 waiver of the Rules of Practice and Procedure, a re-opening and an extension of term for a previously granted variance to allow transient parking in an accessory garage, which expired on June 14, 2011; and

WHEREAS, a public hearing was held on this application on November 27, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application, but requests that the term be limited to five years; 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, the subject site is located on the southwest corner of Park Avenue and East 36th Street, partially within an R10 zoning district and partially within an R9X zoning district; and

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

WHEREAS, the first floor, cellar, and sub-cellar are occupied by an accessory garage, with 45 spaces at the first floor, 48 spaces at the cellar level, and 49 spaces at the sub-cellar level; and

WHEREAS, on July 12, 1960, under the subject calendar number, the Board granted an application pursuant to Section 60(1)(d) of the Multiple Dwelling Law ("MDL"), to permit a maximum of 20 surplus parking spaces to be used for transient parking, for a term of 21 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on October 30, 2001, the Board granted a ten-year extension of term, which expired on June 14, 2011; and

WHEREAS, in response to concerns raised by the Community Board, the applicant submitted revised plans reflecting that the signage on the site will be modified to comply with C1 district regulations, and the applicant states that the hours of illumination of the signage will be limited to 7:00 a.m. to 10:00 p.m.; 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution pursuant to Section 60(1)(d) of the MDL, said resolution having been adopted on July 12, 1960, as subsequently extended, so that as amended this portion of the resolution shall read: "granted for a term of ten (10) years from June 14, 2011, to expire on June 14, 2021; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received June 14, 2012' – (2) sheets and 'October 15, 2012'-(1) sheet; and *on further condition*;

THAT this term will expire on June 14, 2021;

THAT the number of daily transient parking spaces will be no greater than 20;

THAT all residential leases will indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be placed in a conspicuous place within the garage;

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

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

THAT the layout of the parking garage 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; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 102136886)

Adopted by the Board of Standards and Appeals, January 8, 2013.

165-91-BZ
APPLICANT – Law Offices of Stuart A. Klein, for United Talmudical Academy, owner.
SUBJECT – Application August 17, 2012 – Extension of Term of approved Special Permit (§73-19) which permitted the construction and operation of a school (UG 3) which expires on September 15, 2012. M1-2 zoning district.
PREMISES AFFECTED – 45 Williamsburg Street West, aka 32-46 Hooper Street, Block 2203, Lot 20, Borough of Brooklyn.
COMMUNITY BOARD #1BK
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 special permit for the operation of a school within an M1-2 zoning district, which expired on September 15, 2012; and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

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

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

WHEREAS, the site is located on an irregularly-shaped corner lot bounded by Hooper Street to the west, Wythe Avenue to the north, and Williamsburg Street West to the east, within an M1-2 zoning district; and

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

WHEREAS, on September 15, 1992, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-19 to permit the construction of a school within the subject M1-2 zoning district for a term of 20 years, which expired on September 15, 2012; and

WHEREAS, the applicant now seeks to extend or eliminate the term of the variance; and

WHEREAS, the Board notes that no term is required under ZR § 73-19, and considers the elimination of the term appropriate for the site; and

WHEREAS, in response to the concerns raised by the Board, the applicant submitted revised plans reflecting the existing rooftop play area on the building; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 15, 1992, so that as amended this portion of the resolution shall read: "to grant approval of the elimination of the term of the variance; *on condition* that any and all work shall substantially conform to drawings filed with this application marked 'Received August 17, 2012'-(7) sheets and 'December 24, 2012'-(1) sheet; and *on further condition*:

THAT a new certificate of occupancy will be obtained by January 8, 2014;

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

Adopted by the Board of Standards and Appeals, January 8, 2013.

107-06-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Barbizon Hotel Associates, LP, owner; Equinox 63rd Street, Inc. lessee.
SUBJECT – Application September 14, 2012 – Amendment to previously granted Special Permit (§73-36) for the increase (693 square feet) of floor area of an existing Physical Culture Establishment (*Equinox)*. C10-8X/R8B zoning district.
PREMISES AFFECTED – 140 East 63rd Street, southeast corner of intersection of East 63rd Street and Lexington Avenue, Block 1397, Lot 7505, Borough of Manhattan.
COMMUNITY BOARD #8M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted special permit for a physical culture establishment ("PCE"), to permit a 693 sq. ft. expansion of the PCE; and

WHEREAS, a public hearing was held on this application on December 11, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

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

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Lexington Avenue and East 63rd Street, partially within a C1-8X zoning district and partially within an R8B

zoning district; and

WHEREAS, the applicant notes that, because more than 50 percent of the lot area is located in the C1-8X zoning district and the greatest distance from the district boundary to any lot line does not exceed 25 feet, the C1-8X zoning district regulations may apply to the entire site, pursuant to ZR § 77-11; and

WHEREAS, the site is occupied by a 22-story mixed-use commercial/residential building; and

WHEREAS, the PCE occupies 18,471 sq. ft. of floor area on the first and second floors, with an additional 19,738 sq. ft. of floor space located on the sub-cellar and cellar levels; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 27, 2007 when, under the subject calendar number, the Board granted a special permit for the operation of a PCE at the subject site; and

WHEREAS, the applicant now requests an amendment to permit an expansion of the PCE use to an additional 693 sq. ft. of floor area, for a total PCE floor area of 19,164 sq. ft.; and

WHEREAS, the applicant states that the PCE will be expanded into an existing vacant space on the first floor which will be used as a pilates studio and will be accessed from a new opening created within the existing facility; and

WHEREAS, the applicant further states that the proposed expansion will not result in any new storefront space or signage; and

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

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 27, 2007, so that as amended this portion of the resolution shall read: "to permit a 693 sq. ft. expansion of the PCE on the first floor; *on condition* that any and all work shall substantially conform to drawings filed with this application marked 'Received December 24, 2012'- (1) sheet; and *on further condition*:

THAT the term of this grant will expire on February 27, 2017;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 104405038)

Adopted by the Board of Standards and Appeals, January 8, 2013.

39-65-BZ
APPLICANT – Eric Palatnik, P.C., for SunCo. Inc. (R & M), owners.
SUBJECT – Application March 13, 2012 – Amendment of a previously-approved variance (§72-01) to convert repair bays to an accessory convenience store at a gasoline service station (*Sunoco*); Extension of Time to obtain a Certificate of Occupancy, which expired on January 11, 2000; and Waiver of the Rules. C3 zoning district.
PREMISES AFFECTED – 2701-2711 Knapp Street and 3124-3146 Voohries Avenue, Block 8839, Lot 1, 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 February 5, 2013, at 10 A.M., for decision, hearing closed.

410-68-BZ
APPLICANT – Eric Palatnik, P.C., for Alessandro Bartellino, owner.
SUBJECT – Application May 22, 2012 – Extension of Term (§11-411) of approved variance which permitted the operation of (UG16B) automotive service station (*Citgo*) with accessory uses, which expired on November 26, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on January 11, 2008; Waiver of the Rules. R3-2 zoning district.
AFFECTED PREMISES – 85-05 Astoria Boulevard, east corner of 85th Street. Block 1097, Lot 1. Borough of Queens.
COMMUNITY BOARD #3Q
ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for continued hearing.

548-69-BZ
APPLICANT – Eric Palatnik, P.C., for BP North America, owner.
SUBJECT – Application March 27, 2012 – Extension of Term for a previously granted variance for the continued operation of a gasoline service station (*BP North America*) which expired on May 25, 2011; Waiver of the Rules. R3-2 zoning district.
PREMISES AFFECTED – 107-10 Astoria Boulevard, southeast corner of 107th Street, Block 1694, Lot 1, Borough of Queens.
COMMUNITY BOARD #3Q
ACTION OF THE BOARD – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

982-83-BZ
APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.
SUBJECT – Application August 17, 2012 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of retail and office use (UG 6) which expired on July 19, 2012. R3-2 zoning district.
PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of intersection of Northern Boulevard and 192nd Street, Block 5513, Lot 27, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to February 5, 2013, at 10 A.M., for adjourned hearing.

68-91-BZ
APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Inc., owner.
SUBJECT – Application August 24, 2012 – Extension of Term (§11-411) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses, which expired on May 19, 2012; Amendment §11-412) to permit the legalization of certain minor interior partition changes and a request to permit automotive repair services on Sundays; Waiver of the Rules. R5D/C1-2 & R2A zoning district.
PREMISES AFFECTED – 223-15 Union Turnpike, northwest corner of Springfield Boulevard and Union Turnpike, Block 7780, Lot 1, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to January 8, 2013, at 10 A.M. for continued hearing.

85-91-BZ
APPLICANT – Carl A. Sulfaro, Esq. for Lada Limited Liability Company, owner; Bayside Veterinary Center, lessee.
SUBJECT – Application August 20, 2012 – Extension of Term (§11-411) of a previously granted variance for a veterinarian's office, accessory dog kennels and a caretaker's apartment which expired on July 21, 2012; amendment to permit a change to the hours of operation and accessory signage. R3-1 zoning district.
PREMISES AFFECTED – 204-18 46th Avenue, south side of 46th Avenue 142.91' east of 204th Street. Block 7304, Lot 17, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to February 5, 2013, at 10 A.M., for decision hearing closed.

189-03-BZ
APPLICANT – Eric Palatnik, P.C., for 830 East 233rd Street Corp., owner.
SUBJECT – Application November 21, 2011 – Extension of Term of a previously granted special permit (§73-211) for the continued operation of an automotive service station (*Shell*) with an accessory convenience store (UG 16B) which expires on October 21, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on October 21, 2008; Waiver of the Rules. C2-2/R-5 zoning district.
PREMISES AFFECTED – 836 East 233rd Street, southeast corner of East 233rd Street and Bussing Avenue, Block 4857, Lot 44, 41, Borough of Bronx.
COMMUNITY BOARD #12BX
ACTION OF THE BOARD – Laid over to February 12, 2013, at 10 A.M., for decision, hearing closed.

136-06-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Fulton View Realty, LLC, lessee.
SUBJECT – Application August 24, 2012 – Extension of Time to complete construction of a previously approved variance (§72-21) which permitted the residential conversion and one-story enlargement of three, four-story buildings. M2-1 zoning district.
PREMISES AFFECTED – 11-15 Old Fulton Street, between Water Street and Front Street, Block 35, Lot 7, 8 & 9, 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 January 29, 2013, at 10 A.M., for decision, hearing closed.

197-08-BZ
APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.
SUBJECT – Application April 27, 2012 – Amendment to an approved variance (§72-21) to permit a four-story and penthouse residential building, contrary to floor area and open space (§23-141), units (§23-22), front yard (§23-45), side yard (§23-462), and height (§23-631). Amendment seeks to reduce the number of units and parking and increase the size of the rooftop mechanical equipment. R4 zoning district.
PREMISES AFFECTED – 341-349 Troy Avenue aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #9BK
ACTION OF THE BOARD – Laid over to February 26, 2013, at 10 A.M., for adjourned hearing.

208-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Desiree Eisenstadt, owner.
SUBJECT – Application October 25, 2012 – Extension of Time to Complete Construction of an approved special permit (§73-622) to permit the enlargement of an existing single family residence which expired on October 28, 2012. R2 zoning district.
PREMISES AFFECTED – 2117-2123 Avenue M, northwest corner of Avenue M and East 22nd Street, Block 7639, Lot 1 &3(tent.1), Borough of Brooklyn.
COMMUNITY BOARD #14BK
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to January 29, 2013, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

255-84-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner.
SUBJECT – Application May 23, 2012 – Proposed enlargement of a community center (*Administration Security Building*) located partially in the bed of the mapped Rockaway Point Blvd, contrary to Article 35 of the General City Law. R4 zoning district.
AFFECTED PREMISES – 95 Reid Avenue, East side Reid Avenue at Rockaway Point Boulevard. Block 16350, Lot p/o300. Borough of Queens.
COMMUNITY BOARD #14Q
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 May 4, 2012, acting on Department of Buildings Application No. 420372698, reads in pertinent part:
A1- The existing building to be altered lies within the bed of a mapped street contrary to Article 3, Section 35 of the General City Law; 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 the same date; and
WHEREAS, this is an application to reopen and amend a previously approved GCL 35 to allow for the enlargement of an existing community facility; and
WHEREAS, by letter dated October 25, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections; and
WHEREAS, by letter dated July 27, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and
WHEREAS, by letter dated September 12, 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and
WHEREAS, DOT states that the subject lot is not currently included in the agency's Capital Improvement Program; 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 May 4, 2012 , acting on Department of Buildings Application No. 420372698 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 23, 2012"-one (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 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;
THAT the community facility shall be provided with interconnected smoke alarms in accordance with the BSA-approved plans;
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, January 8, 2013.

95-12-A & 96-12-A
APPLICANT – Fried Frank by Richard G. Leland, Esq., for Van Wagner Communications, LLC.
OWNER OF PREMISES – Calandra LLC.
SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising sign. M1-2 zoning district.
PREMISES AFFECTED – 2284 12th Avenue, west side of 12th Avenue between 125th and 131st Streets, Block 2004, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #9M

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 subject appeal comes before the Board in response to two Notice of Sign Registration Rejection letters from the Manhattan Borough Commissioner of the Department of Buildings ("DOB"), dated March 12, 2012, denying registration for two signs at the subject site (the "Final Determinations"), which read, in pertinent part:

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit and in support of the legal establishment of this sign. Unfortunately, a tax photo of this location during the relevant period shows no sign structure. As such the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on January 8, 2012; and

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

WHEREAS, the subject site is located at the west side of 12th Avenue between 125th Street and 131st Street, in an M1-2 zoning district within the Special Manhattanville Mixed Use District; and

WHEREAS, the site is occupied by a two-story building which has two advertising signs located on the roof of the building, one facing north (the "North-Facing Sign") and one facing south (the "South-Facing Sign") (collectively, the "Signs"); and

WHEREAS, on December 31, 2003, DOB issued Permit Nos. 103635210-01-SG and 103635229-01-SG to "replace existing non-conforming illuminated advertising sign" for both the North-Facing Sign and South-Facing Sign (the "2003 Permits"), and on January 2, 2004, DOB issued Permit No. 103634989-01-ET to "repair or rebuilt existing steel structure of existing non-conforming illuminating advertising sign" (collectively, the "Permits"); and

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

WHEREAS, the Appellant states that the Signs are rectangular advertising signs each measuring 20 feet in height by 60 feet in length for a surface area of 1,200 sq. ft., with the North-Facing Sign located 40'-5" from the Henry Hudson Parkway and the South-Facing Sign located 41'-10" from the Henry Hudson Parkway; and

WHEREAS, the Appellant states that when the Signs were installed, the site was within an M2-3 zoning district, but that pursuant to a 2007 rezoning, the site is now zoned M1-2 within the Special Manhattanville Mixed use District; and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration of the Signs based on DOB's determination that the Appellant (1) failed to provide evidence of the establishment of the advertising signs and (2) failed to establish that such use has, if established prior to the relevant date, continued without an interruption of two years or more; and

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

REGISTRATION REQUIREMENT

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

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

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

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

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

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

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

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

on the relevant date set forth in the Zoning Resolution; and

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

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

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

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

REGISTRATION PROCESS

WHEREAS, the Appellant states that on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49, it submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Signs and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Signs; (2) photographs of the Signs; and (3) the Permits, along with Letters of Completion for each application; and

WHEREAS, on October 3, 2011, DOB issued two Notices of Sign Registration Deficiency, stating that it is unable to accept the Signs for registration due to "Failure to provide proof of legal establishment – No proof prior to 2003 rebuild Permit…;" and

WHEREAS, by letter dated January 6, 2012, the Appellant submitted a response to DOB, arguing that the issuance of the 2003 Permits alone, without any further information, is sufficient "proof of legal establishment," and that the Appellant had operated the Signs for more than a decade in reliance on the DOB permits; and

WHEREAS, by letter dated January 30, 2012, the Appellant supplemented its Sign Registration Applications with an affidavit attesting to the uninterrupted and continuing presence and use of the Signs from 1963 until 1989; and

WHEREAS, DOB determined that the additional material submitted was inadequate, and issued the Final Determinations on March 12, 2012; and

RELEVANT STATUTORY PROVISIONS

> ZR § 12-10 *Definitions*
>
> Non-conforming, or non-conformity
>
> A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .
>
> * * *
>
> ZR § 42-55
>
> Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways
>
> M1 M2 M3
>
> In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.
>
> (a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:
>
> (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
>
> (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.
>
> (b) Beyond 200 feet from such arterial highway or #public park#, the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway or #public park#.
>
> (c) The more restrictive of the following shall apply:
>
> (1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or
>
> (2) any #advertising sign# erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in #surface area# on its face, 30 feet in height and 60 feet in length, shall have legal #non-conforming use# status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All #advertising signs# not in conformance with the standards set forth herein shall terminate.

* * *

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

General Provisions

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

* * *

ZR § 52-61 *Discontinuance*

General Provisions

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

* * *

ZR § 52-83

Non-Conforming Advertising Signs

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

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

* * *

Building Code § 28-502.4 – Reporting Requirement

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

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

* * *

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

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

* * *

RCNY § 49-16 – Non-conforming Signs

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

THE APPELLANT'S POSITION

A. Establishment Prior to November 1, 19791 and Continuous Use

WHEREAS, the Appellant contends that the Final Determinations should be reversed because (1) the Signs were established as advertising signs prior to November 1, 1979 and may therefore be maintained as legal non-conforming advertising signs pursuant to ZR § 52-11, and (2) the Signs have operated as advertising signs with no discontinuance of two years or more since their establishment; and

WHEREAS, in support of its assertion that the Signs were established prior to November 1, 1979 and have been in continuous use to the present, the Appellant relies on: (1) a May 24, 1978 lease between the owner of the building and Miller Outdoor Advertising, an outdoor advertising company, which states that Miller had the right to maintain a sign structure on the roof of the building beginning in 1978 (the "1978 Lease"); (2) an Application for Reconsideration dated November 10, 1999 requesting that the Signs be permitted as an existing non-conforming structure and have legal non-conforming use as an advertising sign, and signed off on by the then-Manhattan Borough Commissioner, noting "OK to accept existing roof sign 20 ft. x 60 ft., per ES 234/88 and in continuous use per lease dated May 24, 1978" (the "1999 Reconsideration"); and (3) an affidavit dated January 21, 2012 from Donald Robinson, an employee of various outdoor advertising companies from 1963 through 1989, which states that the Signs were existing in 1963 and that they were being used from 1963 to 1989 as advertising signs (the "Robinson Affidavit"); and

WHEREAS, as to the continuous use of the Signs since November 1, 1979, at the outset DOB states that the Appellant

1 DOB acknowledges that the surface area of the Signs do not exceed 1,200 sq. ft. on their face, 30 feet in height, or 60 feet in length, and therefore the Signs may have legal non-conforming status if erected prior to November 1, 1979 pursuant to ZR § 42-55(c).

has submitted sufficient evidence to demonstrate continuity of the Signs from 1992 through the filing of the subject appeal; and

WHEREAS, accordingly, the Board finds it appropriate to limit its review of the continuity of the Signs to the period from 1979 through 1992, which is the only time period for which DOB has alleged a discontinuance of the Sign for a period in excess of two years, contrary to ZR § 52-61; and

WHEREAS, in support of the existence of the Signs as advertising signs from 1979 through 1992, the Appellant relies on: (1) the 1978 Lease; (2) the 1999 Reconsideration; (3) a 2003 photograph showing advertising copy on the sign structure and a "Miller Outdoor" placard at the bottom of one of the signs (the "2003 Photograph"); (4) an affidavit dated August 10, 2012 from the owner of the site, stating that the Signs continued to be leased to Miller Outdoor Advertising through 2003 under the 1978 Lease (the "Owner's Affidavit"); and (5) the Robinson Affidavit; and

WHEREAS, the Appellant asserts that the 1999 Reconsideration reflects DOB's acknowledgement that the use of the Signs as advertising signs had been legally established prior to November 1, 1979 and continued to be leased under the 1978 Lease until at least 1999; and

WHEREAS, the Appellant contends that the 2003 Photograph, which shows a "Miller Outdoor" placard at the bottom of one of the signs, in combination with the Owner's Affidavit, which states that it assumed the 1978 Lease upon acquisition of the site in 1999 and that the Signs were leased to Miller Outdoor Advertising at the time it took over the site until November 30, 2003 with a continuous advertising display during that time, reflect that the Miller Advertising Company continued to lease the Signs from May 24, 1978 until at least November 30, 2003; and

WHEREAS, the Appellant asserts that DOB's issuance of the 2003 Permits is further evidence that DOB accepted the establishment and continuous use of the Signs since November 1, 1979; and

WHEREAS, a representative of the Appellant provided testimony at the hearing stating that she conducted an extensive search for additional type (a) and (b) evidence pursuant to TPPN 14/1988 (the "TPPN") to prove the continuity of the non-conforming sign, but that no additional evidence was available; and

WHEREAS, as to the Department of Finance ("DOF") tax photograph taken between 1982 and 1987 submitted by DOB (the "1980's DOF Photograph"), which shows no sign structure on the roof of the building and which DOB claims is evidence of discontinuance of the Signs at the site, the Appellant argues that DOB has not provided any proof that the advertising use of the Signs was discontinued for two years or more, and one single photograph from a single moment in time is not in and of itself sufficient to establish discontinuance for a period of two years or more; and

WHEREAS, the Appellant states that pursuant to ZR §§ 42-55 and 52-83, the Signs and supporting sign structure could have been temporarily removed for a period of less than two years in accordance with ZR § 52-61 or replaced without affecting the non-conforming use status of the Signs; and

WHEREAS, the Appellant argues that the temporary removal of the Signs to restore and refurbish the sign structure did not divest them of their legal non-conforming status, and the evidence provided by the Appellant indicates that Miller Outdoor Advertising maintained a lease for the Signs through the 1980's and continued to display advertising copy throughout this time period; and

WHEREAS, the Appellant argues that the subject case is distinguishable from similar cases cited by DOB due to the 1999 Reconsideration, which should be afforded more weight than a DOB-issued permit based on self-certified plans because it reflects that the then-Borough Commissioner reviewed and approved the specific issue of establishment and continuous use of the Signs, and DOB has not provided sufficient evidence to support its conclusion that the 1999 Reconsideration was issued in error, as the only evidence they rely on is the 1980's DOF Photograph which, as noted above, merely reflects the absence of the Signs for one point in time, not for two years continuously; and

B. Ability to Rely on 2003 Permits Alone

WHEREAS, the Appellant asserts that the Signs qualify as non-conforming advertising signs under ZR § 42-55 because the 2003 Permits issued by DOB establish that DOB has already accepted the legal non-conforming status of the Signs; and

WHEREAS, the Appellant further contends that the 2003 Permits specifically provide for the replacement of "existing non-conforming illuminated advertising sign[s]" and DOB has never alleged that the 2003 Permits were issued for anything other than advertising signs; therefore, the fact that DOB issued the 2003 Permits (and the 1999 Reconsideration) establishes that DOB has sufficient evidence that advertising signs have continuously been maintained on the site prior to November 1, 1979; and

WHEREAS, the Appellant asserts that DOB had the opportunity to evaluate the legality of the Signs at the time it issued the 2003 Permits to allow for the repair of the existing advertising signs on the site, and the applicable provisions of the Zoning Resolution have not changed since that time; and

WHEREAS, the Appellant represents that it has relied in good faith on DOB's approval of the Signs, has made investments in maintaining and marketing in reliance on the approvals, and equity does not allow DOB to revise its prior approvals and require the removal of the Signs; and

DOB'S POSITION

A. Establishment of the Signs Prior to November 1, 1979

WHEREAS, DOB contends that the Appellant has failed to provide adequate evidence that the Signs were established as advertising signs prior to November 1, 1979; and

WHEREAS, DOB states that in order to show proof of establishment of the advertising signs under the non-conforming use provisions of ZR § 42-55(c), the Appellant would need to demonstrate that the Signs were installed

prior to November 1, 1979; and

WHEREAS, DOB further states that if the Appellant produced a permit for the Signs prior to November 1, 1979, DOB would accept the Signs as being established prior to the relevant date; further, if the Appellant is unable to produce a permit for the Signs, DOB states that it would also look at additional evidence indicated in RCNY 49(d)(15)(b), including, but not limited to, photographs, affidavits, leases, and receipts which indicate that Signs were installed prior to November 1, 1979; and

WHEREAS, DOB argues that the only evidence the Appellant has produced to show establishment of the Signs prior to November 1, 1979 is the 1978 Lease for "maintenance of a roof sign" and the Robinson Affidavit, which is uncorroborated and questionable at best; and

WHEREAS, DOB contends that the 1999 Reconsideration cannot be relied on for the establishment of the Signs prior to November 1, 1979 because, as discussed in greater detail below, it was issued in error; and

WHEREAS, DOB asserts that the Appellant's evidence of photographs from the 1990's, 2000's, and 2010's, and the 2003 Permits also do not establish that the Signs were erected prior to November 1, 1979; and

WHEREAS, DOB states that, based on the lack of evidence indicating the Signs were installed prior to November 1, 1979, it is unable to conclude that the Signs were established and therefore it cannot consider the Signs to be non-conforming advertising signs, consistent with ZR § 42-55(c); and

B. The Evidence of Continuity Fails to Satisfy the Standard Set Forth in the TPPN

WHEREAS, DOB asserts that even if the Appellant has established the Signs as non-conforming advertising signs, the Appellant must also submit sufficient evidence to establish that the Signs have been continuously used as advertising signs since November 1, 1979, without any two-year period of discontinuance, as required by ZR § 52-61; and

WHEREAS, DOB contends that the Appellant's evidence of continuity of the Signs fails to satisfy the TPPN, which sets forth guidelines for DOB's review of whether a non-conforming use has been continuous; the TPPN includes the following types of evidence, which have been accepted by the Borough Commissioner: (1) Item (a): City agency records; (2) Item (b): records, bills, documentation from public utilities; (3) Item (c): other documentation of occupancy including ads and invoices; and (4) Item (d): affidavits; and

WHEREAS, DOB notes that additional forms of evidence not described in the TPPN are accepted and are given due consideration and weight depending on the nature of the evidence, including the following: (1) a lawfully issued permit from DOB is given substantial weight; (2) other government records, recorded documents and utility bills are generally considered high value evidence; and (3) photographic evidence is also given substantial weight; and

WHEREAS, in contrast, DOB states that uncorroborated testimonial evidence that a sign was established or has existed continuously is not considered sufficient because testimony may be tainted by memory lapses, bias and misperception, and leases and other contracts that are not corroborated by independently verifiable evidence may not be sufficient because they can be fabricated or materially altered and because they do not demonstrate the actual existence of a sign; and

WHEREAS, DOB states that the Appellant has not provided any relevant records from any City agency (Item (a) evidence), except for the 2003 Permits and the 1999 Reconsideration; and

WHEREAS, DOB notes that no public utility bills or records (Item (b) evidence) and no other bills indicating the use of the building (Item (c) evidence) were submitted by the Appellant; and

WHEREAS, DOB states that the only other evidence provided by the Appellant can be categorized as TPPN (d) evidence, including the 1978 Lease (for a term of five years), photographs from 1992, 1996, the multiple photographs from the 2000's, and the multiple photographs from the 2010's, the Owner's Affidavit, and the Robinson Affidavit; and

WHEREAS, DOB acknowledges that the evidence of continuity submitted by the Appellant, specifically the numerous photographs, sufficiently establishes that the Signs were continuously used for advertising from 1992 until the filing of the application; however, DOB asserts that the Appellant has not provided sufficient evidence to show that the Signs were continuously used for advertising without an interruption of two years or more from November 1, 1979 until 1992; and

WHEREAS, as to the 1999 Reconsideration, DOB states that although it gives substantial weight to reconsiderations, if there is evidence that the reconsideration was issued in error, DOB will not rely on it; and

WHEREAS, DOB asserts that the 1999 Reconsideration indicates that the then-Borough Commissioner based the decision solely on the 1978 Lease, and that DOB has now reviewed the lease and deemed it insufficient evidence that the Signs were established prior to November 1, 1979 and continued until at least 1992, particularly in light of the 1980's DOF Photograph which clearly shows that there were no Signs or sign structure on the building at that time; and

WHEREAS, DOB argues that the Appellant has not provided any evidence to explain or rebut the absence of the Signs and sign structure in the 1980's DOF Photograph, and therefore DOB considers the 1999 Reconsideration to have been issued in error; and

WHEREAS, DOB asserts that the only other evidence submitted by the Appellant for this time period is the 1978 Lease, which was only for a term of five years and does not by itself prove that the Sign was in existence during the term of the lease, and the Robinson Affidavit, which is uncorroborated and questionable at best given the fact that the 1980's DOF Photograph clearly shows the lack of Signs or a sign structure; and

WHEREAS, DOB contends that the veracity of the Robinson Affidavit is also questionable because of a similarly questionable affidavit submitted by the same affiant to DOB in

a prior Sign Registration Application denial case, in which the Board upheld DOB's denial for signs at 653 Bruckner Boulevard, Bronx (BSA Cal. Nos. 83-12-A and 84-12-A); and

WHEREAS, DOB states that in the 653 Bruckner Boulevard case the Appellant submitted an affidavit from Mr. Robinson attesting to the display of off-premise advertising signs from 1963 through 1989, just as his affidavit does in this case; however, DOB produced evidence, including a photograph, which clearly indicated that one of the signs was used as an accessory sign during the time period Mr. Robinson claimed that off-premises advertising signs existed at the location; and

WHEREAS, DOB further states that, based on Mr. Robinson's inaccurate affidavit in the 653 Bruckner Boulevard case, and the fact that the 1980's DOF Photograph shows the absence of the Signs or a sign structure on the site, DOB is not able to rely on the Robinson Affidavit; and

WHEREAS, DOB asserts that even if it did find the Robinson Affidavit credible, the submission of affidavits without further corroborating evidence does not establish that the use of the Signs was continuous from November 1, 1979 until 1992 without an interruption of two years; and

WHEREAS, accordingly, DOB concludes that the Appellant has not established that the Signs were continuously used as advertising signs from November 1, 1979 until 1992 without any interruption of two years or more; and

CONCLUSION

WHEREAS, the Board finds that the Appellant has met its burden of establishing that the Signs were established prior to November 1, 1979 and have been in continuous use as advertising signs without any two-year interruption since 1979; and

WHEREAS, as noted above, DOB acknowledges that the Appellant has submitted sufficient evidence to demonstrate continuity of the Signs from 1992 through the filing of the subject appeal; thus, only the establishment of the Signs prior to November 1, 1979 and their continuous use until 1992 are contested; and

WHEREAS, the Board agrees with the Appellant that the 1999 Reconsideration reflects DOB's acknowledgement that the use of the Signs as advertising signs had been legally established prior to November 1, 1979 and that the Signs continued to be leased under the 1978 Lease until at least 1999; and

WHEREAS, the Board finds that the 1999 Reconsideration is compelling and that it should not be disturbed or disregarded as DOB suggests; and

WHEREAS, the Board agrees with the Appellant that the subject case is distinguishable from similar cases cited by DOB because of the 1999 Reconsideration, which should be afforded more weight than a DOB-issued permit based on self-certified plans because it reflects that the then-Borough Commissioner reviewed and approved the specific issue of establishment and continuous use of the Signs; and

WHEREAS, the Board acknowledges the principle that government agencies, like DOB, maintain the ability to correct mistakes and that DOB is not estopped from correcting an erroneous approval of a building permit (see Charles Field Delivery v. Roberts, 66 N.Y. 2d 516 (1985) and Parkview Associates v. City of New York, 71 N.Y.2d 274, cert. denied, 488 U.S. 801 (1988)); however, the Board finds that in this case DOB has not established that the 1999 Reconsideration was issued in error; and

WHEREAS, specifically, DOB states that leases are listed among the type of evidence it considers for establishment of signs under RCNY 49(d)(15)(b), and further states that it categorizes leases as type (d) evidence under the TPPN which was in effect at the time of the 1999 Reconsideration and which sets forth guidelines for DOB's review of whether a non-conforming use has been continuous; and

WHEREAS, the Board notes that the TPPN states that type (d) evidence is acceptable "only after satisfactory explanation or proof that the documentation pursuant to a, b, or c does not exist"; here, the Appellant has submitted type (a) evidence in the form of the 1999 Reconsideration, and a representative of the Appellant provided testimony detailing the extensive search that was conducted for additional type (a) and (b) evidence pursuant to the TPPN and determined that it does not exist; and

WHEREAS, accordingly, the Board finds that even if the then-Borough Commissioner relied solely on the 1978 Lease in approving the 1999 Reconsideration, as DOB claims, DOB has not provided sufficient evidence that the determination was made in error as it acknowledges that leases are among the types of evidence that can be considered for both the establishment and continuous use of the Signs; and

WHEREAS, while DOB may not currently consider a lease, standing alone, to be sufficient evidence of establishment and continuous use of a sign, the Board does not find that to be a sufficient basis to invalidate the 1999 Reconsideration, given that the analysis of what constitutes sufficient evidence of establishment and continuous use is, to a large degree, subjective and based on the totality of the Borough Commissioner's review, and DOB has acknowledged that leases are among the type of evidence that can be considered under RCNY 49(d)(15)(b) as well as the TPPN; therefore it is not clear that the then-Borough Commissioner erred in approving the 1999 Reconsideration; and

WHEREAS, the Board distinguishes the subject facts from cases where the reconsideration at issue was based on an objective interpretation question and where DOB clearly established that the reconsideration was approved in error and should be disregarded; and

WHEREAS, further, the Board disagrees with DOB that merely because the 1999 Reconsideration states "OK to accept existing roof sign 20 ft. x 60 ft., per ES 234/88 and in continuous use per lease dated May 24, 1978," it establishes that the then-Borough Commissioner relied solely on the 1978 Lease in making his determination; rather, it is possible that there was additional evidence that he relied upon but did not memorialize in the hand-written, one-sentence sign-off of the

1999 Reconsideration, and the Board considers the fact that it is unclear whether additional evidence was relied on by the then-Borough Commissioner to weigh in favor of upholding his determination unless it was clearly issued in error; and

WHEREAS, as to DOB's submission of the 1980's DOF Photograph as proof that the 1999 Reconsideration was issued in error, the Board notes that the 1980's DOF Photograph only establishes that the Signs did not exist at that moment in time, and the Board does not find it sufficient, without more, to invalidate the 1999 Reconsideration as it does not prove that the use of the Signs was discontinued for two years or more, and, as noted above, there may have been additional evidence that the then-Borough Commissioner relied upon in approving the 1999 Reconsideration; and

WHEREAS, the Board disagrees with DOB's contention that there is no evidence of the dimensions of the Signs as they existed prior to November 1, 1979, since the 1999 Reconsideration refers to 20'-0" by 60'-0" roof signs; and

WHEREAS, accordingly, the Board finds that the 1999 Reconsideration establishes the existence of the Signs with dimensions of 20'-0" by 60'-0" prior to November 1, 1979 and their continuous use from 1979 through 1992, after which date DOB has accepted that the use of the Signs was continuous.

Therefore it is Resolved that this appeal, challenging a Final Determination issued on March 12, 2012, is granted.

Adopted by the Board of Standards and Appeals, January 8, 2013.

99-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – 393 Canal Street LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-5B zoning district.

PREMISES AFFECTED – 393 Canal Street, Laight Street and Avenue of the Americas, Block 227, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

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

100-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq., for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – 393 Canal Street LLC.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising signs. M1-5B zoning district.

PREMISES AFFECTED – 393 Canal Street, Laight Street and Avenue of the Americas, Block 227, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative: 0

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

THE RESOLUTION –

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

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit, and asserting that this sign is not intended to be seen from the arterial and as such has the appropriate non-arterial permit for construction. Unfortunately, the intent of viewing is not relevant in this assessment and as such, the sign is rejected from registration. While we recognize your assertion that the sign was not intended to be visible from arterial, we affirm our rejection. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on January 8, 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, the subject site is located on the north side of Canal Street between West Broadway and Thompson Street, within an M1-5B zoning district; and

WHEREAS, the site is occupied by a two-story building with a south-facing sign located on the southern exterior wall of the building on the second floor (the "Sign"); and

WHEREAS, the Appellant originally filed a companion application under BSA Cal. No. 99-12-A for a

separate sign located on the roof of the subject building, which was subsequently withdrawn; and

WHEREAS, on January 12, 2001, DOB issued Permit No. 102929431-01-SG for installation of an "illuminated advertising sign on wall structure" at the site (the "2001 Permit"); and

WHEREAS, the Appellant states that the Sign is a rectangular advertising sign measuring 14 feet in height by 48 feet in length for a surface area of 672 sq. ft.; and

WHEREAS, the Appellant states that the Sign faces Sixth Avenue and is located approximately 431'-4" east of the nearest boundary of the exit roadway from the Holland Tunnel, which emerges above ground south of Canal Street near Hudson Street; and

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

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registration based on the fact that (1) the exit roadway of the Holland Tunnel is not a "designated arterial highway" and therefore ZR § 42-55 does not apply to the Sign; (2) even if the Holland Tunnel exit is considered a "designated arterial highway," the Sign is not "within view" of such arterial highway and therefore is not subject to the limitations associated with signs within view of arterial highways; (3) the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's acceptance that the Sign is not "within view" of a designated arterial highway; and (4) the Sign is a conforming use pursuant to current-ZR § 42-53; and

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

REGISTRATION REQUIREMENT

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

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

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

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

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

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

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

REGISTRATION PROCESS

WHEREAS, the Appellant states that on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49, it submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) photographs of the Sign; (3) the 2001 Permit; and (4) Letters of Completion from DOB recognizing that work was completed according to DOB's Rules and Regulations; and

WHEREAS, on October 3, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that it is unable to accept the Sign for registration due to "Failure to provide proof of legal establishment – 2001 Permit No. 102929431 states not adjacent to arterial;" and

WHEREAS, by letter, dated November 17, 2011, the Appellant submitted a response to DOB, noting that DOB had issued permits for the Sign in 2001 and that the Appellant had operated the Sign for more than a decade in reliance on DOB's permits; and

WHEREAS, the Appellant also included evidence demonstrating that the Sign was installed to be visible to traffic heading northbound on Sixth Avenue and that there are at least two surface streets and a public park (less than one-half acre in size) that separate the Sign from the Holland Tunnel exit, and therefore the Sign is not "adjacent" to the Holland Tunnel exit ramp; and

WHEREAS, by letter, dated March 12, 2012, DOB issued the Final Determination which forms the basis of the appeal, stating that it found the "documentation inadequate to support the registration and as such the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

> ZR § 42-53
> Surface Area and Illumination Provisions
> M1 M2 M3
> In all districts, as indicated, all permitted #signs# shall be subject to the restrictions on surface area and illumination as set forth in this Section…
>
> * * *
>
> ZR § 42-55
> Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways

M1 M2 M3
In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.
(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:
(1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
(2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.

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

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

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

* * *

Building Code § 28-502.4 – Reporting Requirement
An outdoor advertising company shall provide the department with a list with the location of signs, sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:
(1)The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more…

* * *

RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application
…(d)(5) Each sign shall be identified as either "advertising" or "non-advertising." To the extent a sign is a non-conforming sign, it must further be identified as "non-conforming advertising" or "non-conforming non-advertising." A sign identified as "non-conforming advertising" or "non-conforming non-advertising" shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) ZR § 42-55 does not apply to the Sign because pursuant to the plain language of the statute the Sign is neither near an "arterial highway," nor "within view" of such arterial highway; (2) the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's acceptance that the Sign is not "within view" of an arterial highway; and (3) the Sign is a conforming use under current-ZR § 42-53; and

1. ZR § 42-55 Does Not Apply to the Sign

WHEREAS, the Appellant asserts that DOB committed an error of law and abused its discretion because it misconstrued and misapplied the plain language of ZR § 42-55, which only regulates advertising signs that are (a) "near" an "arterial highway" and (b) "within view" of such arterial highway; and

WHEREAS, the Appellant argues that in interpreting ZR § 42-55 the Board must give effect to the intention of the Department of City Planning in drafting ZR § 42-55, including the specific language contained therein and its plain meaning if no definition is provided; and

WHEREAS, in support of this position, the Appellant cites to Kramer v. Phoenix Life Insurance Co., 15 N.Y.3d 539, 550-51 (N.Y. 2010) (noting that "courts must give effect to [a statute's] plain meaning," and applying a Merriam Webster's Collegiate Dictionary definition to interpret and undefined term), and Samiento v. World Yacht Inc., 10 N.Y.3d 70, 77-80, 80 n.2-3 (N.Y.2008) (noting that the "primary consideration [in statutory interpretation] is to ascertain and give effect to the intention of the Legislature" so as to give statutory language "its natural and most obvious sense…in accordance with its ordinary and accepted meaning, unless the Legislature by definition or from the rest of the context of the statute provides a special meaning") and notes that in both of those cases the court applied a Merriam Webster's Collegiate Dictionary definition to interpret undefined terms; and

WHEREAS, accordingly, the Appellant contends that because there are no definitions for the terms "arterial

highway" and "within view" in the Zoning Resolution, effect must be given to the plain meaning of those terms, which leads to a conclusion that ZR § 42-55 does not apply to the Sign because the exit roadway to the Holland Tunnel is not an "arterial highway," and even if the Holland Tunnel exit were considered an "arterial highway," the Sign is not "within view" of such arterial highway; and

a. The Holland Tunnel Exit is not an "Arterial Highway"

WHEREAS, the Appellant asserts that DOB committed an error of law and abused its discretion because the exit roadway of the Holland Tunnel is not an arterial highway for the purposes of ZR § 42-55; and

WHEREAS, the Appellant notes that ZR § 42-55 provides guidance regarding the classification of arterial highways:

> arterial highways shall include all highways that are shown on the Master Plan of Arterial Highways and Major Streets as "principal routes," "parkways" or "toll crossings," and that have been designated by the City Planning Commission as arterial highways to which the provisions of this Section shall apply; and

WHEREAS, the Appellant states that arterial highways designated by the City Planning Commission are listed in Appendix H of the Zoning Resolution, and includes "Holland Tunnel and Approaches" on a list of arterial highways "which appear on the City Map and which are also indicated as Principal Routes, Parkways and Toll Crossings on the duly adopted Master Plan of Arterial Highways and Major Streets"; and

WHEREAS, the Appellant contends that while the Zoning Resolution does not define what constitutes the "approaches" to the Holland Tunnel, additional points of reference for which roadways are covered are: (1) arterial highways identified as "principal routes," "parkways," or "toll crossings" on the City's Master Plan of Arterial Highways and Major Streets; and (2) arterial highways which appear on the City Map; and

WHEREAS, the Appellant represents that the Master Plan does not identify the exit roadway from the Holland Tunnel as part of the "toll crossings" that are covered by ZR § 42-55, and the City Map similarly does not identify the exit roadway of the Holland Tunnel as an arterial highway; and

WHEREAS, the Appellant argues that a plain language interpretation of "approach" would also not include the exit roadway of the Holland Tunnel as an "approach," and cites to Webster's Dictionary which defines the noun "approach," in relevant part, as "a drawing near in space or time" or "the ability to approach," and the definition of "approaches," in relevant part, as "the means of approaching an area" or "an embankment, trestle, or other construction that provides access at either end of a bridge or tunnel"; and

WHEREAS, the Appellant asserts that the exit roadway of the Holland Tunnel, therefore, may not be identified as an "approach" because, by its very nature, the exit roadway takes traffic away from the Holland Tunnel; and

WHEREAS, the Appellant notes that in Rule 49, DOB provides its own definition of "approach" for guidance in interpreting the relevant provisions of the Zoning Resolution, and asserts that DOB's definition in Rule 49 comports with the plain language meaning that an "approach" would not include an exit:

> The term "approach" as found within the description of arterial highways indicated within appendix C of the Zoning Resolution, shall mean that portion of a roadway *connecting the local street network to a bridge or tunnel* and from which there is no entry or exit to such network. (Emphasis added).

WHEREAS, the Appellant contends that a plain language interpretation of Rule 49's definition of "approach" would also not include the exit roadway of the Holland Tunnel because an exit does not connect the local street network to the tunnel; rather, an exit connects *from* the tunnel to the local street network; and

WHEREAS, the Appellant asserts that if DOB had intended for an exit to be included in this definition, it would have used express language, such as "connecting the local street network to *or from* a bridge or tunnel"; and

WHEREAS, accordingly, the Appellant argues that because neither the plain language of ZR § 42-55, the Master Plan of Arterial Highways and Major Streets, nor the City Map in any way includes exit roadways (such as the one from the Holland Tunnel) as arterial highways, ZR § 42-55 does not apply to the Sign; and

b. The Sign is Not "Within View" of an Arterial Highway

WHEREAS, the Appellant asserts that even if the exit roadway of the Holland Tunnel is considered a designated arterial highway, DOB misinterprets the meaning of "within view" under ZR § 42-55; and

WHEREAS, the Appellant notes that the Zoning Resolution does not define "within view," however they look to ZR § 42-55 subsections (c)(1) and (c)(2), which include in their criteria for coverage by the regulations that the sign's "message is visible" from an arterial highway; and

WHEREAS, additionally, the Appellant notes that the Zoning Resolution does not define what constitutes a "message" being "visible," so they find that a plain language interpretation is required; and

WHEREAS, the Appellant cites to Webster's Dictionary which defines "message," as "a written or oral communication or other transmitted information sent by messenger or by some other means (as by signals)" or "a group of words used to advertise or notify;" and

WHEREAS, the Appellant also cites to the dictionary for the definition of "visible," which states "capable of being seen," "easily seen," or "capable of being perceived mentally;" and

WHEREAS, the Appellant concludes that according to the definitions, the intent of the zoning is to limit the

applicability of ZR § 42-55 to signs that actually communicate their message to persons that are on an arterial highway and would not be applicable to a sign that is substantially obstructed such that the message of the obstructed sign cannot be communicated to a person on the arterial highway; and

WHEREAS, in contrast, the Appellant asserts that ZR § 42-55 does not apply to a sign that does not face an arterial highway or a sign that is obstructed by objects between the sign and the arterial highway because those signs are incapable of communicating or advertising; and

WHEREAS, the Appellant submitted photographs and maps in support of its position that the orientation and position of the Sign make it is impossible to see the Sign from the exit roadway of the Holland Tunnel because the permanent installations between the two (including, but not limited to, the roadway's concrete barrier wall and fence) completely obstruct the view of the Sign from the roadway; and

WHEREAS, the Appellant notes that DOB provides its own definition of "within view" in Rule 49 as follows: "the term 'within view' shall mean that part or all of the sign copy, sign structure, or sign location that is discernible;" and

WHEREAS, the Appellant asserts that through Rule 49, DOB exceeded its authority by creating a new definition of "within view" which DOB has construed otherwise since December 15, 1961; and

WHEREAS, the Appellant contends that the intent of ZR § 42-55 was clearly to regulate only signs whose message is visible from an arterial highway, and if the Rule 49 definition of "within view" is upheld, then a sign that faces directly away from an arterial highway, with no part of its message visible to the arterial highway, would be prohibited; and

WHEREAS, accordingly, the Appellant asserts that DOB's definition of "within view" under Rule 49 far exceeds its authority to interpret the Zoning Resolution and must be disregarded; and

WHEREAS, the Appellant further asserts that if the Rule 49 definition is disregarded, and only the plain language interpretation of the "within view" standards of ZR § 42-55 is applied, the message of the Sign is not visible from the exit roadway of the Holland Tunnel and ZR § 42-55 does not apply to the Sign; and

2. The Sign was Constructed Pursuant to DOB-Issued Permits

WHEREAS, the Appellant asserts that the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's agreement at the time of permit issuance that the Sign was not "within view" of an "arterial highway" and that DOB's reversal of position with respect to its prior confirmation of the legality of the Sign is improper; and

WHEREAS, the Appellant asserts that it provided DOB with evidence of permits, which demonstrate that the Sign was installed pursuant to lawfully-issued permits and DOB was aware of its location vis a vis the Holland Tunnel, but permitted the Sign pursuant to its interpretation of then-ZR § 42-53 (which has been recodified as ZR § 42-55); and

WHEREAS, the Appellant asserts that DOB has changed its position with regard to the application of ZR § 42-55 and that Local Law 31 did not give DOB the authority to create a new interpretation of long-standing language requiring that a sign be "within view" of an "arterial highway" and at the time of the permit issuance, DOB did not consider the Sign to be "within view" of any "arterial highway"; and

WHEREAS, the Appellant represents that it has relied in good faith on DOB's approval of the Sign, has made investments in maintaining and marketing in reliance on the approvals, and equity does not allow DOB to revise its prior approvals and require the removal of the Sign; and

3. The Sign is a Conforming Use Pursuant to ZR § 42-53

WHEREAS, the Appellant asserts that the Sign is clearly a conforming use pursuant to ZR § 42-53, such that further documentation is not required under Rule 49; and

WHEREAS, specifically, the Appellant contends that pursuant to ZR § 42-53, advertising signs are permitted uses in an M1 zoning district, and therefore the Sign is a conforming use; and

DOB'S POSITION

WHEREAS, DOB asserts that it rejected the Sign Registration Applications because the 2001 Permit was unlawful and improperly issued since the surface area of the Sign did not comply with the requirements of former-ZR § 42-53, which regulated advertising signs that were within view of arterial highways in Manufacturing Districts and stated, in pertinent part:

> No advertising sign shall be located, nor shall an advertising sign be structurally altered, relocated or reconstructed, within 200 feet of an arterial highway or of a public park with an area of one-half acre or more, if such advertising sign is within view of such arterial highway . . . Beyond 200 feet from such arterial highway or public park, an advertising sign shall be located at a distance of at least as many linear feet therefrom as there are square feet of surface are on the face of such sign; and

WHEREAS, therefore, DOB states that signs in manufacturing districts, like the subject M1-5B district, advertising signs were and still are permitted as-of-right under the current ZR § 42-55 (under which the former ZR § 42-53 was recodified) with certain restrictions, when located more than 200 feet from an arterial highway; and

WHEREAS, however, DOB states that such signs were and still are limited in surface area based on their distance from the arterial highway; and

WHEREAS, DOB asserts that it is undisputed that the "Holland Tunnel and Approaches" is considered an arterial highway within the meaning of then-ZR § 42-53, as indicated in Appendix H of the Zoning Resolution; and

WHEREAS, DOB disagrees with the Appellant's position that the definition of an approach under Rule 49 as

"a roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network" was meant to exclude exit roadways merely because the definition does not state "to or from" a bridge or tunnel; and

WHEREAS, DOB asserts that the text of the Rule 49 definition does not support the Appellant's position, as the text simply defines an approach as "a portion of a roadway connecting an arterial highway to the local street network" and the reason the definition does not state "to or from" a bridge or tunnel is because the use of "to or from" in the sentence would be improper grammar, not because it was meant to exclude exit roadways from the definition; and

WHEREAS, DOB further asserts that the definition does not state which direction the traffic needs to flow from the "roadway" in order to be an "approach"; rather, it clearly states that if a roadway connects a local street to a tunnel without any exit to the street, it shall be considered an "approach"; and

WHEREAS, DOB argues that the exit roadway of the Holland Tunnel at issue is a "roadway connecting the local street network" to the Holland Tunnel and "from which there is no entry or exit to such network," and therefore it fits within the definition of an "approach"; and

WHEREAS, DOB also disagrees with the Appellant's position that, assuming the exit roadway of the Holland Tunnel is an "approach," the Sign is not subject to the restrictions on surface area set forth in the former ZR § 42-53 because it is not "within view" of the arterial highway – the Holland Tunnel and approaches; and

WHEREAS, DOB states that it has examined photographs of the Sign taken from the approaches and finds that the Sign is clearly visible and thus "within view" of the approach to the tunnel; and

WHERWEAS, DOB notes that the Appellant's effort to register the Sign reflects a concession on the Appellant's part that the Sign is within view of the arterial highway since Rule 49-15 specifically requires "a sign inventory that shall include all signs, sign structures and sign locations located (1) within a distance of 900 linear feet from and within view of an arterial highway; or (2) within 200 linear feet from and within view of a public park of one half acre or more;" and

WHEREAS, DOB asserts that since the Sign is within view of the arterial highway and located 431 feet from it, the maximum permitted surface area of the Sign was 431 sq. ft. when the 2001 Permit was erroneously issued; DOB notes that the 2001 Permit indicates a surface area of 518 sq. ft. and the Sign Registration Application indicates a surface area of 672 sq. ft., both of which exceeded the limits set forth at the then-ZR § 42-53 and still exceed the permitted surface area per the current ZR § 42-55; and

WHEREAS, accordingly, DOB states that the 2001 Permit was unlawful and improperly issued and the Sign must comply with the surface area requirement of 431 sq. ft. pursuant to ZR § 42-55 in order to be registered with DOB; and

CONCLUSION

WHEREAS, the Board agrees with DOB that (1) the exit roadway to the Holland Tunnel qualifies as an "approach," and as such is a designated arterial highway under ZR § 42-55, and (2) that the Sign is "within view" of the Holland Tunnel approach and thus subject to the restrictions of ZR § 42-55; and

WHEREAS, on the analysis of the meaning of an "approach," the Board finds that the exit roadway to the Holland Tunnel fits within the Rule 49 definition of an "approach" and therefore is considered an arterial highway within the meaning of former ZR § 42-53 (and current ZR § 42-55), as indicated in Appendix H of the Zoning Resolution which includes "Holland Tunnel and Approaches" among the designated arterial highways; and

WHEREAS, the Board finds the Appellant's position that the definition of an "approach" under Rule 49 was meant to exclude exit roadways because the definition does not state "to or from" a bridge or tunnel to be misguided, and agrees with DOB that the definition does not state which direction the traffic needs to flow from the "roadway" in order to be an "approach"; and

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

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

WHEREAS, as noted above, the Board considers the Rule 49 definition of "approach" to be clear and unambiguous, and therefore does not find it necessary to resort to dictionary definitions in order to ascertain the intent of the Zoning Resolution; and

WHEREAS, on the analysis of the meaning of "within view," the Board finds that the Appellant's assertions about intent are misplaced and the Appellant's interpretation of the meaning of the term is strained; and

WHEREAS, the Board notes that (1) there is not any indication in the text that the intended audience for signs is relevant, and (2) the plain meaning of "within view" is a more objective and less-nuanced concept than the Appellant proposes; and

WHEREAS, the Board finds that regardless of whether travelers on the approach to the Holland Tunnel were the intended audience for the Sign, if they are within the travelers' view, ZR § 42-55 must apply; and

WHEREAS, the Board finds that the goal of the statute was to regulate signs within view of arterial highways and that enforcement is best-served by applying an objective standard, rather than a subjective standard involving a scale of the levels of visibility; and

WHEREAS, the Board finds that the Appellant's

approach and emphasis on discernibility of a message is untenable due to the individuality associated both with the sense of sight and the amount of time it takes to communicate a message as well as the broad range of advertising messages, which can include large logos and illustrations or smaller text; and

WHEREAS, similarly, the Board is not persuaded that obstructions (like a barrier wall and fence) along the arterial highway at certain points along the traveler's path renders the Sign outside of view; and

WHEREAS, contrary to the Appellant's assertion that the obstructions render the Sign impossible to see from the exit roadway of the Holland Tunnel, the Board notes that DOB submitted four photographs which clearly reflect that the Sign can be viewed from different points along the exit roadway of the Holland Tunnel; and

WHEREAS, as to the Appellant's contention that DOB has inequitably changed its position on the meaning of "within view," the Board notes that there is no indication that DOB formerly had a different interpretation of "within view," or that it relies on the definition set forth in Rule 49; but, even if DOB did change its position, it has the ability to correct erroneous determinations; and

WHEREAS, the Board declines to take a position on the fairness of DOB's rejection of the registration after erroneously issuing the 2001 Permit, but it does note that the Appellant has enjoyed the benefit of the Sign since that time; and

WHEREAS, the Board disagrees with the Appellant that the Sign is a conforming use under current ZR § 42-53, which is titled "Surface Area and Illumination Provisions" and states that within manufacturing districts, such as the subject M1-5B district, "all permitted signs shall be subject to the restrictions on surface area and illumination as set forth in this Section…"; and

WHEREAS, the Board finds the Appellant's analysis of current ZR § 42-53 misguided, as it disregards more specific provisions of the Zoning Resolution which clearly indicate that the Sign, at its current size, is not permitted; and

WHEREAS, specifically, ZR § 42-55 ("Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways") clarifies that there are additional regulations for signs located near arterial highways, including that no advertising signs are permitted within 200 feet and within view of an arterial highway, and beyond 200 feet of an arterial highway "[b]eyond 200 feet from such arterial highway…the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway…; and

WHEREAS, because the Sign is located approximately 431 feet from an approach to the Holland Tunnel, it is limited to a maximum of 431 sq. ft. in surface area, and therefore the current size of 672 sq. ft. is not permitted; and

WHEREAS, accordingly, the Board finds that DOB appropriately applied ZR § 42-55 to the Sign and properly rejected the Appellant's registration of the Sign.

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

Adopted by the Board of Standards and Appeals, January 8, 2013.

101-12-A

APPLICANT – Fried Frank by Richard G. Leland, Esq. for Take Two Outdoor Media LLC c/o Van Wagner Communications.

OWNER OF PREMISES – Mazda Realty Associates.

SUBJECT – Application April 11, 2012 – Appeal from determination of the Department of Buildings regarding right to maintain existing advertising sign. M1-5 zoning district.

PREMISES AFFECTED – 13-17 Laight Street, south side of Laight Street between Varick Street and St. John's Lane, Block 212, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative: 0

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

THE RESOLUTION –

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

> The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Signs Enforcement Unit, and asserting that this sign is not intended to be seen from the arterial and as such has the appropriate non-arterial permit for construction. Unfortunately, the intent of viewing is not relevant in this assessment and as such, the sign is rejected from registration. While we recognize your assertion that the sign was not intended to be visible from arterial, we affirm our rejection. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on October 30, 2012, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2012, and then to decision on January 8, 2013; 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 south side of Laight Street between Varick Street and St. John's

Lane, in a C6-2A zoning district within the Special Tribeca Mixed Use ("TMU") District; and

WHEREAS, the site is occupied by a six-story building with a north-facing sign located on the roof of the building (the "Sign"); and

WHEREAS, on October 4, 1998, DOB issued Permit Nos. 101827114-01-SG and 101985827-01-AL for installation of an "illuminated advertising billboard roof sign" at the site (the "1998 Permits"), and on October 20, 2000, DOB issued Permit No. 102743435-01-SG for the installation of an "illuminated sign on roof structure at the site (the "2000 Permit"); and

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

WHEREAS, the Appellant states that the Sign is a rectangular advertising sign measuring 19.5 feet in height by 48 feet in length for a surface area of 936 sq. ft.; and

WHEREAS, the Appellant states that the Sign faces Varick Street and is located one block south of Canal Street and approximately 317'-6" east of the nearest boundary of the exit roadway from the Holland Tunnel, which emerges above ground south of Canal Street near Hudson Street; and

WHEREAS, the Appellant states that when the Sign was installed the site was in an M1-5 zoning district within the TMU District, but that pursuant to a 2010 rezoning, the site is now zoned C6-2A within the TMU District; and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of its sign registration based on the fact that (1) the exit roadway of the Holland Tunnel is not a "designated arterial highway" and therefore ZR § 42-55 does not apply to the Sign; (2) even if the Holland Tunnel exit is considered a "designated arterial highway," the Sign is not "within view" of such arterial highway and therefore is not subject to the limitations associated with signs within view of arterial highways; and (3) the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's acceptance that the Sign is not "within view" of a designated arterial highway; and

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

REGISTRATION REQUIREMENT

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

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

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

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

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

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

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

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

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

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

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

REGISTRATION PROCESS

WHEREAS, the Appellant states that on September 1, 2009, pursuant to the requirements of Article 502 and Rule 49, it submitted an inventory of outdoor signs under its control and a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching the following documentation: (1) a diagram of the Sign; (2) photographs of the Sign; and (3) Permit Nos. 1018227114-01-SG and 101985827-01-AL; and

WHEREAS, on October 3, 2011, DOB issued a Notice of Sign Registration Deficiency, stating that it is unable to accept the Sign for registration due to "Failure to provide proof of legal establishment;" and

WHEREAS, by letter, dated November 4, 2011, the Appellant submitted a response to DOB, providing evidence that the Sign was installed within the requisite time period; and

WHEREAS, the Appellant also included evidence demonstrating that the Sign was installed to be visible to traffic heading southbound on Varick Street and is not

within view of vehicles exiting the Holland Tunnel; and

WHEREAS, by letter, dated February 9, 2012, the Appellant made a submission to DOB of photographs to support its position that the Sign is directed toward Varick Street and is not within view of vehicles exiting the Holland Tunnel; and

WHEREAS, by letter, dated March 12, 2012, DOB issued the Final Determination which forms the basis of the appeal, stating that it found the "documentation inadequate to support the registration and as such the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

ZR § 42-55

Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways

M1 M2 M3

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

(a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:
  (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
  (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.

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

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

* * *

ZR § 42-58

Signs Erected Prior to December 13, 2000

M1 M2 M3

In all districts, as indicated, a #sign# erected prior to December 13, 2000, shall have #non-conforming use# status pursuant to Sections 52-82 (Non-Conforming Signs Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the degree of #non-conformity# of such #sign# as of such date with the provisions of Sections 42-52, 42-53 and 42-54, where such #sign# shall have been issued apermit by the Department of Buildings on or before such date.

* * *

Building Code § 28-502.4 – Reporting Requirement

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

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

* * *

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

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

* * *

RCNY § 49-16 – Non-conforming Signs

(a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the

> Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because (1) ZR § 42-55 does not apply to the Sign because, pursuant to the plain language of the statute, the Sign is neither near an "arterial highway," nor "within view" of such arterial highway; (2) the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's acceptance that the Sign is not "within view" of an arterial highway; and

4. ZR § 42-55 Does Not Apply to the Sign

WHEREAS, the Appellant asserts that DOB committed an error of law and abused its discretion because it misconstrued and misapplied the plain language of ZR § 42-55, which only regulates advertising signs that are (a) "near" an "arterial highway" and (b) "within view" of such "arterial highway"; and

WHEREAS, the Appellant argues that in interpreting ZR § 42-55 the Board must give effect to the intention of the Department of City Planning in drafting ZR § 42-55, including the specific language contained therein and its plain meaning if no definition is provided; and

WHEREAS, in support of this position, the Appellant cites to Kramer v. Phoenix Life Insurance Co., 15 N.Y.3d 539, 550-51 (N.Y. 2010) (noting that "courts must give effect to [a statute's] plain meaning," and applying a Merriam Webster's Collegiate Dictionary definition to interpret an undefined term), and Samiento v. World Yacht Inc., 10 N.Y.3d 70, 77-80, 80 n.2-3 (N.Y.2008) (noting that the "primary consideration [in statutory interpretation] is to ascertain and give effect to the intention of the Legislature" so as to give statutory language "its natural and most obvious sense…in accordance with its ordinary and accepted meaning, unless the Legislature by definition or from the rest of the context of the statute provides a special meaning") and notes that in both of those cases the court applied a Merriam Webster's Collegiate Dictionary definition to interpret undefined terms; and

WHEREAS, accordingly, the Appellant contends that because there are no definitions for the terms "arterial highway" and "within view" in the Zoning Resolution, effect must be given to the plain meaning of those terms, which leads to a conclusion that ZR § 42-55 does not apply to the Sign because the exit roadway to the Holland Tunnel is not an "arterial highway," and even if the Holland Tunnel exit were considered to be an arterial highway, the Sign is not "within view" of such arterial highway; and

a. The Holland Tunnel Exit is not an "Arterial Highway"

WHEREAS, the Appellant asserts that DOB committed an error of law and abused its discretion because the exit roadway of the Holland Tunnel is not an "arterial highway" for the purposes of ZR § 42-55; and

WHEREAS, the Appellant notes that ZR § 42-55 provides guidance regarding the classification of arterial highways:

> arterial highways shall include all highways that are shown on the Master Plan of Arterial Highways and Major Streets as "principal routes," "parkways" or "toll crossings," and that have been designated by the City Planning Commission as arterial highways to which the provisions of this Section shall apply; and

WHEREAS, the Appellant states that arterial highways designated by the City Planning Commission are listed in Appendix H of the Zoning Resolution, and includes "Holland Tunnel and Approaches" on a list of arterial highways "which appear on the City Map and which are also indicated as Principal Routes, Parkways and Toll Crossings on the duly adopted Master Plan of Arterial Highways and Major Streets"; and

WHEREAS, the Appellant contends that while the Zoning Resolution does not define what constitutes the "approaches" to the Holland Tunnel, additional points of reference for which roadways are covered are: (1) arterial highways identified as "principal routes," "parkways," or "toll crossings" on the City's Master Plan of Arterial Highways and Major Streets; and (2) arterial highways which appear on the City Map; and

WHEREAS, the Appellant represents that the Master Plan does not identify the exit roadway from the Holland Tunnel as part of the "toll crossings" that are covered by ZR § 42-55, and the City Map similarly does not identify the exit roadway of the Holland Tunnel as an arterial highway; and

WHEREAS, the Appellant argues that a plain language interpretation of "approach" would also not include the exit roadway of the Holland Tunnel as an "approach," and cites to Webster's Dictionary which defines the noun "approach," in relevant part, as "a drawing near in space or time" or "the ability to approach," and the definition of "approaches," in relevant part, as "the means of approaching an area" or "an embankment, trestle, or other construction that provides access at either end of a bridge or tunnel"; and

WHEREAS, the Appellant asserts that the exit roadway of the Holland Tunnel, therefore, may not be identified as an "approach" because, by its very nature, the exit roadway takes traffic away from the Holland Tunnel; and

WHEREAS, the Appellant notes that in Rule 49, DOB provides its own definition of "approach" for guidance in interpreting the relevant provisions of the Zoning Resolution, and asserts that DOB's definition in Rule 49 comports with the plain language meaning that an "approach" would not include an exit:

> The term "approach" as found within the description of arterial highways indicated within

appendix C of the Zoning Resolution, shall mean that portion of a roadway *connecting the local street network <u>to</u> a bridge or tunnel* and from which there is no entry or exit to such network. (Emphasis added); and

WHEREAS, the Appellant contends that a plain language interpretation of Rule 49's definition of "approach" would also not include the exit roadway of the Holland Tunnel because an exit does not connect the local street network to the tunnel; rather, an exit connects *from* the tunnel to the local street network; and

WHEREAS, the Appellant asserts that if DOB had intended for an exit to be included in this definition, it would have used express language, such as "connecting the local street network to *or from* a bridge or tunnel"; and

WHEREAS, accordingly, the Appellant argues that because neither the plain language of ZR § 42-55, the Master Plan of Arterial Highways and Major Streets, nor the City Map in any way includes exit roadways (such as the one from the Holland Tunnel) as arterial highways, ZR § 42-55 does not apply to the Sign; and

b. The Sign is Not "Within View" of an Arterial Highway

WHEREAS, the Appellant asserts that even if the exit roadway of the Holland Tunnel is considered a designated arterial highway, DOB misinterprets the meaning of "within view" under ZR § 42-55; and

WHEREAS, the Appellant notes that the Zoning Resolution does not define "within view," however they look to ZR § 42-55 subsections (c)(1) and (c)(2), which include in their criteria for coverage by the regulations that the sign's "message is visible" from an arterial highway; and

WHEREAS, additionally, the Appellant notes that the Zoning Resolution does not define what constitutes a "message" being "visible," so they find that a plain language interpretation is required; and

WHEREAS, the Appellant cites to Webster's Dictionary which defines "message," as "a written or oral communication or other transmitted information sent by messenger or by some other means (as by signals)" or "a group of words used to advertise or notify;" and

WHEREAS, the Appellant also cites to the dictionary for the definition of "visible," which states "capable of being seen," "easily seen," or "capable of being perceived mentally;" and

WHEREAS, the Appellant concludes that according to the definitions, the intent of the zoning is to limit the applicability of ZR § 42-55 to signs that actually communicate their message to persons that are on an arterial highway and would not be applicable to a sign that is substantially obstructed such that the message of the obstructed sign cannot be communicated to a person on the arterial highway; and

WHEREAS, in contrast, the Appellant asserts that ZR § 42-55 does not apply to a sign that does not face an arterial highway or a sign that is obstructed by objects between the sign and the arterial highway because those signs are incapable of communicating or advertising; and

WHEREAS, the Appellant submitted photographs and maps in support of its position that the orientation and position of the Sign make it extremely difficult to view it from the exit roadway, let alone understand what it is communicating as the roadway abruptly veers away from the Sign, which is approximately 70 feet in the air; and

WHEREAS, the Appellant asserts that the view of the Sign is further obstructed by numerous permanent installations located between the Sign and the roadway, including buildings, light poles, and a traffic sign; and

WHEREAS, the Appellant notes that DOB provides its own definition of "within view" in Rule 49 as follows: "the term 'within view' shall mean that part or all of the sign copy, sign structure, or sign location that is discernible;" and

WHEREAS, the Appellant asserts that through Rule 49, DOB exceeded its authority by creating a new definition of "within view" which DOB has construed otherwise since December 15, 1961; and

WHEREAS, the Appellant contends that the intent of ZR § 42-55 was clearly to regulate only signs whose message is visible from an arterial highway, and if the Rule 49 definition of "within view" is upheld, then a sign that faces directly away from an arterial highway, with no part of its message visible to the arterial highway, would be prohibited; and

WHEREAS, accordingly, the Appellant asserts that DOB's definition of "within view" under Rule 49 far exceeds its authority to interpret the Zoning Resolution and must be disregarded; and

WHEREAS, the Appellant further asserts that if the Rule 49 definition is disregarded, and only the plain language interpretation of the "within view" standards of ZR § 42-55 is applied, the message of the Sign is not visible from the exit roadway of the Holland Tunnel and ZR § 42-55 does not apply to the Sign; and

5. The Sign was Constructed Pursuant to DOB-Issued Permits

WHEREAS, the Appellant asserts that the Sign was constructed pursuant to DOB-issued permits, which reflects DOB's agreement at the time of permit issuance that the Sign was not "within view" of an "arterial highway" and that DOB's reversal of position with respect to its prior confirmation of the legality of the Sign is improper; and

WHEREAS, the Appellant asserts that it provided DOB with evidence of permits, which demonstrate that the Sign was installed pursuant to lawfully-issued permits, which were issued when the Sign was permitted in the underlying M1-5 zoning district and DOB was aware of its location vis a vis the Holland Tunnel, but permitted the Sign pursuant to its interpretation of then-ZR § 42-53 (which has been recodified as ZR § 42-55); and

WHEREAS, the Appellant asserts that DOB has changed its position with regard to the application of ZR § 42-55 and that Local Law 31 did not give DOB the authority to create a new interpretation of long-standing language requiring that a sign be "within view" of an "arterial

highway" and at the time of the permit issuance, DOB did not consider the Sign to be "within view" of any "arterial highway"; and

WHEREAS, the Appellant represents that it has relied in good faith on DOB's approval of the Sign, has made investments in maintaining and marketing in reliance on the approvals, and equity does not allow DOB to revise its prior approvals and require the removal of the Sign; and

DOB'S POSITION

WHEREAS, DOB asserts that it rejected the Sign Registration Applications because the 1998 Permits and 2000 Permit were unlawful and improperly issued since the surface area of the Sign did not comply with the requirements of then-ZR § 42-53; ZR § 42-53, in effect at the time the permits were issued, regulated advertising signs that were within view of arterial highways in Manufacturing Districts and stated, in pertinent part:

> No advertising sign shall be located, nor shall an advertising sign be structurally altered, relocated or reconstructed, within 200 feet of an arterial highway or of a public park with an area of one-half acre or more, if such advertising sign is within view of such arterial highway . . . Beyond 200 feet from such arterial highway or public park, an advertising sign shall be located at a distance of at least as many linear feet therefrom as there are square feet of surface area on the face of such sign; and

WHEREAS, therefore, DOB states that signs in manufacturing districts, like the M1-5 district the Sign was in at the time of its installation until 2010 when the area was rezoned to be within a C6-2A zoning district, were and still are permitted as-of-right under the current ZR § 42-55 (under which the former ZR § 42-53 was recodified) with certain restrictions, when located more than 200 feet from an arterial highway; and

WHEREAS, however, DOB states that such signs are limited in surface area based on their distance from the arterial highway; and

WHEREAS, DOB asserts that it is undisputed that the "Holland Tunnel and Approaches" is considered an arterial highway within the meaning of then-ZR § 42-53, as indicated in Appendix H of the Zoning Resolution; and

WHEREAS, DOB disagrees with the Appellant's position that the definition of an approach under Rule 49 as "a roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network" was meant to exclude exit roadways merely because the definition does not state "to or from" a bridge or tunnel; and

WHEREAS, DOB asserts that the text of the Rule 49 definition does not support the Appellant's position, as the text simply defines an approach as "a portion of a roadway connecting an arterial highway to the local street network" and the reason the definition does not state "to or from" a bridge or tunnel is because the use of "to or from" in the sentence would be improper grammar, not because it was meant to exclude exit roadways from the definition; and

WHEREAS, DOB further asserts that the definition does not state which direction the traffic needs to flow from the "roadway" in order to be an "approach"; rather, it clearly states that if a roadway connects a local street to a tunnel without any exit to the street, it shall be considered an "approach"; and

WHEREAS, DOB argues that the exit roadway of the Holland Tunnel at issue is a "roadway connecting the local street network" to the Holland Tunnel and "from which there is no entry or exit to such network," and therefore it fits within the definition of an "approach"; and

WHEREAS, DOB also disagrees with the Appellant's position that, assuming the exit roadway of the Holland Tunnel is an "approach," the Sign is not subject to the restrictions on surface area set forth in the former ZR § 42-53 because it is not "within view" of the arterial highway – the Holland Tunnel and approaches; and

WHEREAS, DOB states that it has examined photographs of the Sign taken from the approaches and finds that the Sign is clearly visible and thus "within view" of the approach to the tunnel; and

WHERWEAS, DOB notes that the Appellant's effort to register the Sign reflects a concession on the Appellant's part that the Sign is within view of the arterial highway since Rule 49-15 specifically requires "a sign inventory that shall include all signs, sign structures and sign locations located (1) within a distance of 900 linear feet from and within view of an arterial highway; or (2) within 200 linear feet from and within view of a public park of one half acre or more;" and

WHEREAS, DOB asserts that since the Sign is within view of the arterial highway and located 317 feet from it, the maximum permitted surface area of the Sign was 317 sq. ft. when the 1998 Permits and 2000 Permit were erroneously issued; DOB notes that the 1998 Permits indicate a surface area of 560 sq. ft., the 2000 Permit indicates a surface area of 1,600 sq. ft., and the Sign Registration Application indicates a surface area of 936 sq. ft., which exceeded the then-ZR § 42-53 and still exceeds the permitted surface area per the current ZR § 42-55; and

WHEREAS, accordingly, DOB finds that the 1998 Permits and the 2000 Permit for the Sign were unlawful and improperly issued and the Sign must be removed since no advertising sign is permitted as-of-right in the current C6-2A zoning district pursuant to ZR § 32-63; and

WHEREAS, DOB states that the Appellant cites to ZR § 42-58 but does not make an argument that the Sign should be granted non-conforming use status pursuant to ZR § 42-58 and any such future claim that the Sign should be granted non-conforming use status is without merit; and

WHEREAS, DOB cites to ZR § 42-58, which states in pertinent part:

> A sign erected prior to December 13, 2000, shall have non-conforming use status pursuant to Section 52-82 (Non-Conforming Sings Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the

degree of non-conformity of such sign as of such date with the provisions of Section 42-52, 42-53, and 42-54, where such sign shall have been issued a permit by the Department of Buildings on or before such date; and

WHEREAS, DOB concludes that the 1998 Permits and the 2000 Permit for the Sign were unlawful and improperly issued since the proposed sign did not comply with the surface area requirements of then- ZR § 42-53; therefore, the sign cannot be granted non-conforming use status under ZR § 42-58; and

CONCLUSION

WHEREAS, the Board agrees with DOB that (1) the exit roadway to the Holland Tunnel qualifies as an "approach," and as such is a designated arterial highway under ZR § 42-55, and (2) that the Sign is "within view" of the Holland Tunnel approach and thus subject to the restrictions of ZR § 42-55; and

WHEREAS, on the analysis of the meaning of an "approach," the Board finds that the exit roadway to the Holland Tunnel fits within the Rule 49 definition of an "approach" and therefore is considered an arterial highway within the meaning of former ZR § 42-53 (and current ZR § 42-55), as indicated in Appendix H of the Zoning Resolution which includes "Holland Tunnel and Approaches" among the designated arterial highways; and

WHEREAS, the Board finds the Appellant's position that the definition of an "approach" under Rule 49 was meant to exclude exit roadways because the definition does not state "to or from" a bridge or tunnel to be misguided, and agrees with DOB that the definition does not state which direction the traffic needs to flow from the "roadway" in order to be an "approach"; and

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

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

WHEREAS, as noted above, the Board considers the Rule 49 definition of "approach" to be clear and unambiguous, and therefore does not find it necessary to resort to dictionary definitions in order to ascertain the intent of the Zoning Resolution; and

WHEREAS, on the analysis of the meaning of "within view," the Board finds that the Appellant's assertions about intent are misplaced and the Appellant's interpretation of the meaning of the term is strained; and

WHEREAS, the Board notes that (1) there is not any indication in the text that the intended audience for signs is relevant, and (2) the plain meaning of "within view" is a more objective and less-nuanced concept than the Appellant proposes; and

WHEREAS, the Board finds that regardless of whether travelers on the approach to the Holland Tunnel were the intended audience for the Sign, if they are within the travelers' view, ZR § 42-55 must apply; and

WHEREAS, the Board finds that the goal of the statute was to regulate signs within view of arterial highways and that enforcement is best-served by applying an objective standard, rather than a subjective standard involving a scale of the levels of visibility; and

WHEREAS, the Board finds that the Appellant's approach and emphasis on discernibility of a message is untenable due to the individuality associated both with the sense of sight and the amount of time it takes to communicate a message as well as the broad range of advertising messages, which can include large logos and illustrations or smaller text; and

WHEREAS, similarly, the Board is not persuaded that obstructions (like light poles and traffic signs) along the arterial highway at certain points along the traveler's path renders the Sign outside of view; and

WHEREAS, contrary to the Appellant's assertion that the orientation and position of the Sign combined with the aforementioned obstructions render the Sign extremely difficult, if not impossible, to view from the exit roadway of the Holland Tunnel, the Board notes that DOB submitted two photographs which clearly reflect that the Sign can be viewed from different points along the exit roadway of the Holland Tunnel; and

WHEREAS, as to the Appellant's contention that DOB has inequitably changed its position on the meaning of "within view," the Board notes that there is no indication that DOB formerly had a different interpretation of "within view," or that it relies on the definition set forth in Rule 49; but, even if DOB did change its position, it has the ability to correct erroneous determinations; and

WHEREAS, the Board declines to take a position on the fairness of DOB's rejection of the registration after erroneously issuing the 1998 Permits and the 2000 Permit, but it does note that the Appellant has enjoyed the benefit of the Sign since that time; and

WHEREAS, the Board also declines to take a position on whether the Sign could be established as a legal non-conforming sign because that alternate relief was not at issue in the appeal; and

WHEREAS, accordingly, the Board finds that DOB appropriately applied ZR § 42-55 to the Sign and it is not permitted; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant's registration of the Sign.

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

Adopted by the Board of Standards and Appeals, January 8, 2013.

213-12-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Linda McDermott-Paden, lessee.
SUBJECT – Application July 20, 2012 – Proposed reconstruction and enlargement of existing single family dwelling located partially within the bed of the mapped street, contrary to Section 35 of the General City Law. R4 zoning district.
AFFECTED PREMISES – 900 Beach 184th Street, east side Beach 184th Street, 240' north of Rockaway Point Boulevard. Block 16340, Lot p/o50. Borough of Queens.
COMMUNITY BOARD #14Q
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 June 28, 2012, acting on Department of Buildings Application No. 420566541, reads in pertinent part:

A1- The existing building to be altered lies within the bed of a mapped street, contrary to General City Law Article 3 , Section 35 ; 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 the same date; and

WHEREAS, by letter dated January 7, 2013, the Fire Department states that it has no objection to the subject proposal; and

WHEREAS, by letter dated July 20, 2012, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated September 12, 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency's Capital Improvement Program; 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 June 28, 2012, acting on Department of Buildings Application No. 420566541, 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 July 10, 2012"-one (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 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;

THAT the home shall be sprinklered in accordance with the BSA-approved plans; 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, January 8, 2012.

239-12-A
APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Donald Greaney, lessee.
SUBJECT – Application August 2, 2012 – Proposed reconstruction and enlargement of existing single family dwelling not fronting a mapped street, contrary to Section 36 of the General City Law. The proposed upgrade of the existing non-conforming private disposal system located partially in the bed of the Service Road, contrary to Building Department policy. R4 zoning district.
AFFECTED PREMISES – 38 Irving Walk, west side of Irving Walk, 45' north of the mapped Breezy Point Boulevard. Block 16350, Lot p/o 400. Borough of Queens.
COMMUNITY BOARD #14Q
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 July 20, 2012, acting on Department of Buildings Application No. 420583915, reads in pertinent part:

A1- The street giving access to the existing building to be altered is not duly placed on the map of the City of New York, therefore:
A) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
B) Existing dwelling to be altered does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section 27-291 of the Administrative Code of the City of

New York; and

A2 - The proposed upgraded private disposal system in the bed of the service lane is contrary to the Department of Buildings policy; 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 the same date; and

WHEREAS, by letter dated October 25, 2012, the Fire Department states that it has reviewed the subject proposal and requires that the applicant provide a revised site plan showing the building to be fully sprinklered; 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 April 5, 2012, acting on Department of Buildings Application No. 420583915, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 1, 2012 - one (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 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;

THAT the home shall be sprinklered in accordance with the BSA-approved plans;

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, January 8, 2013.

240-12-A

APPLICANT – Gary Lenhart, R.A., for The Breezy Point Cooperative, Inc., owner; Zorica & Jacques Tortoroli, owner.

SUBJECT – Application August 2, 2012 – Proposed reconstruction and enlargement of existing single family dwelling located partially in the bed of the mapped street, contrary to Section 35 of the General City Law. The proposed upgrade of the existing non-conforming private disposal system in the bed of the mapped street is contrary to Article 3 of the General City Law. R4 zoning district.

PREMISES AFFECTED – 217 Oceanside Avenue, north side Oceanside Avenue, west of mapped Beach 201st Street, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

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 July 20, 2012 acting on Department of Buildings Application No. 420579662, reads in pertinent part:

A1- The existing building to be altered lies within the bed of a mapped street, contrary to General City Law Article 3, Section 35; and

A2- The proposed upgrade of the existing private disposal system in the bed of a mapped street is contrary to General City Law Article 3, Section 35; 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 the same date; and

WHEREAS, by letter dated October 25, 2012, the Fire Department states that it has reviewed the subject proposal and has no objections to the proposal; and

WHEREAS, by letter dated August 9, 2012, the Department of Environmental Protection states that it has no objections to the proposal; and

WHEREAS, by letter dated September 12, 2012, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency's Capital Improvement Program; 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 June 28, 2012 acting on Department of Buildings Application No. 420579662, 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 July 20, 2012"-one (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 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;

THAT the home shall be sprinklered in accordance with the BSA-approved plans; 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, January 8, 2013.

89-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.
COMMUNITY BOARD #3SI

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

92-07-A thru 94-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.
COMMUNITY BOARD #3SI

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

95-07-A
APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.
SUBJECT – Application April 19, 2007 Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.
PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.
COMMUNITY BOARD #3SI

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

103-12-A
APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.
SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.
PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.
COMMUNITY BOARD #2BK
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

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

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 8, 2013
1:30 P.M.

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

ZONING CALENDAR

73-12-BZ
APPLICANT – Jeffrey Chester, Esq./GSHLLP, for 41-19 Bell Boulevard LLC, owner; LRHC Bayside N.Y. Inc., lessee.
SUBJECT – Application March 20, 2012 – Application for a special permit to legalize an existing physical culture establishment (*Lucille Roberts*). C2-2 zoning district.
PREMISES AFFECTED – 41-19 Bell Boulevard between 41st Avenue and 42nd Avenue, Block 6290, Lot 5, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 9, 2012, acting on Department of Buildings Application No. 420527111, reads in pertinent part:

> Physical Culture Establishment is not permitted as per Section of Code ZR 32-31; and

WHEREAS, this is an application under ZR §§73-36 and 73-03, to permit, on a site partially within a C2-2 (R6B) zoning district and partially within a C8-1 zoning district, the legalization of a physical culture establishment (PCE) on the cellar level, first floor, and mezzanine of a one-story building contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on August 14, 2012, after due notice by publication in *The City Record*, with continued hearings on October 23, 2012 and November 27, 2012, and then to decision on January 8, 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 11, Queens, recommends approval of this application on condition that (1) the gate in the driveway be removed, (2) exposed wires on the outside of the building be removed, and (3) the PCE take additional steps to reduce vibrations and noise felt by the adjacent building at 41-23 Bell Boulevard; and

WHEREAS, the Queens Borough President recommends approval of the application and supports the Community Board's conditions; and

WHEREAS, the owner of the adjacent building at 41-23 Bell Boulevard (the "Neighbor") provided written and oral testimony in opposition to the application, expressing concerns about (1) noise and vibration from the PCE use, (2) the live load capacity of the subject building, and (3) the history of illegal use of the building as a PCE without the required special permit; and

WHEREAS, specifically, the Neighbor asserts that it is unable to keep tenants in all of its three units due to complaints about sound and vibration and its existing tenants are significantly disturbed by the sound and vibration from the PCE; and

WHEREAS, the subject site is located on the east side of Bell Boulevard, between 41st Avenue and 42nd Avenue in a C2-2 (R6B) zoning district; a small portion at the back of the lot is within the adjacent C8-1 zoning district; and

WHEREAS, the PCE occupies 6,848 sq. ft. of floor area on the first floor and mezzanine and 4,700 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE is operated as a Lucille Roberts Health Club; and

WHEREAS, the PCE began operation at the site in 1993 when the site was within a C4-2 zoning district, a district where PCE's are allowed by special permit; and

WHEREAS, accordingly, the applicant filed an application for a special permit at the Board pursuant to BSA Cal. No. 132-93-BZ; and

WHEREAS, however, while the application was pending, the site and surrounding area was rezoned from C4-2 to C1-2 (R6B); the special permit is not available in C1-2 zoning districts; and

WHEREAS, thus, because the special permit was not available to the PCE at the site after the rezoning, the Board dismissed the application in 1995 for lack of jurisdiction; and

WHEREAS, the applicant subsequently sought a variance to legalize the PCE, pursuant to BSA Cal. No. 393-04-BZ, but ultimately withdrew the application; and

WHEREAS, the applicant states that it pursued other avenues for legalizing the PCE but was only successful after filing an application for an amendment of the zoning map (C080293ZMQ) in 2008 to rezone a portion of one block along Bell Boulevard, between 42nd Avenue and the Long Island Railroad right-of-way from a C1-2 to a C2-2 commercial overlay district within the underlying R6B zoning district; and

WHEREAS, on December 15, 2010, the City Planning Commission (CPC) approved the zoning map amendment and on January 18, 2011, the City Council ratified CPC's resolution; and

WHEREAS, finally, the applicant filed the subject application for a special permit to legalize the PCE as it is once again within a zoning district which allows the special

permit; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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, in response to the Neighbor's concerns, the applicant consulted a sound expert who visited the subject building and the Neighbor's building to observe the conditions and make recommendations; and

WHEREAS, the sound expert concluded that the sound levels comply with Noise Code requirements and recommended sound control measures to ensure continued compliance and to protect the Neighbor from excessive noise; and

WHEREAS, specifically, the sound expert identified the sound system, performed sound testing within the building during the loudest class with high enrollment, and found that the sound system at its typical maximum level measured 95 dBc in the center of the gym area; and then tested the sound in the adjacent building; and

WHEREAS, the test reflected that the sound was slightly to faintly audible on the first and second floors of the adjacent building and inaudible on the third floor; and

WHEREAS, the tests conclude that (1) the tested low-frequency sound levels are lower than the Noise Code 45 dB limit; (2) the dBA levels were below 42 dBA; (3) the music is inaudible in the third floor unit; and (4) the third floor unit is occupied by a school and is not "a receiving property dwelling unit" as described in the Noise Code; and

WHEREAS, the consultant made the following recommendations: (1) remount the existing speakers using spring mounts to reduce the transfer of bass vibration to building walls; (2) the system should be set up in stereo; and (3) the system should include a recommended sound limiter to be locked with a security cover; and

WHEREAS, the Neighbor called the applicant's sound study into question and performed its own informal analysis of the sound and vibration, which concluded that the sound and vibration where excessive; and

WHEREAS, the Neighbor suggests that the applicant maintain lower dB emission and/or include sound-deadening materials; and

WHEREAS, the applicant's sound consultant asserts that sound-deadening materials would not be effective in reducing sound or vibration, given the existing wall construction and adjacency of the two buildings' walls and that installing new concrete walls would be an extreme measure with considerable hardship, which is not warranted for the level of sound and vibration which comply with the Noise Code parameters; and

WHEREAS, the Neighbors maintain their opposition to the PCE use even with the noted conditions; and

WHEREAS, the applicant has agreed to implement all of the Community Board's conditions and all of its acoustic consultant's recommendations; and

WHEREAS, the Board notes that the applicant has modified its sound transmission in response to the concerns raised by the Neighbor, but that the PCE and the Neighbor have been unable to resolve their differences; and

WHEREAS, the Board notes that four commissioners visited the site and the adjacent building at different times and did not observe the conditions the Neighbor describes; and

WHEREAS, the Board also is not persuaded by the Neighbor's and its tenants' unspecific complaints about the sound and vibration and the absence of a professional sound study like that produced by the applicant's sound expert, which the Board finds to be credible; and

WHEREAS, the Board concludes that the measures to be installed appear to address the primary concerns and are consistent with the measures the Board has seen proposed for similar facilities; and

WHEREAS, with regard to the noise and live load concerns, the Board notes that the applicant is required to comply with all Building Code, Noise Code, and all other regulations; and

WHEREAS, as far as the Neighbor's concerns about the history of illegality of the PCE use, the Board notes that the applicant has made efforts during its history to obtain a special permit and legalize a use that would have been legal by special permit at the beginning of its existence there; and

WHEREAS, the Board notes that due to the applicant's significant efforts, the PCE use is now within a zoning district where it is permitted; and

WHEREAS, the Board notes that the site is within an active commercial strip directly adjacent to Long Island Railroad tracks; and

WHEREAS, the Board also notes that the PCE's hours of operation are reasonable and significantly shorter than those for other PCE's; and

WHEREAS, the Board has taken care to visit the site unannounced at various times to observe conditions, visit the Neighbor's building, and to review all of the Neighbor's concerns and the applicant's responses, and is satisfied that the applicant has sufficiently addressed sound and vibration matters; and

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings

pursuant to ZR §§ 73-36 and 73-03; and

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

WHEREAS, the New York City Department of City Planning ("DCP") 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. 08DCP044Q, dated August 26, 2009; 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

Therefore it is Resolved that the Board of Standards and Appeals adopts the Negative Declaration issued by the Department of City Planning on July 23, 2010, 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 partially within a C2-2 (R6B) zoning district and partially within a C8-1 zoning district, the legalization of a physical culture establishment on the cellar level, first floor, and mezzanine of a one-story building contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 21, 2012" - Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on January 8, 2023;

THAT the hours of operation will be limited to Monday to Thursday 8:00 a.m. to 9:00 p.m.; Friday 9:00 a.m. to 8:00 p.m.; Saturday 9:00 a.m. to 2:00 p.m.; and Sunday 9:00 a.m. to 1:00 p.m.;

THAT the sound limiter will be placed with a secure lock and in a location not accessible to the public;

THAT the speakers will hang from the mezzanine, padded carpeting will be maintained throughout the club, and other acoustical attenuation measures will be installed and maintained as reflected on the BSA- approved plans;

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

THAT the above conditions will appear on the 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 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, January 8, 2013.

110-12-A

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.

SUBJECT – Application January 19, 2012 – Variance to §§26(7) and 30 of the Multiple Dwelling Law (pursuant to §310) to facilitate the new building, contrary to court regulations. M1-6 zoning district.

PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, January 8, 2013.

156-12-BZ

CEQR #12-BSA-137K

APPLICANT – Sheldon Lobel, for Prospect Equities Operation, LLC, owner.

SUBJECT – Application May 17, 2012 – Variance (§72-21) to permit construction of a mixed-use residential building with ground floor commercial use, contrary to minimum inner court dimensions (§23-851). C1-4/R7A zoning district.

PREMISES AFFECTED – 816 Washington Avenue, southwest corner of Washington Avenue and St. John's Place, Block 1176, Lot 90, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 17, 2012, acting on Department of Buildings Application No. 320373742, reads in pertinent part:

> Proposed inner court for the residential portion of proposed 'mixed building' does not comply with minimum required dimensions; contrary to ZR 23-851; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an C1-4 (R7A) zoning district, a five-story mixed-use commercial/residential building with UG 6 on the ground floor and eight affordable housing units, which does not comply with the requirements for inner courts, contrary to ZR § 23-851; and

WHEREAS, a public hearing was held on this application on November 27, 2012, after due notice by publication in the *City Record*, and then to decision on January 8, 2013; and

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

WHEREAS, Community Board 8, Brooklyn, recommends approval of this application; and

WHEREAS, Councilmember Letitia James submitted a letter in support of the application; and

WHEREAS, the subject premises is a corner lot bounded by Washington Avenue to the east and St. John's Place to the north, within an C1-4 (R7A) zoning district; and

WHEREAS, the site is irregular in shape with approximately 22'-6" of frontage on Washington Avenue and 87'-10" of frontage on St. John's Place, with a total lot area of 3,972 sq. ft.; and

WHEREAS, the site is currently vacant, as a fire in June 2011 destroyed the mixed-use four-story building previously on the site; and

WHEREAS, the applicant proposes to construct a five-story and cellar mixed-use building, with Use Group 6 commercial use on the first floor and Use Group 2 affordable housing units on the second through fifth floors; and

WHEREAS, the proposed building will measure approximately 15,700 sq. ft. in floor area, with an FAR of 3.95 (the zoning district permits 15,888 sq. ft. and a maximum allowable FAR of 4.0), and will contain a total of eight residential units; and

WHEREAS, however, ZR § 23-851 requires a minimum inner court dimension of 30 feet and a minimum area of 1,200 sq. ft.; and

WHEREAS, the applicant proposes an inner court with dimensions of 23'-10" by 19'-7 1/8" and 730 sq. ft. of area, a reduction of 7'-0" and approximately 10'-0" in dimensions, and 472 sq. ft. of area; and

WHEREAS, the applicant asserts that the irregular shape of the lot and the history of the site contribute to the unique physical condition, which creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the applicant states that the site has an irregular trapezoid shape, with a depth ranging from 22'-6" along Washington Avenue to 63'-3" at the rear of the site; and

WHEREAS, the applicant's land use map reflects that due to the angle at which Washington Avenue intersects St. John's Place and other parallel streets within the 400-ft. radius, there are approximately seven sites within the area that are of similar shape and size, but only the subject site is vacant; and

WHEREAS, as to the history of the site, in June 2008, the applicant purchased the mixed-use four-story building on the site in foreclosure as part of the Department of Housing Preservation and Development's (HPD) Third Party Transfer Program; and

WHEREAS, the applicant states that the program requires developers to temporarily relocate existing tenants while the building is being rehabilitated and reinstall the tenants in units of the same size once the restoration of the building is complete; and

WHEREAS, further, the applicant states that the owner entered into a regulatory agreement with the City of New York which requires compliance with certain restrictions for a 30-year period, including mandated residential rent levels and minimum household sizes; and

WHEREAS, the applicant submitted a letter from HPD reflecting that it supports the proposal and has given the applicant a low-interest rate loan through the Third Party Transfer Program, which dictates unit sizes and number of dwelling units for each proposed project; and

WHEREAS, the applicant states that the former building was occupied by three four-bedroom units with floor areas of 1,223 sq. ft. each and three three-bedroom units with floor area of 1,007 sq. ft. each; and

WHEREAS, the proposed building will have four four-bedroom units with floor area of 1,286 sq. ft. each and four three-bedroom units with floor area of 1,040 sq. ft. each; and

WHEREAS, the applicant's analysis reflects that the complying building can accommodate units with 998 sq. ft. and 1,185 sq. ft., which can accommodate two and three bedrooms, respectively, rather than three and four bedrooms in the former building; and

WHEREAS, accordingly, the applicant states that a fully complying building would only accommodate smaller units with fewer bedrooms or fewer units and would not satisfy the requirement to replace the former units; and

WHEREAS, the applicant notes that a complying building may be able to accommodate more units, but they would not be able to replace the existing ones without creating duplexes which are impractical and inefficient for such a small building due to the introduction of individual circulation space; and

WHEREAS, the applicant states that to reflect the conditions of the prior building on the site, to be re-occupied by former tenants, the proposal includes four three-bedroom units and four four-bedroom units, similar in size to the prior

units; and

WHEREAS, the applicant represents that due to the irregular shape of the lot and the court requirements, no complying building can be accommodated that would meet both inner court and HPD requirements regarding restoration of former tenants to dwelling units with identical room counts; and

WHEREAS, further, the applicant provided an analysis of a similar sized lot that is regular and rectangular in shape that showed that a conforming building accommodates and satisfies all HPD requirements regarding restoration of former tenants to dwelling units with former sizes and room counts; and

WHEREAS, the applicant states that the analysis confirms that the irregular shape of the site, which is a unique condition, creates a hardship for a conforming proposal to comply with zoning regulations and meet the programmatic needs established by HPD; and

WHEREAS, the applicant represents that the proposed inner court dimensions are the minimum needed to create units that meet HPD requirements; and

WHEREAS, the Board notes that the floor plate is dictated by the prior conditions and irregular lot and, thus there is little flexibility in satisfying the required quantity and size of units, but that because additional floor area was available, it allowed for another floor in the same footprint as the required floors; and

WHEREAS, further, the Board notes that it is not feasible to create duplex units to replace existing single floor units in such a small building; and

WHEREAS, the Board agrees that the unique shape, and history of the building on the site, with related HPD requirements, creates practical difficulties and unnecessary hardship in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing (1) an as-of-right scenario with mixed-use and a complying inner court; (2) an as-of-right scenario with mixed-use and a side yard with a width of eight feet; (3) an as-of-right scenario with an outer court; and (4) the proposed scenario; and

WHEREAS, the study concluded that the only scenario which would result in a reasonable return is the proposed; and

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

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, nor impact adjacent uses; and

WHEREAS, the applicant states that the court is not required on the ground floor, which will be occupied by commercial use, thus, the waiver only applies to floors two through five; and

WHEREAS, the applicant states that on both the Washington Avenue and St. John's Place sides of the building, a fully complying court would result in the building abutting the adjacent buildings for a greater depth than they do in the proposed scenario; and

WHEREAS, the applicant notes that the new building will replace the former building, which was constructed in approximately 1920 and did not provide a complying inner court, or required egress or fire safety measures; and

WHEREAS, accordingly, the applicant asserts that the proposed building will comply with all egress and fire safety requirements and will therefore provide increased safety to residents of the building as well as adjacent buildings; and

WHEREAS, the applicant represents that the impacts of the proposed waiver of inner court regulations on adjacent properties will be negligible when compared to available as-of-right scenarios; 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 applicant represents that the hardship was not created by the owner or a predecessor in title, but that the irregular shape of the lot is a historic condition; and

WHEREAS, based on the above, the Board agrees that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the applicant states that the proposal complies with all bulk regulations except inner court dimensions and that it is the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, thus, 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 Section 617 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA137K, dated May 17, 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 issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, to permit, on a site within an C1-4 (R7A) zoning district, a five-story mixed-use commercial/residential building with UG 6 on the ground floor and eight affordable housing units, which does not comply with the requirements for inner courts, contrary to ZR § 23-851; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 3, 2013"– eleven (11) sheets; and *on further condition*:

THAT the parameters of the building will be: five stories, a total height of 52'-1/2" without bulkhead, a total floor area of 15,700 sq. ft. (3.95 FAR), an inner court with the minimum dimensions of 23'-9" by 19'-7", and a lot coverage of 79 percent, as illustrated on the Board-approved plans;

THAT the internal floor layouts on each floor of the proposed building will be as reviewed and approved by DOB;

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

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

THAT substantial construction will proceed in accordance with ZR § 72-23; 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, January 8, 2013.

189-12-BZ

APPLICANT – Michael T. Sillerman, Kramer Levin et al., for the Wachtower Bible and Tract Society, Inc., owner; Bossert, LLC, lessees.

SUBJECT – Application June 12, 2012 – Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00). C1-3/R7-1, R6 zoning districts.

PREMISES AFFECTED – 98 Montague Street, east side of Hicks Street, between Montague and Remsen Streets, on block bounded by Hicks, Montague, Henry and Remsen Streets, Block 248, Lot 15, 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 Executive Zoning Specialist, dated May 30, 2012 acting on Department of Buildings Application No. 320374304, reads in pertinent part:

> Proposed transient hotel use (UG 5) is not permitted in R6 (LH-1) lot portion; contrary to ZR 22-10.
>
> Proposed transient hotel use (UG 5) is not permitted in C1-3/R7-1 (LH-1) lot portion; contrary to ZR 32-14; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R6 zoning district and partially within a C1-3 (R7-1) zoning district within the Special Limited Height (LH-1) District and the Brooklyn Heights Historic District, the modification and conversion of an existing building into a transient hotel (Use Group 5) with 280 rooms, accessory hotel use (Use Group 5), and commercial use (Use Group 6), which does not conform with use regulations pursuant to ZR §§ 22-10 and 32-14; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in the *City Record*, with continued hearings on October 23, 2012 and November 27, 2012, and then to decision on January 8, 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, Brooklyn, recommends approval of the application; and

WHEREAS, the Montague Street BID, Court/Livingston/Schermerhorn BID, the Brooklyn Chamber of Commerce, and certain community members and representatives of local businesses provided testimony in support of the proposal; and

WHEREAS, certain community members (including some represented by counsel) provided written and oral testimony in opposition to the proposal (the "Opposition"); their primary concerns are related to (1) increased vehicle traffic to the site; (2) potential for noise from the hotel and specifically the rooftop restaurant to be heard in nearby residential buildings; (3) the absence of a hardship associated with an as-of-right residential development; (4) the operation plan for the hotel and specifically the rooftop restaurant to minimize impact on nearby uses; and (5) the enforcement of the conditions imposed to improve the operation plan; and

WHEREAS, the existing building has 14 stories (the "Existing Building") and is located on the block bounded by Montague Street, Hicks Street, Remsen Street, and Henry Street, occupying the entire blockfront of Hicks Street between Montague and Remsen streets; the northern half of the site is within a C1-3 (R7-1) zoning district, and the southern half is within an R6 zoning district, within the Special Limited Height (LH-1) District and the Brooklyn Heights Historic District; and

WHEREAS, the site has 200 feet of frontage on Hicks Street, 78 feet of frontage on each of Montague and Remsen streets, and a total lot area of 15,635 sq. ft.; and

WHEREAS, the applicant states that the C1-3 (R7-1) zoning district permits residential use with a maximum FAR of 3.44, subject to the height factor and open space regulations, and community facility floor area of up to 4.8 FAR; commercial use of up to 2.0 FAR is permitted, but in a building containing residences or community facility uses, commercial uses are permitted only on the first floor of the building; and

WHEREAS, the applicant states that the R6 zoning district permits residential use with a maximum 2.43 FAR, subject to the height factor and open space regulations, and community facility floor area of up to 4.8 FAR; and

WHEREAS, the entire site is located within a Special Limited Height (LH-1) District, which limits the height of new buildings to 50 feet, pursuant to ZR § 23-691; the Existing Building is a contributing building in the Brooklyn Heights Historic District; and

WHEREAS, the Existing Building has the following non-complying bulk conditions: (1) a floor area of 180,533 sq. ft. (11.55 FAR) (approximately 75,000 sq. ft. would be permitted for community facility uses); (2) a streetwall height of 147 feet (50 feet is the maximum permitted) and a total height of 172 feet (50 feet is the maximum permitted); and (3) does not provide a setback (a setback with a depth of 20 feet is required); and

WHEREAS, the Board notes that the proposed building will maintain existing non-compliances; and

WHEREAS, the applicant proposes to restore and reconvert the Existing Building to Use Group 5 hotel use, with Use Group 6 restaurant use on the ground floor, and with limited accessory hotel signage; the existing floor area will be retained and converted to hotel use; and

WHEREAS, the first floor will be occupied by accessory hotel use, including meeting space limited to hotel guests, and a restaurant; the second through 13th floors will be occupied by guest rooms, and the partial 14th floor will be occupied by the rooftop restaurant; and

WHEREAS, the proposal reflects 280 hotel units, an approximately 2,884 square-foot restaurant on the ground floor, and a 2,953 square-foot accessory hotel restaurant and lounge in the 14th floor penthouse (the "Proposed Building"); and

WHEREAS, the Board notes that the use of the Existing Building includes four rent-stabilized units, which will remain; and

WHEREAS, the entrance to the hotel lobby would be located on Montague Street, and a complying restaurant space would also be entered from Montague Street; the existing loading entrance on Hicks Street would remain to service the hotel, and a conveyor belt system would be added to bring deliveries to the cellar and speed hotel deliveries; the height of the Proposed Building is approximately 172 feet, as at present, exclusive of mechanical space; and

WHEREAS, the applicant states that the current certificate of occupancy indicates community facility use, which is permitted in the subject zoning districts, although until 1997, the certificates of occupancy showed Use Group 5 transient hotel use, which was a pre-existing non-conforming use, and also Use Group 2 residential use; and

WHEREAS, the applicant adds that the latest Department of Housing Preservation & Development Multiple Dwelling Registration for the building shows 51 "Class A" units and 221 "Class B" units, which indicates that the building has been primarily used for transient occupancy; and

WHEREAS, the use of the Proposed Building as a hotel does not conform with the use regulations of the Zoning Resolution governing C1-3(R1-7) and R6 zoning districts, thus, the requested variance is required; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: the building's historic use and configuration as a transient hotel and transient community facility accommodations; and

WHEREAS, as to the Existing Building, the applicant states that the original portion of the hotel was constructed in 1909 and as the Hotel Bossert, and has been used as a residence hall and Class "B" transient hotel throughout its history; and

WHEREAS, the building was built in two phases, with the first half (occupying the portion of the site within 100 feet of Montague Street) completed in 1909, and the latter half (toward Remsen Street) completed in 1912; and

WHEREAS, the applicant states that hotel was formerly occupied by the "Marine Roof," a two-level restaurant at the 14th floor; and

WHEREAS, the building deteriorated in the 1960s and 1970s, and was used as a single-room-occupancy hotel until it was acquired by the Jehovah's Witnesses in 1983; the Jehovah's Witnesses' restoration of the building earned a "Preservation Award" from the New York Landmarks Conservancy in 1991 and a Special Award for Architectural Excellence from the Brooklyn Heights Association in 1993; and

WHEREAS, the applicant asserts that Pre-1961 certificates of occupancy list the building as a Class "B" transient hotel containing guest rooms, a dining room, bar, lounge, ballroom, cabaret, and hotel support features; and

WHEREAS, certificates of occupancy in 1968, 1983, 1992, and 1995 showed both Use Group 2 "apartments" and also Use Group 5 "guest rooms" on each of the upper floors, with continued use of the lower floors for dining rooms, a lounge, and a kitchen; and

WHEREAS, most recently, the Watchtower Bible and Tract Society (the Jehovah's Witnesses) began to occupy the Existing Building in 1983, and converted it to community facility use in 1997; the Jehovah's Witnesses currently use the building for both long-term and short-term stays by their members; and

WHEREAS, the most recent certificate of occupancy for the building, which indicates "J-2 non-profit institution with sleeping accommodations," with both "apartments" and "guest rooms" on each of the upper floors; and

WHEREAS, the applicant states that the Existing Building is configured with four narrow "fingers" extending off of its main hallway; the rooms located in these fingers have windows facing an inner court with pre-Multiple Dwelling Law ("MDL"), tenement-like dimensions, which does not meet modern standards for legal light and air, at some places with a width as narrow as 12 feet; and

WHEREAS, the Existing Building is currently arranged with 224 rooms, including several one- and two-bedroom suites; and

WHEREAS, the applicant asserts that given its current use and layout, with relatively small rooms and a noncomplying inner court, the building is best suited for transient hotel use; conversion to a complying residential use would require extensive demolition and rebuilding in the rear to create a complying inner court, which is highly visible at the building's eastern façade and would be subject to LPC's review and approval; and

WHEREAS, specifically, the applicant states that the construction of the building in two phases resulted in many redundancies in the building's systems, including four separate egress stairs, two passenger elevator shafts, and a very long hallway that shifts by approximately five feet at the junction between the first and the second building segments; thus, the Existing Building is uniquely inefficient, even by the standards of its time; and

WHEREAS, the consulting architect provided a statement which asserts that as a result of the historic conditions, development of the Existing Building for residential use, in compliance with the Zoning Resolution, would require substantial demolition and reconstruction in the rear of the building to create a complying inner court; and

WHEREAS, the architect states that conversion of this non-residential building to residential use may be done in accordance with Article 1, Chapter 5 of the Zoning Resolution, which substitutes MDL § 277 standards for light and air in place of the Zoning Resolution Article 2 requirements; however, the Existing Building's courts measure 12 to 13 feet in width, which do not meet the minimum width court dimension of 15 feet required by MDL § 277 for legal windows, so a complying court would need to be constructed for a complying residential scheme; and

WHEREAS, the architect concludes that the area in the rear of the building would constitute an inner court, as defined in the MDL, but does not have a minimum dimension of 15 feet for all of the windows facing the court; some windows face a court with a dimension of as little as 12 feet; thus, the Existing Building does not meet even the more liberal court standards of MDL § 277; and

WHEREAS, the applicant submitted a plan scheme for a complying residential building, which reflects that the "fingers" in the rear of the Existing Building would be cut back, and certain areas of the existing court would be filled in, to create a regularly shaped, rectangular inner court with dimensions of 30 feet by 78 feet; and

WHEREAS, the applicant notes that the Existing Building has floor plate widths of approximately 36 feet to 39 feet as compared to the 60-ft. width of the typical modern residential building with a double-loaded corridor, so the reconfiguration of the court and the additions to the floor slab would allow for a more efficient internal layout, although, the layout would still be less efficient than in a modern residential building; and

WHEREAS, the applicant submitted a report which describes the extensive structural work that would be required in order to create the complying court shown in the as-of-right residential scheme drawings; and

WHEREAS, the applicant asserts that the required work would include: (1) demolition of the existing masonry façade, cladding, windows and interior partitions in the area of the rear half of the building; (2) demolition of the portion of the building protruding into the new proposed court yard area, at floors 2-14 and the roof, including existing elevator shafts and general floor framing; (3) installation of new floor framing plus concrete on metal deck within the "old/existing" light well area which would become new enclosed space, upon floors two through the roof; (4) construction of the new façade around the new proposed courtyard area; (5) upgrading the existing columns along the "old/existing" light well area, via the concrete encapsulation or plating with new steel; (6) upgrading of the portion of the existing columns which are within the existing building below the second floor; and (7) upgrading of the foundation supporting the columns as required for the new loads; and

WHEREAS, the applicant represents that the premium costs associated with the reconfiguration of the Existing Building to comply with minimum court regulations amount to $4 million; and

WHEREAS, the applicant notes that the need to add kitchens to all of the rooms and reconfigure the bathrooms with new plumbing would further add to the cost of this work; and

WHEREAS, the applicant asserts that even with the noted reconfiguration of the Existing Building, inefficiencies in the layout would remain; specifically, the apartment units along the street-side perimeter of the building would be too narrow for well-designed, marketable apartment units and the inefficiency results in a reduction in the number of units from the existing 224 down to 137 in the as-of-right residential scheme; and

WHEREAS, the applicant has documented the additional costs associated with demolishing the interior portion of the building in order to provide the courtyard; and

WHEREAS, the Board notes that that the demolished floor area cannot be replaced as of right because the building would still be overbuilt and the heights of both wings of the existing building exceed the height limits set forth in the Limited Height District; and

WHEREAS, thus, the applicant asserts that the layout of the floors is more compatible with the proposed use and requires less significant modifications to accommodate the proposed use than would be required to accommodate a conforming residential use; and

WHEREAS, as noted, the applicant represents that the considerable costs associated with converting the building to a conforming residential use cannot be overcome because the building cannot feasibly accommodate residential units that would be marketable; and

WHEREAS, the applicant states that the configuration and history of development of the building are unique and create hardships that are not found on other sites in the neighborhood; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance and compliance with the applicable zoning district regulations; and

WHEREAS, the applicant assessed the financial feasibility of three scenarios: (1) the as-of-right residential scheme involving the conversion of the Existing Building to residential use with 137 units, in compliance with the use regulations of the C1-3 (R7-1) and R6 districts with a ground-floor restaurant, an accessory restaurant in the penthouse, and community facility spaces on the ground-floor and in the basement; (2) a lesser variance residential scheme, which would involve the conversion of the Existing Building to residential use, in compliance with the applicable use regulations, but without the demolition in the rear of the building to create a complying court; the lesser variance scheme requires a variance pursuant to MDL § 310 to allow residential units to have windows facing the existing noncomplying inner court; and (3) the Proposed Building, with 302 transient hotel rooms; and

WHEREAS, during the hearing process, and in response to the Board's and the Oppositions questions, the applicant clarified certain points including condominium valuation, the value of the four rent-regulated units, and hotel comparables; and

WHEREAS, ultimately, at the Board's direction, the applicant reduced the number of hotel rooms from 302 to 280 and explained that it could still achieve a reasonable rate of return by offsetting the reduction in rooms by an increase in premium suite-type units; and

WHEREAS, the applicant concluded that only the transient hotel scheme would result in a sufficient return; and

WHEREAS, the applicant revised the proposal to its current iteration as a 280-room transient hotel with accessory uses and has submitted evidence reflecting that it achieves a reasonable return; and

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

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

WHEREAS, the applicant notes that the Existing Building, designed for and used as a hotel and, later, a community facility, with transient sleeping accommodations, has not been used for conforming residential use; and

WHEREAS, the applicant represents that the immediate area is a mix of commercial, residential, and institutional uses; and

WHEREAS, the applicant states that the block on which the site is located is improved with retail and other buildings of between one and eight stories along Montague Street and four- to five-story brownstone buildings along Remsen Street; and

WHEREAS, the applicant notes that the proposed commercial use is permitted by underlying zoning district regulations; and

WHEREAS, the applicant states that Montague Street, where the hotel's entrance is located, is an active retail corridor, with mostly restaurants, cafes, clothing stores, and personal service establishments in one- to two-story retail buildings or four- to eight-story mixed residential and commercial buildings; immediately to the east of the site, on Montague Street, is a single-story supermarket building and the building to the east of the site on Remsen Street is a four-story, multi-family brownstone building; and

WHEREAS, the applicant represents that the building is among a diverse collection of brownstones, 6-12-story multi-family apartment building, retail, and institutional uses; the office district of Downtown Brooklyn and Borough Hall lies three blocks to the east of the site; the Proposed Building will continue to have its entrance on Montague Street, which is an active retail street between Hicks Street and Cadman Plaza; and

WHEREAS, the alterations necessary to reconvert the Proposed Building to hotel use are subject to approval by the LPC; and by letter dated September 7, 2012, LPC issued a Certificate of No Effect; and

WHEREAS, the applicant asserts that the Proposed Building will be operated in a very similar manner to the Existing Building, which, although it is classified on its certificate of occupancy as a community facility use, in practice operates very much like a typical transient hotel; and

WHEREAS, the applicant asserts that the Jehovah's Witnesses' use of the Existing Building includes many rooms used for short-term stays by their members who are visiting New York City from out of town and generally stay in the hotel for one to three nights; and

WHEREAS, the applicant states that although the Existing Building is currently configured with 224 rooms, with some one- and two-bedroom suites, the Jehovah's Witnesses have historically operated it to maximize occupancy, and have unrelated individuals in a single room,

akin to a dormitory; and

WHEREAS, thus, the applicant asserts, the hotel has been operated, in practice, like a hotel with more than 224 rooms; and

WHEREAS, the applicant states that the Jehovah's Witnesses use the dining rooms on the ground floor and basement level as a commissary, to feed staff from many different facilities in the Brooklyn Heights neighborhood, accommodating several hundred people for lunch at the site, with meals prepared in the large commercial kitchen in the building's cellar; and

WHEREAS, the applicant asserts that the layout of the Proposed Building, with 280 rooms, results from breaking up the existing multi-room suites into individual rooms according to natural room partitions; and

WHEREAS, the applicant asserts that this reconfiguration will effectively accommodate the same number of people who are currently accommodated by the Jehovah's Witnesses, but in a more traditional hotel layout, with individual, private rooms and bathrooms; and

WHEREAS, the applicant states that the Proposed Building will include a (1) ground-floor restaurant, entered from Montague Street, which will be an elegant, "white table cloth" restaurant and (2) a penthouse restaurant and lounge on the 14th floor of the building, with indoor and outdoor dining; and

WHEREAS, during the hearing process, the applicant provided several iterations of an operation plan to address the Opposition's concerns related to: (1) increased vehicle traffic to the site; (2) potential for noise from the hotel and specifically the rooftop restaurant to be heard in nearby residential buildings; (3) the absence of a hardship associated with an as-of-right residential development; (4) the operation plan for the hotel and specifically the rooftop restaurant to minimize impact on nearby uses; and (5) the enforcement of the conditions imposed to improve the operation plan; and

WHEREAS, as to traffic, the applicant states that its EAS analysis shows that there will be fewer than 50 incremental vehicle trips and fewer than 200 incremental pedestrian trips in any intersection in any peak hour as a result of the proposed project; therefore, a detailed traffic study is not warranted for CEQR purposes, as the additional traffic generated by the project would not exceed the applicable CEQR thresholds; and

WHEREAS, the applicant represents that the hotel will actively manage its taxi traffic and loading operations to avoid any potential traffic conflicts in the surrounding area; a hotel loading zone is designated in front of the hotel on Montague Street, which allows for efficient taxi drop-off and pick-ups; and

WHEREAS, in addition, the entire block of Hicks Street adjacent to the hotel, between Remsen and Montague streets, is designated as a loading zone, with no parking during daytime hours; this loading zone is adjacent to the hotel's dedicated loading entrance on Hicks Street; and

WHEREAS, the applicant states that it has developed a traffic management plan for the project, which includes the following elements: (1) taxis and cars will drop off in the hotel loading zone on Montague Street, which can accommodate two parked vehicles; (2) the hotel will contract with Quik Park to valet any private vehicles to the facility at 360 Furman Street, which is a 10-minute walk from the site; (3) the hotel loading zone on Hicks Street of 140-150 feet in length will accommodate several small trucks at any time; (4) it is anticipated that there will be mostly two small trucks at any given time for the deliveries to the hotel, which will be primarily food and beverage, some laundry, and private trash carting; and (5) take all reasonable measures to limit deliveries to 7:00 a.m. – 10:00 a.m., and will consult with the Community Board concerning delivery hours and any related issues; and

WHEREAS, additionally, the applicant asserts that the planned modifications to the loading area in the Proposed Building will improve the hotel's loading operations; and

WHEREAS, the applicant proposes the following additional measures: (1) dedicated staff of at least two door/bellman at the entrance to manage taxi and auto traffic, to do the following: (i) enforce double-parking prohibition, (ii) unload guest vehicles as promptly as practicable, (iii) take vehicles to the off-site parking garage as soon as the guest's luggage has been unloaded, and (iv) summon radio cars when needed by guests, using a dispatch system; (2) to provide additional staffing as required to prevent traffic congestion and adjust doormen and parking staff schedule daily based on guests' transportation data collected from advanced reservations; and (3) to develop projections of guest transportation needs for the days ahead by asking guests to identify their means of transportations in and out of the hotel; and

WHEREAS, the applicant also (1) proposes to maintain a "No Standing Hotel Loading Zone" regulation in front of the hotel on Montague Street, and a "No Standing Except Trucks" regulation on Hicks Street; (2) has requested that DOT extend the hotel loading zone on Montague Street for one additional space to the east, in an area that is currently a metered space so that the resulting loading zone will accommodate three vehicles; and (3) will not allow tour or charter buses to load or unload at the hotel; and

WHEREAS, the applicant notes that the Existing Building currently contains a small loading area at the ground-floor level, which leads directly to the building's freight elevator and the limited size of this loading area limits the ability to stage deliveries in this area; and

WHEREAS, the applicant states that it will install a conveyer belt system in this loading area to bring deliveries directly to the cellar as well as a trash compactor in the building to minimize waiting times for trash carting by reducing the volume of trash to be collected; and

WHEREAS, the applicant asserts that these improvements will speed the unloading of deliveries and loading of trash, and minimize truck waiting time along Hicks Street; and

WHEREAS, as to the use of the rooftop restaurant, the applicant proposes (1) that no music will be permitted on the

outdoor terrace or in any other outdoor location; (2) indoor rooftop restaurant music will be developed with noise abatement measures and will be limited to 69 dbA at all times; (3) the proposed outdoor terrace measures a maximum of 11 feet by 159 feet; (4) maximum occupancy at any given time in the rooftop restaurant and on the terrace will not exceed 120 in total, of which not more than 40 at any given time may occupy the terrace; (5) no opening of the walls or windows of the rooftop restaurant, whether permanent or temporary, will be permitted; (6) the rooftop restaurant and terrace will include (i) vestibules at each exit point onto the terrace, (ii) soundproofing material on the exterior walls of the restaurant and walls of the terrace, (iii) sound-absorbing finishes for the exterior areas, and (iv) insulated glass; (7) the rooftop terrace will close at 10:00 pm on all nights (meaning that no patrons will be allowed on the terrace after this time, except on New Year's Eve); (8) the indoor rooftop restaurant will close by 11:00 pm on weekdays, and 12:00 am on Fridays and Saturdays; and (9) that no additional occupiable outdoor space shall be developed on any floor, including the 13th and 14th floors, except as may be required by code for egress from terrace; and

WHEREAS, the Board notes that restaurant closure means closure of the entire restaurant and not just the kitchen; and

WHEREAS, as to other event and restaurant space, the applicant states that (1) the meeting rooms on the ground floor and in the basement will be restricted to use by registered hotel guests, and may not be rented to or used by non-guests; (2) there are no event spaces in the hotel available for rental by non-hotel guests; (3) the applicant will not apply for a DCA Cabaret license or enter into any special events contracts with third-party booking agents advertising events to the public for any of the spaces in the hotel; (4) sound-absorbing interior finishes will be used for the meeting rooms and the ground-floor restaurant; (5) total capacity of ground-floor restaurant spaces will be 240 persons, which may be distributed between the Montague Street (C1-3) restaurant and the rear restaurant/lounge; (6) no rope lines, checkpoints, or check-in tents will be established at any time outside of the hotel; (7) the applicant agrees to use all reasonable measures to ensure that all people waiting to use the hotel facilities will be accommodated within the hotel building; and (8) the applicant will post a sign outside the hotel, near the Montague Street entrance, stating: "This is a residential neighborhood. Please respect our neighbors." and will instruct hotel staff to take all reasonable measures to reduce noise by patrons outside of the hotel and restaurants; and

WHEREAS, the applicant proposes the following additional conditions: (1) to make improvements to the HVAC systems, including central air, which will help to reduce noise in the surrounding area; (2) to establish a Community Liaison to respond to all community concerns; (3) to hold monthly meetings with community members through the Community Board; (4) to focus lighting away from neighboring buildings, and provide very soft and not obtrusively bright lighting; and (5) to limit the use the Remsen Street entrance to required egress; and

WHEREAS, the applicant notes that any noise levels generated by all units and ventilation systems provided are dictated by the Building Code, and as such will operate within the maximum 45 dB (decibel) level prescribed by the Building Code; and

WHEREAS, the Board notes that the applicant and the Opposition had a series of conversations about the operation plan and that both parties appeared at the hearings on the matter; and

WHEREAS, the Board is pleased that the parties have come to a resolution on nearly all of the conditions that caused concern to the Opposition; and

WHEREAS, the Board notes that only the following issues remain unresolved, per the Opposition's requests: (1) no music be permitted within the rooftop restaurant, and no sound amplification system of any kind be installed or used in such space; (2) no parties or other loud events be permitted on the rooftop terrace; (3) no cabaret, dance, DJ or other loud event be permitted on the rooftop, whether indoors or on the outdoor terrace; (4) an 11:00 p.m. closure time for the indoor rooftop restaurant on all days; (5) to have its acoustic consultant review the plans for baffling and make recommendations; (6) that the hotel be limited to a maximum of 225 guest rooms in order to minimize adverse traffic impacts; and (7) that the variance not be effective until the applicant has entered into an agreement with the Casino Mansion Company (CMC), requiring it to observe all restrictions and allowing CMC to enforce such restrictions directly; and

WHEREAS, the Board finds that the applicant has committed to institute numerous measures to satisfy the Opposition's concerns; and

WHEREAS, the Board notes that the applicant will impose significant mitigation to prevent the sound from reaching nearby uses, which is supported by the applicant's acoustical consultant and is consistent with the measures employed in other similar cases; and

WHEREAS, accordingly, the Board finds the applicant's proposal satisfactorily addresses the Opposition's concerns related to the use of the rooftop and other noise; and

WHEREAS, the Board finds that the applicant similarly proposes significant mitigation measures to address the Opposition's concerns about traffic; and

WHEREAS, with regard to the Opposition's proposal that the applicant enter an agreement which would allow CMC to directly enforce any non-compliance with the conditions of the grant, the Board does not take a position as to the appropriateness of such a proposal, but notes that the Department of Buildings enforces the conditions of the Board's grants and that in the event of non-compliance, the Board may ultimately review the use and evaluate the compliance with its conditions; and

WHEREAS, the Board notes that the Opposition

raised several supplemental issues concerning the applicant's methodology and other matters and that the applicant provided responses to clarify its analysis, which the Board accepts as rational and thorough; and

WHEREAS, thus, the Board supports the applicant's proposed conditions, but notes that it finds 11:00 p.m. to be a more appropriate closure time for the restaurant during the week and it finds a limitation on the ground floor restaurant use to an occupancy of 240 to be more compatible with the surrounding area; and

WHEREAS, the Board agrees that the proposed use has been designed to minimize any effect on nearby conforming uses; and

WHEREAS, accordingly, the Board finds that this action will neither 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 applicant states that the practical difficulties and unnecessary hardships associated with the development of the Proposed Building result from the history of development of the Existing Building, its purpose-built character, and its incompatibility with a conforming use; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the Existing Building; and

WHEREAS, the applicant asserts that the lesser variance residential scenario, which requires a waiver for inner court dimensions required pursuant to ZR § 15-112, for residential conversions, does not realize a reasonable rate of return; and

WHEREAS, further, the applicant asserts that the residential units would have diminished marketability due to the conditions associated with the insufficient court dimensions and other compromised layout conditions; and

WHEREAS, the Board notes that the applicant initially proposed 302 transient hotel rooms and certain other conditions related to the restaurant uses to overcome the hardship at the site; and

WHEREAS, the Board notes that the current proposal reflects fewer units than the original proposal and many conditions to increase compatibility with nearby conforming uses; and

WHEREAS, accordingly, the Board finds that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA143K, dated September 21, 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; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site partially within an R6 zoning district and partially within a C1-3 (R7-1) zoning district within the Special Limited Height (LH-1) District and the Brooklyn Heights Historic District, the modification and conversion of an existing building into a transient hotel (Use Group 5) with 280 rooms and accessory hotel use (Use Group 5) and commercial use (Use Group 6), which does not conform with use regulations pursuant to ZR §§ 22-10 and 32-14, *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 January 7, 2013" – twenty-four (24) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the Proposed Building: 14 stories, a wall height of 147 feet, and a total height of 172 feet; a total floor area of 180,533 sq. ft. (11.55 FAR); transient hotel floor area of 177,649 sq. ft.; commercial floor area of 2,884 sq. ft.; and a maximum of 280 hotel rooms (including suites);

<u>14th Floor Restaurant and Terrace</u>

THAT no music, amplified or unamplified, and no sound amplification system of any kind will be permitted on the outdoor terrace;

THAT the 14th floor restaurant and terrace will contain sound attenuation measures as shown on the approved plans and indoor music will be limited to 69 dbA at all times;

THAT the maximum occupancy at any given time both in the 14th floor restaurant and on the terrace will comply with Building Code occupancy regulations and not exceed 120 persons in total, of which not more than 40 patrons at any given time may occupy the terrace;

THAT the 14th floor restaurant will close by 11:00 p.m. on weekdays, and by 12:00 a.m. on Fridays and

Saturdays (i.e., no patrons will be allowed in the restaurant after these times);

THAT the 14th floor terrace will close at 10:00 p.m. on all nights (i.e., no patrons will be allowed on the terrace after this time), except that the 14th floor terrace may remain open beyond 10:00 p.m. on New Year's Eve;

Ground Floor Restaurant and Meeting Rooms

THAT the meeting rooms on the ground floor and in the basement will be restricted to use by registered hotel guests, and may not be rented to or used by non-hotel guests;

THAT the meeting rooms and the ground-floor restaurant will contain sound attenuation measures as shown on the approved plans;

THAT the capacity of both ground-floor restaurant spaces shall be limited to a combined total of 240 persons;

Pedestrian and Vehicular Traffic

THAT the hotel will provide 75 to 100 spaces dedicated for use by the hotel at the parking garage at 360 Furman Street, which will be available for parking 24 hours a day, seven days a week;

THAT at least two dedicated staff at the hotel entrance will manage taxi and other vehicle traffic, including enforcing double-parking prohibition, unloading guest vehicles, taking vehicles to the off-site parking garage, and summoning radio cars when needed by guests, using a dispatch system;

THAT no rope lines, checkpoints, or check-in tents will be permitted at any time outside of the hotel;

THAT no tour or charter buses will be permitted to load or unload in front of the hotel;

THAT deliveries will be limited to hours between 7:00 a.m. and 7:00 p.m.;

THAT the Remsen Street entrance will only be used for required egress;

Other Conditions

THAT no cabaret license will be issued for any space in the hotel;

THAT no occupancy will be permitted in any other outdoor space, other than the 14th floor terrace except as may be required by code for egress from terrace;

THAT a sign will be posted outside the hotel, near the Montague Street entrance, stating: "This is a residential neighborhood. Please respect our neighbors";

THAT any exterior lighting will at all times be directed away from neighboring buildings;

THAT the all of 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;

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

THAT this grant is contingent upon final approval from the Department of Environmental Protection before issuance of construction permits other than permits needed for soil remediation; 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, January 8, 2013.

200-12-BZ
CEQR #12-BSA-148M
APPLICANT – Sheldon Lobel, P.C., for Oversea Chinese Mission, owner.
SUBJECT – Application June 26, 2012 – Variance (§72-21) to permit the enlargement of UG4 house of worship (*The Overseas Chinese Mission*), contrary floor area (§109-121), lot coverage (§109-122) and enlargement of non-complying building (§54-31). C6-2 zoning district.
PREMISES AFFECTED – 154 Hester Street, southwest corner of Hester Street and Elizabeth Street, Block 204, Lot 16, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 31, 2012, acting on Department of Buildings Application No. 121048801 reads, in pertinent part:

ZR 109-121 - The existing floor area exceeds the 4.8 permitted by this section with Preservation Area A.

ZR 109-122 - The proposed enlargement exceeds lot coverage permitted by this section.

1. ZR 54-31 – In a C6-2G Zoning District within Preservation Area A, the existing bulk and lot coverage are non-complying, therefore the proposed enlargement increases the non-compliance and is not permitted; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in a C6-2G zoning district within the Special Little Italy District (LI) Area A the enlargement of an existing nine-story community facility building (Use Group 4), which does not comply with the underlying zoning district regulations for floor area and lot coverage and increases the degree of non-complying floor area and lot coverage conditions, contrary to ZR §§ 109-121, 109-122, and 54-31; and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

WHEREAS, the premises and surrounding area had

site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

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

WHEREAS, the applicant submitted approximately 70 letters in support of the application from community members and businesses in the area; and

WHEREAS, this application is being brought on behalf of Oversea Chinese Mission ("OCM"), a non-profit religious entity; and

WHEREAS, the subject site is located on the southwest corner of Hester Street and Elizabeth Street, within a C6-2G zoning district with the Special Little Italy District (LI) Area A; and

WHEREAS, the subject site has a width ranging from 54'-7" to 55'-1", a depth of 99'-10", and a lot area of 5,473 sq. ft.; and

WHEREAS, the subject site is currently occupied by a pre-existing non-complying nine-story building built in 1912, which was used as a school when OCM purchased it in 1966 and is now occupied by OCM for its house of worship and ancillary uses; and

WHEREAS, the cellar and first floor are built full to the lot lines and floors two through eight are built full with the exception of a light well located along the western lot line measuring approximately three feet by 40 feet for a total of approximately 320 sq. ft. per floor; the ninth floor is a partial floor along the north half of the building; and

WHEREAS, the applicant proposes to undertake a full renovation of the building to accommodate its growing needs and to enlarge the building by filling in the light well on floors two through eight; and

WHEREAS, the applicant states that the existing building has the following non-complying parameters: a total floor area of 43,650 sq. ft. (8.39 FAR) (which exceeds the maximum permitted 26,270 sq. ft. and 4.8 FAR for community facility use); a total lot coverage of 95 percent (which exceeds the maximum permitted 70 percent); and a height of 126'-6" (which exceeds the maximum permitted height of 75'-0"); and

WHEREAS, the applicant proposes to enlarge the building to the following parameters: a floor area of 45,959 sq. ft. (8.5 FAR); and a lot coverage of 100 percent; and

WHEREAS, the applicant notes that the enlargement increases the degree of non-compliance of the floor area and lot coverage, but does not affect any other bulk parameters; and

WHEREAS, the proposal provides for the following uses: (1) a multipurpose room/chapel at the first floor; (2) the main sanctuary on the second floor; (3) a multipurpose room/chapel and a nursery on the third floor; (4) a children's library and classrooms on the fourth floor; (5) classrooms, a computer lab, and a youth worship room on the fifth floor; (6) classrooms, offices, and a conference room on the sixth floor; (7) classrooms on the seventh floor; (8) classrooms and two accessory apartments on the eighth floor; and (9) classrooms and a rooftop terrace on the ninth floor; and

WHEREAS, the applicant states that due to the building's non-complying bulk, without a variance, no enlargement of the building envelope would be allowed; and

WHEREAS, the applicant states that the following are the primary programmatic needs of OCM which necessitate the requested variances: (1) to increase the seating capacity of the sanctuary space; (2) to provide additional classroom space; (3) to provide improved and increased ADA-compliant facilities; (4) to provide additional office and support space; (5) to provide additional mechanical space without disrupting floor plans; and (6) to improve the efficiency of the building, its security, access, and circulation; and

WHEREAS, the applicant states that the congregation's size has grown consistently and continues to grow, but the building has never undergone any significant renovations and thus, some worship services overflow into different floors due to high attendance and members must participate remotely via audiovisual equipment; and

WHEREAS, the applicant states that the number of existing classrooms limits the number of fellowship activities that can be offered, particularly on Friday evenings and Sunday afternoons; and

WHEREAS, the applicant states that OCM has had to rent auditorium, gymnasium, and classroom space from a nearby public school to accommodate its programmatic needs; and

WHEREAS, the applicant states that the proposed floor area and lot coverage waivers will allow OCM to increase its floor area while allowing for more program space, improved interior layouts and circulation, and ADA-compliant restrooms and elevator; and

WHEREAS, the applicant represents that OCM also requires additional and improved space for its many community-based programs including language classes and activities for children; and

WHEREAS, the applicant provided a chart which analyzes the existing, as-of-right, and proposed conditions, which includes that (1) the existing sanctuary space accommodates 704 occupants, the as-of-right would accommodate 966, and the proposed will accommodate 1,018; and (2) the existing number of classrooms is 23, the as-of-right would accommodate 24, and the proposed reflects 28; and

WHEREAS, further, the chart reflects that the current building does not provide central HVAC or sprinklers, there are not any Code- or ADA-compliant restrooms, and that the existing stair tower is exposed to the elements; and

WHEREAS, the proposal reflects adding HVAC and sprinklers, providing complying restrooms, and enclosing the stair tower to enhance comfort and promote building-wide vertical circulation; and

WHEREAS, as to the existing conditions, the applicant notes that the building is nearly 100 years old and was formerly occupied by a school with many small offices and classrooms; and

WHEREAS, the applicant asserts that the pre-existing

non-complying conditions of the 1912 building cannot accommodate modern use and the programmatic needs of OCM including large assembly areas, useful classroom configurations, required mechanicals, and circulation space; and

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

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of OCM coupled with the constraints of the existing buildings create 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 OCM is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

WHEREAS, the applicant represents that the proposed enlargement 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 that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant notes that OCM has occupied the building for more than 50 years and, thus, its use is established in the community and will not change; and

WHEREAS, the applicant states that the existing light well to be enclosed cannot be viewed from three sides of the building, including both street frontages; and

WHEREAS, the applicant states that no other changes are proposed to the envelope of the existing nine-story building and that the pre-existing non-complying height will not change; and

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram which reflects that the area is developed primarily with mixed-use commercial/residential buildings and multiple dwellings between five and seven stories; and

WHEREAS, the applicant asserts that the enlargement will not have a negative impact on the light and air accessed by the adjacent seven-story commercial building or eight-story apartment building; and

WHEREAS, the applicant performed a shadow study which reflects that the incremental increase in shadows associated with the enlargement is negligible; and

WHEREAS, with regard to noise, the applicant states that the new windows proposed for the enlargement will be inoperable on the first through third floors, which will be occupied by large assembly spaces, and will only be operable on the fourth through eighth floors; additionally, the wall construction and new windows will have higher STC ratings than the existing wall and windows, and provide a greater level of noise attenuation; and

WHEREAS, accordingly, the Board finds that this action will neither 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 applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of OCM could occur in its existing building; and

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

WHEREAS, the applicant notes that the application reflects an increase in the total floor are of only approximately 2,300 sq. ft. (a five percent increase over the existing floor area) and an increase in lot coverage of approximately five percent; and

WHEREAS, the applicant notes that the building envelope will be unchanged except for the enclosure of the existing light well; otherwise, the renovation is within the envelope of the building; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford OCM the relief needed to meet its programmatic needs; and

WHEREAS, 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.12BSA148M, dated June 26, 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 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, on a site in a C6-2G zoning district within the Special Little Italy District (LI) Area A, the enlargement of an existing nine-story community facility building (Use Group 4), which does not comply with the underlying zoning district regulations for floor area and lot coverage and increases the degree of non-complying floor area and lot coverage conditions, contrary to ZR §§ 109-121, 109-122, and 54-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 21, 2012" – Thirteen (13) sheets, and *on further condition*:

THAT the building parameters will include: a maximum floor area of 45,959 sq. ft. (8.5 FAR); and a maximum height of 126'-6", as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building will require the prior approval of the Board;

THAT the use will be limited to a house of worship (Use Group 4);

THAT no commercial catering will take place onsite;

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;

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

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

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, January 8, 2013.

209-12-BZ
CEQR #13-BSA-002K
APPLICANT – The Law Offices of Stuart Klein, for 910 Manhattan Avenue Realty Corp., owner.
SUBJECT – Application July 6, 2012 – Special Permit (§73-36) to permit the operation of a physical culture establishment. C4-3A zoning district.
PREMISES AFFECTED – 910 Manhattan Avenue, north east corner of Greenpoint and Manhattan Avenues, Block 2559, Lot 4, Borough of Brooklyn.
COMMUNITY BOARD #1BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 7, 2012, acting on Department of Buildings Application No. 320299663, reads in pertinent part:

> #Physical Culture or health establishments#, including gymnasiums (not permitted under Use Group 9) will require a special permit by the Board of Standards and Appeals as per ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-3A zoning district, the operation of a physical culture establishment (PCE) on a portion of the first, second, and third floors of a three-story commercial building contrary to ZR § 32-31; and

WHEREAS, the Board notes that the proposal also includes an enlargement to the existing two-story and mezzanine building to create a third floor; and

WHEREAS, the Board has not reviewed and does not take a position as to the zoning compliance of the enlargement, which the applicant represents is as-of-right; any such enlargement is subject to DOB review and approval; and

WHEREAS, a public hearing was held on this application on November 15, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

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

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application on condition that (1) the hours of operation be limited to 10:00 p.m., rather than midnight on weeknights, and (2) the PCE provide bicycle parking; and

WHEREAS, the subject site is located on the northeast corner of Manhattan Avenue and Greenpoint Avenue in a C4-3A zoning district; and

WHEREAS, the PCE will occupy approximately 16,567.54 sq. ft. of floor area on a portion of the first, second, and third floors; and

WHEREAS, the PCE will be operated as G Energy; and

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

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

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

WHEREAS, at hearing, the Board inquired about the sound attenuation measures proposed to mitigate any impact on residential uses in adjacent buildings; and

WHEREAS, in response, the applicant described the following sound attenuation plan: (1) the floor plan is designed in a way to locate the group exercise space and open gym areas away from the residential use by installing closet space, locker rooms, and staircases along much of the lot line walls to serve as a sound buffer; (2) the lot line walls are independent non-combustible walls constructed of brick and masonry with a Sound Transmission Class of 59 that exceeds the Building Code requirement of 50; and (3) the majority of the interior walls will be insulated and furred to provide additional buffering; and

WHEREAS, the applicant proposes the following hours of operation: Monday through Friday, 5:00 a.m. to midnight and Saturday and Sunday, 7:00 a.m. to midnight; and

WHEREAS, as to the hours of operation, at the Board's request, the applicant performed an analysis of area businesses which reflects that within a one-block radius there are ten establishments that are open daily until 10:00 p.m. and five of those ten are open 24 hours a day; and

WHEREAS, further, the adjacent McDonald's is open weekdays until 12:00 a.m. and open 24 hours a day on the weekend; and

WHEREAS, the applicant adds that two other PCE's in the area – Otom Gym and the YMCA – are open daily until midnight; and

WHEREAS, accordingly, the applicant states that the proposed hours of operation are compatible with nearby uses and that it requires the proposed hours to remain competitive in the PCE market; and

WHEREAS, in response to community feedback, the applicant reduced the size of the PCE so that an existing business on the first floor can remain; and

WHEREAS, the Board concludes that the measures to be installed appear to address the primary concerns and are consistent with the measures the Board has seen proposed for similar facilities; and

WHEREAS, the Board also notes that the PCE's hours of operation are consistent with other businesses in the area; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA002K, dated June 5, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration action 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 within a C4-3A zoning district, the operation of a physical culture establishment on a portion of the first, second, and third floors of a three-story commercial building contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 24, 2012" - Five (5) sheets and "Received January 4, 2013" - One (1) sheet and *on further condition*:

THAT the term of this grant will expire on January 8, 2023;

THAT the hours of operation will be limited to Monday through Friday, 5:00 a.m. to midnight and Saturday and Sunday, 7:00 a.m. to midnight;

THAT acoustical attenuation measures will be installed and maintained as reflected on the Board-approved plans;

THAT massages may only be performed by New York State-licensed masseurs;

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

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

THAT DOB will review the building enlargement for full zoning compliance;

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 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, January 8, 2013.

212-12-BZ
CEQR #13-BSA-003Q
APPLICANT – Gerald J. Caliendo, R.A., AIA, for Conver Realty/Pat Pescatore, owners; Sun Star Services, LLC, lessee.
SUBJECT – Application July 9, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Massage Envy*) in the cellar and first floor of the existing commercial building. C2-2/R6B zoning district.
PREMISES AFFECTED – 38-03 Bell Boulevard, east side of Bell Boulevard, 50.58' south of intersection formed by Bell Boulevard and 38th Avenue, Block 6238, Lot 18, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated November 7, 2012, acting on Department of Buildings Application No. 420293346, reads in pertinent part:

Proposed Physical Culture Establishment not permitted in R6B with C2-2 overlay; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-2 (R6B) zoning district, the operation of a physical culture establishment (PCE) on the cellar level and first floor of a one-story commercial building contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on December 11, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Bell Boulevard, 50 feet from the intersection at 38th Avenue, within a C2-2 (R6B) zoning district; and

WHEREAS, the PCE will occupy approximately 1,623 sq. ft. of floor area on the first floor and 1,623 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as Massage Envy; and

WHEREAS, the applicant represents that the services at the PCE will include massage; 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 applicant proposes the following hours of operation: Monday through Friday, 9:00 a.m. to 9:00 p.m.; Saturday 9:00 a.m. to 8:00 p.m.; and Sunday, 10:00 a.m. to 6:00 p.m.; and

WHEREAS, at the Board's direction, the applicant analyzed the underlying parking requirements; and

WHEREAS, the applicant concluded that the parking requirement is three spaces and, thus, can be waived pursuant to ZR § 36-231, which allows waiver for fewer than 15 spaces; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA003Q, dated July 5, 2012; and

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

Noise; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration action 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 within a C2-2 (R6B) zoning district, the operation of a physical culture establishment on the cellar level and first floor of a one-story commercial building contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 2, 2013" - Five (5) sheets and *on further condition*:

THAT the term of this grant will expire on January 8, 2023;

THAT the hours of operation will be limited to Monday through Friday, 9:00 a.m. to 9:00 p.m.; Saturday 9:00 a.m. to 8:00 p.m.; and Sunday, 10:00 a.m. to 6:00 p.m.;

THAT massages may only be performed by New York State-licensed masseurs;

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

THAT the above conditions will appear on the 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 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, January 8, 2013.

258-12-BZ
CEQR #13-BSA-024M

APPLICANT – Holland & Knight, LLP, for Old Firehouse No. 4 LLC, owner.

SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the conversion of two buildings into a single-family residence, contrary to lot coverage, minimum distance between buildings and minimum distance of legally required windows. R8B zoning district.

PREMISES AFFECTED – 113 East 90th Street, north side of East 90th Street, 150' west of the intersection of 90th Street, and Park Avenue, Block 1519, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Manhattan Borough Commissioner dated July 21, 2012 acting on Department of Buildings Application No. 121133308, read in pertinent part:

ZR 23-155 The proposed conversion creates a non-compliance with respect to allowable lot coverage

ZR 23-711 The proposed residential buildings do not comply with the minimum distance between buildings

ZR 23-861 The proposed legally required windows do not comply with the required distance from the lot line; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R8B zoning district, the conversion of two existing buildings into a single-family home that exceeds the allowable lot coverage, minimum distance between buildings, and minimum distance from windows to lot line/wall, contrary to ZR §§ 23-155, 23-711, and 23-861; and

WHEREAS, a public hearing was held on this application on December 4, 2012 after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

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

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on the north side of East 90th Street between Park and Lexington avenues, within an R8B zoning district; and

WHEREAS, the subject site is a rectangular shaped zoning lot with 25 feet of frontage along East 90th Street, a depth of 100.71 feet, and a total lot area of 2,517.75 sq. ft.; and

WHEREAS, the zoning lot is occupied by two buildings; in the front and extending for a depth of 60 feet is a

three-story building (the "Front Building"), while the rear portion is occupied by a two-story building (the "Rear Building") with a depth of 15 feet; an open area of approximately 25 feet separates the two buildings; and

WHEREAS, the existing buildings were constructed around 1880 to serve as the quarters for New York Fire Patrol 4 which served the Upper East Side; and

WHEREAS, the applicant states that after the fire patrol disbanded in the 1940s, the site was purchased by the American Alpine Club and used as a private club and museum; and

WHEREAS, in April 1994, the Board approved a variance (BSA Cal. No. 165-93-BZ) to permit a Use Group 6 commercial art gallery on the ground floor of the Front Building with two apartments on the upper floors and a Use Group 3 museum in the Rear Building; and

WHEREAS, most recently, on June 16, 2009, the Board granted an additional 15-year term for the art gallery and museum; and

WHEREAS, the subject proposal is for the conversion of all floors of both buildings to residential use as a single-family home; and

WHEREAS, the Front Building would have a vestibule, living room and kitchen on the first floor, with living quarters on the second and third floor, and the rear building would have guest quarters with a vestibule on the ground floor and bedroom on the second floor; and

WHEREAS, the applicant does not propose any changes to the buildings' envelopes, but will excavate below the open area separating the two buildings and underneath the Rear Building to create a cellar; and

WHEREAS, the application does not propose any increase in floor area above the existing conditions; and

WHEREAS, the combined floor area for the buildings is 5,317.25 sq. ft. (2.11 FAR) which is less than the 10,071 sq. ft. (4.0 FAR) permitted by the R8B zoning; and

WHEREAS, however, the applicant proposes to maintain the following historic conditions which are non-complying for residential use: (1) lot coverage of 1,899.75 square feet or 75.4 percent (70 percent is the maximum permitted); (2) distance between front and rear buildings of 24.72 feet (a minimum distance of 35 feet is required); and (3) distance between a legally required window and a wall of 24.72 feet (30 feet is required); and

WHEREAS, the applicant states that the requested relief is necessary for the reasons stated below; and

WHEREAS, the applicant states that the configuration of the historic buildings on the lot is a unique physical condition, which creates practical difficulties and unnecessary hardship in converting the existing buildings to a conforming use in a manner that is in full compliance with underlying district regulations; and

WHEREAS, the applicant states that the buildings were designed and built in 1880 for use by the old New York City Fire Patrol; and

WHEREAS, the applicant states that the Front Building housed the actual firefighting equipment and the rear building was a horse stable and, thus, the buildings were designed to function together on the same lot; and

WHEREAS, the applicant states that two buildings located on a site with a width of 25 feet is a condition that occurs very infrequently, if at all, in this neighborhood; and

WHEREAS, the applicant notes that the Fire Patrol buildings where permitted to be converted to commercial and museum use by the 1994 variance, but both uses have ceased and the art gallery is no longer in business; and

WHEREAS, the applicant represents that due to the significant increase in property values, the art gallery was unable to generate sufficient income; and

WHEREAS, the Board's resolution approving the 1994 variance found that "[T]he history of development of this small lot with two (2) separate buildings not designed or used for residential uses creates a unique condition and an unnecessary hardship in now utilizing both buildings [for] a conforming use . . . ."; and

WHEREAS, the applicant asserts that in order to satisfy lot coverage and distance between buildings, and distance between window and wall regulations, the Rear Building would have to be demolished as its depth (measured from exterior walls) would only be approximately five feet if the full 35-ft. distance between the Front Building and wall of the Rear Building were provided; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable regulations; and

WHEREAS, the applicant submitted an Economic Analysis Report analyzing the feasibility of two alternative development scenarios; and

WHEREAS, specifically, the applicant submitted a feasibility study which analyzed: (1) the Front Building with a Use Group 3 medical office on the first floor and residential uses on floors two and three and medical use in the entire Rear Building; and (2) a commercial art gallery on the first floor with residential uses on floors two and three of the Front Building and a museum in the entire Rear Building; and

WHEREAS, the study concluded that the two alternative scenarios would not result in a reasonable return; and

WHEREAS, the Board has determined that because of the subject site's unique condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that both buildings will be used as a single-family residence, which is a conforming use in the zoning district, and would remove a non-conforming commercial use; and

WHEREAS, the applicant notes that the remainder of the block is entirely occupied by residential use and the proposed variance would be consistent with the existing character of the neighborhood; and

WHEREAS, specifically, there is a nine-story apartment

building to the east of the site and then a group of six five-story buildings; to the west, and extending to Park Avenue is a 14-story apartment building, which is separated from the subject site by an open space with a width of 9'-6"; and

WHEREAS, the south side of East 90th Street is characterized by nine- to 15-story apartment buildings; and

WHEREAS, the applicant states that the distance between the two buildings on the site is 24.72 feet which is not significantly less than the required 30 feet; and

WHEREAS, the applicant asserts that there will be substantial light and air available to all rooms fronting on the areas where the two buildings are adjacent; and

WHEREAS, specifically, the applicant notes that the Front Building has a height of 39.54 feet and the Rear Building has a height of 20 feet, so only the lower portion of the Front Building is even within the scope of the non-complying distance between buildings; the remainder of the Front Building overlooks the open area above the Rear Building; and

WHEREAS, therefore, the Board finds that this action will neither 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 applicant states that the unnecessary hardship encountered by compliance with the zoning regulations have existed since the 19th century when the two buildings were constructed by the New York Fire Patrol; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic development and use of the zoning lot; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 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 § 72-21 to permit, in an R8B zoning district, the conversion of two existing buildings into a single-family home that does not provide the allowable lot coverage, minimum distance between buildings, and minimum distance from windows to lot lines, contrary to ZR §§ 23-155, 23-711, and 23-861; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 19, 2012"- eleven (11) sheets; and *on further condition*:

THAT the parameters of the proposed home will be as follows: 5,317.25 sq. ft. of floor area (2.11 FAR); and a minimum distance of 24.72 feet between the Front Building and Rear Building, as illustrated in the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed home shall be as reviewed and approved by DOB;

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

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

THAT substantial construction will proceed in accordance with ZR § 72-23; 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, January 8, 2013.

276-12-BZ
CEQR #13-BSA-031K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 833 Flatbush, LLC c/o Jem Realty, owner; Blink 833 Flatbush Avenue Inc., lessee.

SUBJECT – Application September 11, 2012 – Special Permit (§73-36) to permit a physical culture establishment (*Blink)* within portions of an existing commercial building. C2-4 zoning district.

PREMISES AFFECTED – 833/45 Flatbush Avenue, aka 2/12 Linden Boulevard, northeast corner of Flatbush Avenue and Linden Boulevard, Block 5086, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 23, 2012, acting on Department of Buildings Application No. 320534720, reads in pertinent part:

Proposed Physical Culture Establishment in a C2-4 (R7A) zoning district is contrary to Section 32-10 ZR; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-4 (R7A) zoning district and partially within an R6B zoning district, the operation of a physical culture establishment (PCE) on a portion of the first floor and second floor of a two-story commercial building contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 27, 2012, after due notice by publication in *The City Record*, and then to decision on January 8, 2013; and

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

WHEREAS, the subject site is located on the northeast

corner of Flatbush Avenue and Linden Boulevard, partially within a C2-4 (R7A) zoning district and partially within an R6B zoning district; and

WHEREAS, the PCE will occupy approximately 15,436 sq. ft. of floor area on the first and second floors; and

WHEREAS, the applicant notes that the segment of the building at the corner of Flatbush Avenue and Linden Boulevard (formerly Lot 13) was constructed pursuant to a variance to permit a residence in a business district which exceeded the permitted floor area (BSA Cal. No. 498-48-BZ) and an appeal related to egress (BSA Cal. No. 1128-48-A); and

WHEREAS, the building segment on Lot 8 was constructed prior to 1921; and

WHEREAS, subsequently, the variance building was occupied by a bank and, most recently, a store and a restaurant; and

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

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

WHEREAS, the applicant represents that the PCE use is limited to the portion of the site within the C2-4 (R7A) zoning district; 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 applicant proposes the following hours of operation: Monday through Saturday, 5:30 a.m. to 11:00 p.m. and Sunday, 7:00 a.m. to 9:00 p.m.; and

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

WHEREAS, the 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.13BSA031K, dated September 10, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration action 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 partially within a C2-4 (R7A) zoning district and partially within an R6B zoning district, the operation of a physical culture establishment on a portion of the first floor and second floor of a two-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 7, 2013" - Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on January 8, 2023;

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

THAT massages may only be performed by New York State-licensed masseurs;

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 PCE use is not permitted within the portion of the site in the R6B zoning district;

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 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, January 8, 2013.

147-11-BZ
APPLICANT – Sheldon Lobel, P.C., for Savita and Neeraj Ramchandani, owners.
SUBJECT – Application September 16, 2011 – Variance (§72-21) to permit the construction of a single-family, semi-detached residence, contrary to floor area (§23-141) and side yard (§23-461) regulations. R3-2 zoning district.
PREMISES AFFECTED – 24-47 95th Street, east side of 95th Street, between 24th and 25th Avenues, Block 1106, Lot 44, Borough of Queens.
COMMUNITY BOARD #3Q
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 February 5, 2013, at 1:30 P.M., for decision, hearing closed.

157-11-BZ
APPLICANT – Sheldon Lobel, P.C., for 1968 2nd Avenue Realty LLC., owner.
SUBJECT – Application October 5, 2011– Variance (§72-21) to allow for the legalization of an existing supermarket, contrary to rear yard (§33-261) and loading berth (§36-683) requirements. C1-5/R8A and R7A zoning districts.
PREMISES AFFECTED – 1968 Second Avenue, northeast corner of the intersection of Second Avenue and 101st Street, Block 1673, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #11M
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 February 26, 2013, at 1:30 P.M., for decision, hearing closed.

1-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Harran Holding Corp., owner; Moksha Yoga NYC LLC, lessee.
SUBJECT – Application January 3, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Moksha Yoga*) on the second floor of a six-story commercial building. C4-5 zoning district.
PREMISES AFFECTED – 434 6th Avenue, southeast corner of 6th Avenue and West 10th Street, Block 573, Lot 6, Borough of Manhattan.
COMMUNITY BOARD #2M

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

12-12-BZ
APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for 100 Varick Realty, LLC, AND 66 Watts Realty LLC, owners.
SUBJECT – Application January 19, 2012 – Variance (§72-21) for a new residential building with ground floor retail, contrary to use (§42-10) and height and setback (§§43-43 & 44-43) regulations.
PREMISES AFFECTED – 100 Varick Street, east side of Varick Street, between Broome and Watts Streets, Block 477, Lot 35, 42, 44 & 76, Borough of Manhattan.
COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for deferred decision.

55-12-BZ
APPLICANT – Eric Palatnik, P.C., for Kollel L'Horoah, owner.
SUBJECT – Application March 13, 2012 – Special Permit (§73-19) to permit the legalization of an existing Use Group 3 religious-based, non-profit school (*Kollel L'Horoah*), contrary to use regulations (§42-00). M1-2 zoning district.
PREMISES AFFECTED – 762 Wythe Avenue, corner of Penn Street, Wythe Avenue and Rutledge Street, Block 2216, Lot 19, Borough of Brooklyn.
COMMUNITY BOARD #1BK

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

63-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneu Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.
SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.
PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27th Street and Avenue N. Block 7663, Lot 6. Borough of Brooklyn.
COMMUNITY BOARD #14BK

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

72-12-BZ
APPLICANT – Raymond H. Levin, Wachtel Masyr & Missry, LLP, for Lodz Development, LLC, owner.
SUBJECT – Application March 28, 2012 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to off-street parking (§25-23), floor area, open space, lot coverage (§23-145), maximum base height and maximum building height (§23-633) regulations. R7A/C2-4 and R6B zoning districts.
PREMISES AFFECTED – 213-223 Flatbush Avenue, southeast corner of Dean Street and Flatbush Avenue. Block 1135, Lot 11. Borough of Brooklyn.
COMMUNITY BOARD #6BK
ACTION OF THE BOARD – Laid over to April 9, 2013, at 1:30 P.M., for adjourned hearing.

82-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Miriam Benabu, owner.
SUBJECT – Application – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461); perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-2 zoning district.
PREMISES AFFECTED – 2011 East 22nd Street, between Avenue S and Avenue T, Block 7301, Lot 55, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to February 12, 2013, at 1:30 P.M., for continued hearing.

115-12-BZ
APPLICANT – Sheldon Lobel, P.C., for RMDS Realty Associates, LLC, owner.
SUBJECT – Application April 24, 2012 – Special Permit (§73-44) to allow for a reduction in parking from 331 to 221 spaces in an existing building proposed to be used for ambulatory diagnostic or treatment facilities in Use Group 6 parking category B1. C4-2A zoning district.
PREMISES AFFECTED – 701/745 64th Street, Seventh and Eighth Avenues, Block 5794, Lot 150 & 165, Borough of Brooklyn.
COMMUNITY BOARD #4BK
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to January 29, 2013, at 1:30 P.M., for decision, hearing closed.

235-12-BZ
APPLICANT – Slater & Beckerman, LLP, for NBR LLC, owner.
SUBJECT – Application July 30, 2012 – Special Permit (§73-242) to allow a one-story building to be used as four eating and drinking establishments (Use Group 6), contrary to use regulations (§32-00). C3 zoning district.
PREMISES AFFECTED – 2771 Knapp Street, East side of Knapp Street, between Harkness Avenue to the south and Plumb Beach Channel to the north. Block 8839, Lots 33, 38, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for continued hearing.

241-12-BZ
APPLICANT – Greenberg Traurig, LLP by Deidre A. Carson, Esq., for 8-12 Development Partners, owners; 10-12 Bond Street, lessee.
SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a new mixed residential and retail building, contrary to use regulations (§42-10 and 42-14D(2)(b)). M1-5B zoning district.
PREMISES AFFECTED – 8-12 Bond Street aka 358-364 Lafayette Street, northwest corner of the intersection of Bond and Lafayette Streets, Block 530, Lot 62, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Laid over to February 5, 2013, at 1:30 P.M., for deferred decision.

261-12-BZ
APPLICANT – Sheldon Lobel, P.C., for One York Property, LLC, owner; Barry's Bootcamp Tribeca LLC, lessee.
SUBJECT – Application August 31, 2012 – Special Permit (§73-36) for the operation of a physical culture establishment (*Barry's Bootcamp*) on the first and cellar floors of existing building. C6-2A (TMU) zoning district.
PREMISES AFFECTED – 1 York Street, south side of Laight Street between Avenue of Americas, St. John's and York Streets, Block 212, Lot 7503, Borough of Manhattan.
COMMUNITY BOARD #1M
ACTION OF THE BOARD – Laid over to February 12, 2013, at 1:30 P.M., for continued hearing.

280-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Sheila Weiss and Jacob Weiss, owners.
SUBJECT – Application September 21, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1249 East 28th Street, east side of 28th Street, Block 7646, Lot 26, Borough of Brooklyn.
COMMUNITY BOARD #14BK

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

298-12-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.
SUBJECT – Application October 17, 2012 – Variance (§72-21) to permit the conversion of nine floors of an existing ten-story building to Use Group 3 college or university use (*New York University*), contrary to use regulations. M1-5B zoning district.
PREMISES AFFECTED – 726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street and East 4th Street, Block 545, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #2M
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 February 12, 2013, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on December 4, 2012, under Calendar No. 5-86-BZ and printed in Volume 97, Bulletin No. 50, is hereby corrected to read as follows:

5-96-BZ
APPLICANT – Sheldon Lobel, P.C., for St. Johns Place LLC, owner; Park Right Corporation, lessee.
SUBJECT – Application August 2, 2012 – Extension of Time to obtain a Certificate of Occupancy of an approved variance which permitted the operation a one-story public parking garage for no more than 150 cars (UG 8) which expired on February 2, 2011; Waiver of the Rules. R7-1 zoning district.
PREMISES AFFECTED – 564-592 St. John's Place, south side of St. John's Place, 334' East of Classon Avenue. Block 1178, Lot 26. Borough of Brooklyn.
COMMUNITY BOARD #8BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on October 23, 2012, after due notice by publication in *The City Record*, and then to decision on December 4, 2012; and

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

WHEREAS, the premises is located on the south side of St. John's Place, between Classon Avenue and Franklin Avenue, within an R7-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 29, 1919 when, under BSA Cal. No. 263-19-BZ, the Board granted a variance to permit the construction of a one-story building to be used for the storage of more than five motor vehicles; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, on January 18, 1966, under BSA Cal. No. 327-63-BZ, the Board granted a change in use to permit the assembly of mirrors into frames, the storage and cutting of sheet glass, the manufacturing of plastic and wood frames and novelties, with an off-street loading berth; and

WHEREAS, on March 18, 1997, under the subject calendar number, the Board reinstated the expired variance and legalized a change in use to a public parking garage for not more than 150 cars (Use Group 8), for a term of ten years; and

WHEREAS, most recently, on February 2, 2010, the Board granted a ten year extension of term, to expire March 18, 2017, an extension of time to obtain a certificate of occupancy to February 10, 2011, and an amendment to the previously approved plans to legalize the modification of the parking layout and the installation of 75 two-level automobile stacking devices; and

WHEREAS, the applicant now requests an additional extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that the requested extension of time is necessary to resolve the open violations issued against the site; and

WHEREAS, at hearing, the Board questioned whether the automobile stacking requirements comply with Materials and Equipment Acceptance Division ("MEA") requirements, in accordance with the prior grant; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the Office of Technical Certification and Research ("OTCR") has replaced the MEA division, but that the substantive MEA conditions have been adequately addressed; and

WHEREAS, specifically, the architect states that the ceiling height, which is a minimum of 12'-0" in height, provides adequate height for the stackers and sprinkler coverage, the floor loads are not an issue because the stackers are located on the ground floor, the garage is sprinklered, and the parking spaces comply with the DOB standard size of 8'-6" by 18'-0"; and

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

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on March 18, 1997, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to December 4, 2014; *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application; and *on further condition*:

THAT the term of this grant will expire on March 18, 2017;

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

THAT a new certificate of occupancy will be obtained by December 4, 2014;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted."
(DOB App. No. 310233841)

Adopted by the Board of Standards and Appeals, December 4, 2012.

***The resolution has been amended. Corrected in Bulletin Nos. 1-2, Vol. 98, dated January 16, 2013.**

***CORRECTION**

This resolution adopted on November 20, 2012, under Calendar No. 156-11-BZ and printed in Volume 97, Bulletin Nos. 46-48, is hereby corrected to read as follows:

156-11-BZ
CEQR #12-BSA-028X
APPLICANT – Sheldon Lobel, P.C., for The Rector Church Warden and Vestry Men of St. Simeon's Church owners.
SUBJECT – Application October 5, 2011 – Variance (§72-21) to permit the construction of a 12-story mixed residential (UG 2 supportive housing) and community facility (*St. Simeon's Episcopal Church*) (UG4 house of worship) building, contrary to setback (§23-633(b)), floor area (§§23-145, 24-161, 77-22), lot coverage (§23-145) and density (§§23-22, 24-20) requirements. R8 zoning district.
PREMISES AFFECTED – 1020 Carroll Place, triangular corner lot bounded by East 165th Street, Carroll Place and Sheridan Avenue, Block 2455, Lot 48, Borough of Bronx.
COMMUNITY BOARD #4BX
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 Bronx Borough Commissioner, dated September 28, 2011, acting on Department of Buildings Application No. 220137233, reads, in pertinent part:

1. Proposed floor area ratio (FAR) exceeds the maximum permitted pursuant to ZR 23-145, 24-161, and 77-22
2. Proposed lot coverage exceeds the maximum permitted pursuant to ZR 23-145
3. Proposed Quality Housing building does not provide required setbacks of 10 and 15 feet above maximum base height in an R8 district along wide and narrow streets respectively, pursuant to ZR 23-633(b)
4. Proposed number of dwelling units exceeds maximum permitted pursuant to ZR 23-22 and 24-20; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 zoning district, a proposed 12-story community facility (UG 4) and affordable housing (UG 2) building, which does not comply with floor area ratio ("FAR"), lot coverage, setback, and density regulations and is contrary to ZR §§ 23-22, 23-145, 23-633, 24-161, 24-20 and 77-22; and

WHEREAS, the application is brought on behalf of St. Simeon's Episcopal Church and the Canterbury Heights Development Corporation (CHDC) a not-for-profit organization affiliated with St. Simeon's, the owner of the site and the occupant of the proposed house of worship; and

WHEREAS, a public hearing was held on this application on September 11, 2012, after due notice by publication in the *City Record*, with a continued hearing on October 16, 2012, and then to decision on November 20, 2012; and

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

WHEREAS, Community Board 4, Bronx, recommends approval of the application and cites the need for affordable housing in the area; and

WHEREAS, the applicant submitted letters of support from New York State Assemblywoman Vanessa Gibson and the Mount Hermon Baptist Church; and

WHEREAS, the subject site is located on a triangular corner lot, which is its own small city block, bounded by East 165th Street, Carroll Place, and Sheridan Avenue and has a total area of 5,154 sq. ft.; and

WHEREAS, the majority of the zoning lot (95.8 percent) is located within 100 feet of East 165th Street; and

WHEREAS, the site was formerly occupied by St. Simeon's Episcopal Church, in a building that was deemed unsafe in 1998 and, despite attempts to rehabilitate it, was eventually demolished in 2003 due to withdrawal of insurance coverage; the site is currently vacant; and

WHEREAS, the applicant proposes to occupy the 12-story building (with a total height of 117 feet) with community facility use at the cellar and ground floor level, for St. Simeon's, including the church sanctuary and an accessory pastor's apartment; and the 11 upper floors will be occupied by residential use, including 50 affordable dwelling units ranging from studios to three-bedroom units; and

WHEREAS, the applicant states that ten of the residential units (20 percent) will provide supportive housing for the formerly homeless; supportive social services will be provided by Comunilife, an institution that provides supportive services including those for mental health counseling and benefits management for the formerly homeless; and

WHEREAS, the conditions which trigger the need for the variance are (1) floor area of 49,072 sq. ft. (9.52 FAR) (36,851 sq. ft. (7.15 FAR) is the maximum permitted); (2) the portion of the first floor occupied by community facility use complies with lot coverage regulations, but the residential floors above have a lot coverage of 85 percent (80 percent is the maximum permitted lot coverage); (3) the absence of setbacks above the maximum permitted base height of 85 feet (setbacks of 10 feet from the wide street and 15 feet from the narrow streets are required above the base height); and (4) the provision of 50 dwelling units (density regulations limit the number of units to 44); and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with

applicable regulations: (1) the triangular shape; and (2) the slope and poor soil conditions; and

WHEREAS, as to the shape, the applicant states that the site is irregularly-shaped with three frontages; and

WHEREAS, specifically, the applicant states that the odd shape of the site constrains the floor plate because the ratio of street frontage is so high and the angles of the intersections of the streets do not support efficient standard building design; and

WHEREAS, the applicant asserts that there are premium façade costs associated with having all of the exterior surface area of the building be a street frontage such as the need for a greater degree of fenestration; and

WHEREAS, the applicant asserts that due to inefficiencies of constructing on an irregularly-shaped site, the lot area of 5,154 sq. ft. could accommodate approximately three fewer dwelling units than if the lot were regularly-shaped; and

WHEREAS, the applicant represents that the as of right alternative would only allow for 37 dwelling units which is well below the minimum 50 units required to qualify for Low-Income Affordable Marketplace Program (LAMP) financing, as will be discussed in more detail below; and

WHEREAS, additionally, the applicant represents that if the lot coverage and setback regulations were followed strictly, the as of right floorplate would narrow significantly above a height of 85 feet and allow for only one unit on floors nine through twelve; and

WHEREAS, due to the shape and the requirement for setbacks at each of the three frontages, the upper floors of any building would be significantly constrained as at a height of 85 feet, a setback of 10'-0" is required at East 165th Street and setbacks of 15'-0" are required at Carroll Place and Sheridan Avenue; and

WHEREAS, the applicant asserts that a standard shaped lot with only one or two street frontages would not be similarly constrained by the setback requirements; and

WHEREAS, the applicant proposes a larger floor plate, in conflict with lot coverage requirements so that a larger amount of floor area can be accommodated on the lower floors, where a setback would not be required; and

WHEREAS, as to the uniqueness of the shape, the 400-ft. radius diagram reflects that the site is one of two triangular sites in the area and is the smaller of the two; and

WHEREAS, the diagram reflects that the subject site is the only site so affected by the curve of Carroll Place which, along with the intersections of Sheridan Avenue and East 165th Street, creates the unique triangular block, with one curved side that is occupied solely by the subject site; the subject site is the only such triangular block and the smallest block in the study area; and

WHEREAS, as to the slope and soil, the applicant asserts that the site has a change in grade varying in elevation from 72 feet to 82 feet and with bedrock encountered at varying depths of 12 feet to 28 feet below grade; and

WHEREAS, the applicant asserts that the presence of bedrock makes construction of the foundation more costly as the removal of bedrock is more expensive than typical soil excavation; and

WHEREAS, the applicant states that the geotechnical report indicates a variety of sub-grade conditions including areas of pre-existing fill and old concrete foundations; and

WHEREAS, the applicant represents that there are additional costs associated with the labor and materials for an uneven foundation and the removal of unsuitable fill materials below proposed footings; and

WHEREAS, the applicant asserts that it will employ a slab on grade foundation with spread footing, a strategy that requires the minimization of the differential settlement; and

WHEREAS, the applicant asserts that additional floor area is required to help balance out the premium costs associated with construction on the triangular lot with compromised soil conditions; and

WHEREAS, the applicant states that in addition to the site's unique physical conditions, CHDC has specific programmatic needs, which require (1) a permanent house of worship for St. Simeon's, (2) community services, and (3) affordable housing; and

WHEREAS, CHDC's mission as set forth in its mission statement is to "support and strengthen individuals, families, neighborhoods and communities with the means that would enable them to live their lives in the best way possible" through affordable and better housing, child care and educational services, and social and psychological services; and

WHEREAS, the applicant states that it will receive financing for the proposal from the New York City Housing Development Corporation, LAMP, as well as New York City Department of Housing Preservation and Development's Low Income Program (LIP); and

WHEREAS, the applicant states that the proposal will also be partially funded by grants from the Office of the Bronx Borough President and Councilmember Helen Foster; and

WHEREAS, the applicant represents that the building program is determined in part by the requirements of the government funding sources concerning building design and unit count; and

WHEREAS, the applicant states that in order to be eligible for financing from LAMP, the minimum number of residential units is 50, of which 50 percent must be two-bedroom units or larger and each unit must comply with HPD's design guidelines, including suggested minimum floor area per unit type; and

WHEREAS, accordingly, the proposal reflects a total of 50 affordable housing units, including one, two, and three-bedroom apartments and studios for low-income families and single adults; and

WHEREAS, of the 50 units, seven will be studio apartments, 18 will be one-bedroom apartments, 21 will be two-bedroom apartments and four will be three-bedroom apartments; and

WHEREAS, as noted, an as-of-right building at the

site that complies with floor area, lot coverage and height and setback regulations would allow for only 37 dwelling units, 13 units below the minimum required to qualify for LAMP financing; and

WHEREAS, accordingly, the applicant requires the waivers of residential floor area, setback, lot coverage, and density regulations; and

WHEREAS, the applicant states that LIP financing requires that at least 20 percent of the units be set aside for formerly homeless households and that a social services plan be approved to serve such residents; and

WHEREAS, the applicant states that, in accordance with LIP financing, ten of the 50 units will be designated for formerly homeless and Comunilife and CHDC will provide social services for building residents and the broader East Concourse community; and

WHEREAS, the applicant states that St. Simeon's need to rebuild its house of worship on the historic site of its church is fulfilled through its partnership with CHDC and the plan to construct a building which can accommodate both the new church space and the affordable housing; and

WHEREAS, the space available for church use includes a 1,081 sq. ft. multipurpose room in the cellar, which will accommodate meetings and social gatherings that may not be appropriate in the sanctuary; and

WHEREAS, the proposal also reflects that the first floor will contain a pastor's apartment, giving the church's pastor full-time access to church facilities and supporting his role in helping the church and building residents; and

WHEREAS, the cellar will be occupied by mechanical rooms and the tenants' laundry room, church offices, and a church multipurpose room; and

WHEREAS, the Board accepts the applicant's assertion that there are mutual benefits of St. Simeon's and CHDC occupying the same building due to an overlap of uses, programming, and leadership; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of St. Simeon's and CHDC's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since CHDC and St. Simeon's are both not-for-profit organizations and the proposed development will be in furtherance of their not-for-profit missions; 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 states that the proposed 12-story community facility and residential building is consistent with the character of the surrounding area as the use and total height of the proposed building are permitted as-of-right; and

WHEREAS, the applicant asserts that the proposed bulk results in an envelope that is consistent with existing development within the neighborhood; and

WHEREAS, the applicant notes that the site occupies its own block and the proposed building with its non-complying lot coverage and setback conditions is, thus, not immediately adjacent to any other sites; and

WHEREAS, specifically, the applicant states that there are several tall buildings within 400 feet of the site, including a 23-story multiple dwelling building located at 1020 Grand Concourse and a ten-story multiple dwelling building located at 1000 Grand Concourse across Carroll Place; and

WHEREAS, additionally, the applicant states that ten of the 21 multiple dwelling buildings located within a 400-ft. radius have floor area well above the 49,072 sq. ft. for the proposed building; and

WHEREAS, the applicant also asserts that the percentage by which the proposed 9.52 FAR exceeds the maximum permitted FAR is consistent with the bulk of other buildings in the study area that exceed their maximum allowable FAR; and

WHEREAS, the applicant states that of the 26 buildings located within 400 feet of the site, 16 exceed the maximum permitted FAR and nine exceed the maximum allowable FAR in their respective districts by more than 20 percent; and

WHEREAS, the applicant submitted photographs and a 400-ft. radius diagram to support these assertions; 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, at hearing, the Board asked the applicant to provide additional evidence that the proposed floor area is compatible with the surrounding area; and

WHEREAS, in response, the applicant stated that there is a 23-story building complex (Executive Towers) at 1020 Grand Concourse on the corner of East 165th Street with an FAR their architect consultant assesses to be 9.10 (although Oasis notes it be 6.92); and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site and the programmatic needs of CHDC and St. Simeon's; and

WHEREAS, the applicant states that there is no viable lesser variance that would allow for 50 units that conform to certain size and design requirements required by funding sources, particularly since the as of right scenario would only allow for 37 units; and

WHEREAS, accordingly, the Board finds that the proposal reflects the minimum necessary to accommodate the applicant's programmatic needs; and

WHEREAS, 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 Sections 617.2 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA028X, dated July 24, 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 issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R8 zoning district, a proposed 12-story community facility (UG 4) and affordable housing (UG 2) building, which does not comply with floor area ratio, lot coverage, setback, and density regulations and is contrary to ZR §§ 23-22, 23-145, 23-633, 24-161, 24-20 and 77-22, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 19, 2012" - Sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 12 stories, a residential floor area of 44,988 sq. ft., a community facility floor area of 4,084 sq. ft., and a total floor area of 49,072 sq. ft. (9.52 FAR), a total height of 117 ft., and lot coverage of 85 percent above the first floor, all as illustrated on the BSA-approved plans;

THAT there will be no change in use or ownership of the building without the prior review and approval of the Board;

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, November 20, 2012.

***The resolution has been amended. Corrected in Bulletin Nos. 1-2, Vol. 98, dated January 16, 2013.**

***CORRECTION**

This resolution adopted on November 20, 2012, under Calendar No. 151-12-A and printed in Volume 97, Bulletin Nos. 46-48, is hereby corrected to read as follows:

151-12-A
APPLICANT – Christopher M. Slowik, Esq./Law Office of Stuart Klein, for Paul K. Isaacs, owner.
SUBJECT – Application May 9, 2012 –
Appeal challenging the Department of Buildings' determination that a roof antenna is not a permitted accessory use pursuant to ZR § 12-10. R8 zoning district.
PREMISES AFFECTED – 231 East 11th Street, north side of E. 11th Street, 215' west of the intersection of Second Avenue and E. 11th Street, Block 467, Lot 46, Borough of Manhattan.
COMMUNITY BOARD #3M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson……..….4
Negative: Commissioner Montanez 1
THE RESOLUTION –

WHEREAS, this is an appeal of a Department of Buildings ("DOB") final determination dated April 10, 2012, issued by the First Deputy Commissioner (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part:

> The request to lift the Stop Work Order associated with application no. 120213081 to legalize a ham radio antenna above the existing 5 story residential building is hereby denied.
>
> As per ZR 22-21, radio or television towers, non-accessory, are permitted by special permit of the BSA.
>
> The proposed ham radio antenna, approximately 40 feet high, is not customarily found in connection with residential buildings and is therefore not an accessory use to the building; and

WHEREAS, the appeal was brought on behalf of the owner of 231 East 11th Street (hereinafter the "Appellant"); and

WHEREAS, a public hearing was held on this application on August 21, 2012 after due notice by publication in *The City Record*, with a continued hearing on October 16, 2012, and then to decision on November 20, 2012; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; 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, the subject site is located on the north side of East 11th Street between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the site has approximately 25'-6" of frontage of East 11th Street, a depth of 100 feet, and a total lot area of 2,550 sq. ft.; and

WHEREAS, the site is occupied by a five-story residential building with a height of approximately 58'-0" (the "Building"); a radio tower with a height of approximately 40'-0" is located on the rooftop of the Building (the "Radio Tower"); and

PROCEDURAL HISTORY

WHEREAS, on November 2, 2009 DOB issued Notice of Violation No. 34805197M charging work without a permit for the Radio Tower contrary to Administrative Code Section 28-105.1; the violation was sustained by an Administrative Law Judge of the Environmental Control Board on October 26, 2010; and

WHEREAS, on or about November 30, 2009, the Appellant filed Job Application No. 120213081 for a permit to legalize the Radio Tower, and on September 30, 2010 DOB issued Permit No. 120213081-01-AL for the Radio Tower; and

WHEREAS, on or about December 16, 2010, DOB reexamined the application and determined that it was approved in error contrary to the Zoning Resolution and on January 13, 2011, DOB issued an Intent to Revoke Approval(s) and Permit(s), Order(s) to Stop Work Immediately letter with an objection that "Proposed antenna is not accessory to the function or principal use of the building"; on or about February 9, 2011, a stop work order was served upon the Appellant and the Radio Tower permit was revoked; and

WHEREAS, on July 12, 2011, DOB denied the Appellant's request to reinstate the permit and rescind the stop work order; the July 12, 2011 determination was renewed by DOB on April 10, 2012, and forms the basis of the Final Determination; and

RELEVANT ZONING RESOLUTION PROVISIONS

WHEREAS, the Appellant and DOB cite the following Zoning Resolution provisions, which read in pertinent part:

> ZR § 12-10 (Accessory Use, or accessory)
>
> An "accessory use":
>
> (a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land) . . .; and
>
> (b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and
>
> (c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use# . . .

An #accessory use# includes…

(16) #Accessory# radio or television towers…

* * *

ZR § 22-21 (By the Board of Standards and Appeals)

In the districts indicated, the following #uses# are permitted by special permit of the Board of Standards and Appeals, in accordance with standards set forth in Article VII, Chapter 3…

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

Radio or television towers, non-#accessory#...

* * *

ZR § 73-30 (Radio or Television Towers)

In all districts, the Board of Standards and Appeals may permit non-#accessory# radio or television towers, provided that it finds that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant makes the following primary arguments: (1) the Radio Tower meets the ZR § 12-10 definition of accessory use; and (2) the Zoning Resolution is preempted by federal law and regulation from precluding international communications, and to the extent DOB maintains the Radio Tower is impermissible due to its height, DOB's interpretation is subject to limited preemption because it has not "reasonably accommodated" the Appellant's needs; and

1. Accessory Use

WHEREAS, as to the definition of accessory use, the Appellant asserts that the proposed Radio Tower meets the criteria as it is: (a) located on the same zoning lot as the principal use (the residential building), (b) the Radio Tower use is incidental to and customarily found in connection with a residential building, and (c) the Radio Tower is in the same ownership as the principal use and is proposed for the benefit of the owner of the Building; and

WHEREAS, the Appellant notes that DOB acknowledges that the principal use of the site is as a residential building, and that the owner maintains a residence at the Building; and

WHEREAS, the Appellant states that the owner has been a licensed "ham" radio operator since 1957, and is in frequent contact with other amateur radio operators around the world; and

WHEREAS, the Appellant notes that the owner is an amateur radio operator (amateur radio license No. W2JGQ) and is not engaged in a commercial use of the Radio Tower; and

WHEREAS, the Appellant submitted a needs analysis prepared by an engineer which concludes that, based on the owner's desired use of the ham radio to engage in communication to Israel and the Middle East, "a significantly taller tower should be utilized to provide optimal coverage," however the proposed Radio Tower with a height of 40 feet "is an acceptable compromise adequate for moderate needs of the amateur radio operator when measured against commonly used engineering metrics;" and

WHEREAS, the Appellant cites to 7-11 Tours, Inc. v. Board of Zoning Appeals of Town of Smithtown, 454 N.Y.S.2d 477, 478 (2d Dept. 1982) for the following discussion of the definition of "accessory use":

> "[I]ncidental", when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant…The word "customarily" is even more difficult to apply. Courts have often held that the use of the word "customarily" places a duty on the board or court to determine whether it is usual to maintain the use in question in connection with the primary use. The use must be further scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use; and

WHEREAS, the Appellant asserts that the owner's use of the Radio Tower is clearly that of a hobbyist engaged in an avocation from his own residence, and that the owner's hobby as an amateur ham radio operator is both "attendant to" and "commonly, habitually, and by long practice reasonably associated with" the primary use of the Building as a residence; and

WHEREAS, as to whether amateur radio antennas are customarily found in New York City, the Appellant notes that the FCC website lists the names of all amateur radio licensees in the country, and as of May 7, 2012 the site listed a total of 1,086 active amateur radio licensees in Manhattan, while at least 2,235 additional licensees are located in the other four boroughs of New York City; and

WHEREAS, the Appellant asserts that almost all of the licenses reflected on the FCC website are issued to natural persons who enjoy long distance amateur radio communications from their residences; thus, the outdoor radio antennas are commonly in use by radio amateurs in New York City to support international communications; and

WHEREAS, in support of its position that ham radio antennas are customarily found in connection with residences, the Appellant cites to the Oxford English Dictionary definition of "customarily" as "in a way that follows customs or usual practices; usually"; and

WHEREAS, the Appellant contends that a use can be "customary" without being very common, such as swimming pools and tennis courts, which are undoubtedly "customarily" found as accessories to residences, regardless of the frequency with which they so appear; and

WHEREAS, the Appellant argues that it is clear that ham radio antennas are "usually" found as accessories to residences, in that when such antennas are found, they are found appurtenant to residences, and the fact that amateur

radio towers may be a relatively rare use is irrelevant to the consideration of whether such use is accessory to a residence; and

WHEREAS, at the Board's request and to support its contention that ham radio antennas are "customarily found in connection with" a residence, the Appellant submitted a series of photographs depicting similar antennas maintained throughout New York City, which provides the borough, underlying zoning district, size, and use group of the residence to which the antenna is accessory, and where available and to the extent possible to obtain such information, it also provides the height of the antennas pictured; and

WHEREAS, specifically, the Appellant submitted photographs of nine other antennas found in Manhattan, the Bronx, Brooklyn, and Queens, which are associated with various types of buildings, from single-family homes to 19-story apartment buildings, and which are found in residential, commercial and manufacturing zoning districts; and

WHEREAS, the Appellant asserts that despite the diversity amongst the buildings depicted, they are all residences, and the ham radio antennas attached to each residence is an accessory use to the main use of the building as a residence; and

WHEREAS, the Appellant represents that the antennas pictured in the photograph array are comparable in size to the Radio Tower, and in some cases, larger than the Radio Tower; and

WHEREAS, the Appellant further represents that there are many more such antennas annexed to other residences throughout the City, however, given the time constraints of the Board's hearing process and the reluctance of some ham radio operators to expose themselves to possible enforcement action by DOB, the Appellant provided the aforementioned photographs as representative of the type of antenna systems found throughout the City; and

WHEREAS, the Appellant also submitted an array of 23 photographs of antennas from other jurisdictions, many of which are significantly taller than the subject Radio Tower with a height of 40 feet, which the Appellant argues reflects that the subject Radio Tower is modest in size and scope; and

WHEREAS, the Appellant also submitted a copy of a memorandum from then-DOB Commissioner Bernard J. Gillroy, dated November 22, 1955, on the subject of radio towers (the "1955 Memo"), which states that "[n]umerous radio towers have been erected throughout the city for amateur radio stations," and further states that such towers "may be accepted in residence districts as accessory to the dwelling;" and

WHEREAS, the Appellant contends that the 1955 Memo serves as evidence that amateur radio towers were numerous throughout New York City and DOB customarily found them as accessory to residences since at least 1955; and

2. Preemption

WHEREAS, the Appellant argues that the Zoning Resolution is preempted by federal law and regulation from precluding international communications, and to the extent DOB maintains the Radio Tower is impermissible due to its height, DOB's interpretation of the Zoning Resolution as it applies to the site is subject to limited preemption because DOB has not "reasonably accommodated" the owner's needs; and

WHEREAS, the Appellant states that federal laws and FCC regulations strongly favor the maintenance of ham radio equipment such as the Radio Tower, and pre-empt local ordinances which prohibit the maintenance of such equipment, either on their face or as applied; and

WHEREAS, specifically, the Appellant asserts that FCC Opinion and Order PRB-1, Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, 101 FCC 2d 952, 50 Fed. Reg. 38813 (Sept. 25, 1985) ("PRB-1"), requires local authorities to reasonably accommodate amateur radio; and

WHEREAS, the Appellant notes that PRB-1 was codified as a regulation of the FCC at 47 CFR § 97.15(b)(2006), which states:

> Except as otherwise provided herein, a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communications. (State and local regulation of a station antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. See PRB-1, 101 FCC 2d 952 (1985) for details.); and

WHEREAS, the Appellant further notes that PRB-1 explains that antenna height is important to effective radio communications as follows:

> Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in…Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose; and

WHEREAS, the Appellant states that the needs analysis it submitted reflects that the proposed Radio Tower with a height of 40 feet is the minimum bulk necessary to accommodate the owner's desired communications; and

WHEREAS, accordingly, the Appellant argues that DOB's position that the Radio Tower is impermissible as an accessory use due to its height fails to reasonably accommodate the international amateur service communications that the owner desires to engage in, and therefore DOB's position is subject to the limited preemption

of PRB-1 and 47 CFR § 97.15(b), and is preempted as applied; and

DOB'S POSITION

WHEREAS, DOB makes the following primary arguments in support of its revocation of the Permit for the Radio Tower: (1) the Radio Tower is not accessory to the principal residential use and therefore requires a special permit from the Board as a non-accessory radio tower; and (2) the Zoning Resolution provides a "reasonable accommodation" in accordance with federal law; and

WHEREAS, DOB asserts that pursuant to ZR § 22-21, in R8B zoning districts, "radio or television towers, non-accessory" are permitted only "by special permit of the Board of Standards and Appeals," and because no special permit has been issued for the Appellant's radio tower, it must satisfy the ZR § 12-10 definition of "accessory use"; and

WHEREAS, DOB contends that the Radio Tower does not satisfy the ZR § 12-10 definition of accessory use primarily because it does not satisfy the criteria that such a radio tower be "customarily found in connection with" the principal use of the site as a residence; and

WHEREAS, specifically, DOB argues that the proposed Radio Tower is significantly taller and more elaborate than the traditional accessory radio towers (or "aerials") that have been found atop residences for decades in New York City, which are typically used to receive remotely broadcast television and/or AM/FM signals for at-home private listening or viewing and are usually 12 feet or less in height and often affixed directly to chimneys or roof bulkheads; and

WHEREAS, DOB distinguishes traditional "aerials" with the proposed Radio Tower which extends 40 feet above the roof of the Building and must be secured to the roof at multiple points by one-half inch steel wires; and

WHEREAS, DOB further distinguishes the proposed Radio Tower because it functions differently than traditional aerials in that it both receives and transmits radio signals (as opposed to traditional aerials which merely receive radio signals) and is powerful enough to communicate with people living in South America and the Middle East; and

WHEREAS, accordingly, DOB considers the proposed Radio Tower to be categorically distinct from the aerials that are "customarily found in connection with" New York City residences, and argues that the plain text of the Zoning Resolution does not support its use as accessory to the principal use of the zoning lot as a residence; and

WHEREAS, DOB asserts that while the Appellant has cited a number of cases from other states that support the general notion that ham radio use may be permitted as accessory to a residence, the subject case is controlled by the Court of Appeals decision in Matter of New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y.2d 413 (1998); and

WHEREAS, DOB notes that in Botanical Garden the Board agreed with DOB's determination that a 480-ft. radio tower on the campus of Fordham University adjacent to the New York Botanical Garden was a permitted accessory use for an educational institution that operated a radio station, finding that the radio tower was clearly incidental to and customarily found in connection with an educational institution; and

WHEREAS, DOB states that, in upholding the Board's determination, the Court of Appeals explained that there was "more than adequate evidence to support the conclusion that [the operation of a 50,000 watt radio station with a 480-ft. radio tower] is customarily found in connection with a college or university" and articulated the following standard for determining whether a use is accessory under the Zoning Resolution:

> [w]hether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the over-all character of the particular area in question. Botanical Garden, 91 N.Y.2d at 420; and

WHEREAS, DOB notes that the Court also stressed that the accessory use analysis is fact-based and that "[t]he issue before the [Board] was: is a station of this particular size and power, with a 480-foot tower, customarily found on a college campus or is there something inherently different in this radio station and

tower that would justify treating it differently" Botanical Garden, 91 N.Y.2d at 421; and

WHEREAS, DOB argues that, based on the standard set forth in Botanical Garden, the proposed Radio Tower is not permitted as accessory to the Building; and

WHEREAS, specifically, DOB asserts that the Radio Tower is incompatible with the principal use and the surrounding area, in that it adds an additional 40 feet of height to the Building and its supporting wires and structures, which are permanently affixed, occupy a substantial portion of the roof; thus, when measured by its size in relation to the Building, the Radio Tower is not clearly incidental; and

WHEREAS, DOB further asserts that the Radio Tower is out of context with the subject residential neighborhood, as it is located on an interior lot situated mid-block in a contextual, medium-density residential district on a narrow street of a quintessential East Village block on which no other buildings have aerials approaching the size and complexity of the proposed Radio Tower; and

WHEREAS, DOB argues that, even if the proposed Radio Tower were considered "clearly incidental" to the residential building, the Appellant has also not demonstrated that the Radio Tower of this size and power is "customarily found in connection with" New York City residences; and

WHEREAS, as to the photographs and evidence submitted by the Appellant of other radio towers within New York City, DOB asserts that they do not constitute sufficient evidence to establish that a rooftop radio tower with a height of 40 feet is customarily found in connection with the principal use of a residential building located in an R8B zoning district; and

WHEREAS, specifically, DOB states that of the nine

photographs provided by the Appellant, five photographs show rooftop radio towers which are not comparable to the subject Radio Tower because they are located on buildings which are 11 to 19 stories tall, and none of which appear to be close to the height of the residential building below the tower; and

WHEREAS, DOB further states that of the remaining four photographs that show radio towers that are located on or near buildings less than 11 stories, only one is located on the roof of a building and that radio tower appears to be approximately half the height of the two-story dwelling; the other three photographs do not appear to show radio towers located on the roofs of the buildings, and the only one of those three that appears to be more than 40 feet in height is a stand-alone radio tower with a height of 80 feet associated with a two-story residential building, and DOB represents that it would not consider such a radio tower to be an accessory use; and

WHEREAS, DOB contends that in order for the subject Radio Tower to satisfy the "customarily found in connection with" criteria, it is not sufficient to provide evidence of other radio towers with similar heights as the subject Radio Tower; rather, the Appellant would have to provide evidence that it is customary to have a radio tower with a height of 40 feet on the rooftop of a four-story building of similar height as the Building, within an R8B zoning district; and

WHEREAS, accordingly, DOB asserts that the evidence submitted by the Appellant is insufficient to establish that a rooftop radio tower with a height of 40 feet located on a four-story residential building in an R8B zoning district is customary, and therefore it does not meet the ZR § 12-10 definition of accessory use; and

WHEREAS, DOB argues that the evidence submitted by the Appellant reflects a similarity between the facts in the subject case and those of BSA Cal. No. 14-11-A (1221 East 22nd Street, Brooklyn), which involved a challenge to DOB's denial of a permit for an accessory cellar that was nearly as large as the single-family residence to which it was to be appurtenant; and

WHEREAS, DOB asserts that the Board affirmed DOB's denial in that case, in part, because the appellant failed to demonstrate that such oversized, non-habitable cellars were customarily found in connection with residences, and that in the subject case the Appellant's evidence similarly fails to demonstrate that a rooftop radio tower with a height of 40 feet is customarily found on a four-story residential building; and

WHEREAS, by letter dated November 8, 2012, the Department of City Planning ("DCP") states that it expresses no opinion regarding the merits of the subject case but requests that the Board take the height of the antenna into account in determining whether it is accessory, as it did in BSA Cal. No. 14-11-A, because the size of a use can be relevant to whether it is "incidental to" and "customarily found in connection with" a principal use; and

WHEREAS, as to the 1955 Memo submitted by the Appellant, DOB asserts that the 1955 Memo merely deals with the permitting safety requirements, and specifications for the construction of radio towers, and does not indicate that radio towers are necessarily accessory uses to residences; and

WHEREAS, DOB acknowledges that the Zoning Resolution is clear that some radio towers are accessory, however it is also clear that some radio towers are not accessory, and the 1955 Memo does not state which type of radio towers could be considered accessory or non-accessory; and

WHEREAS, in response to the Appellant's preemption argument, DOB contends that the Zoning Resolution does provide a "reasonable accommodation" in accordance with federal law; and

WHEREAS, DOB asserts that PRB-1 is a declaratory ruling issued by the FCC requiring that "local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications;" and

WHEREAS, DOB contends that its interpretation of the Zoning Resolution to prohibit the proposed radio tower as accessory to the subject residence as-of-right was proper and consistent with PRB-1, and that it has reviewed the proposal at the highest level and determined that it had no authority to allow the radio tower because a special permit is required pursuant to ZR §§ 22-21 and 73-30; and

WHEREAS, DOB further contends that ZR § 73-30, which authorizes the radio tower by special permit, contemplates the sort of fact-finding and analysis required by PRB-1; accordingly the Zoning Resolution as interpreted by DOB is consistent with the FCC's "reasonable accommodation" requirement; and

THE APPELLANT'S RESPONSE

WHEREAS, in response to the arguments set forth by DOB, the Appellant asserts that DOB's reliance on Botanical Garden and BSA Cal. No. 14-11-A are misplaced; and

WHEREAS, as to Botanical Garden, the Appellant first notes that that case involved a radio tower that was accessory to an educational institution rather than an amateur radio tower that is accessory to a residence, and that to the extent that case is comparable to the subject case, a clear reading shows that it actually supports the Appellant's position; and

WHEREAS, at the outset, the Appellant states that in Botanical Garden, DOB, the Board, the Supreme Court, the Appellate Division, and the Court of Appeals all found that the Fordham antenna was an accessory use, using arguments similar to those advanced by the Appellant; and

WHEREAS, the Appellant notes that, in upholding the lower courts in Botanical Garden, the Court of Appeals rejected the appellant's contention that it is not customary for universities to maintain radio towers of such height, stating that "[t]his argument ignores the fact that the Zoning Resolution classification of accessory uses is based upon functional rather than structural specifics." Botanical Garden, 91 N.Y.2d at 421; and

WHEREAS, the Appellant contends that Botanical Garden therefore reflects that DOB's contention that the Radio Tower is not an accessory use because of its size

conflates use regulation and bulk regulation in a way that is not contemplated by the Zoning Resolution; and

WHEREAS, the Appellant asserts that Botanical Garden also supports its position that the Radio Tower is an accessory use because it is "customarily found in connection with" the principal use, as the Court of Appeals observed:

> The specifics of the proper placement of the station's antenna, particularly the height at which it must be placed, are dependent on site-specific factors such as the surrounding geography, building density and signal strength. This necessarily means that the placement of antennas will vary widely from one radio station to another. Thus, the fact that this specific tower may be somewhat different does not render the Board's determination unsupported as a matter of law, since the use itself (i.e., radio operations of this particular size and scope) is one customarily found in connection with an educational institution. Moreover, Fordham did introduce evidence that a significant number of other radio stations affiliated with educational institutions in this country utilize broadcast towers similar in size to the one it proposes. Botanical Garden, 91 N.Y.2d at 422; and

WHEREAS, finally, the Appellant notes that in Botanical Garden the Court of Appeals recognized that, unlike other examples of accessory uses listed in ZR § 12-10, there is no height restriction associated with accessory radio towers and that it would be inappropriate for DOB to arbitrarily restrict the height of such radio towers, as the Court stated that:

> Accepting the Botanical Garden's argument would result in the judicial enactment of a new restriction on accessory uses not found in the Zoning Resolution. Zoning Resolution § 12-10 (accessory use) (q) specifically lists "[a]ccessory radio or television towers" as examples of permissible accessory uses (provided, of course that they comply with the requirements of Zoning Resolution § 12-10 [accessory use] [a], [b] and[c]). Notably, no height restriction is included in this example of a permissible accessory use. By contrast, other examples of accessory uses contain specific size restrictions. For instance, Zoning Resolution § 12-10 defines a "home occupation" as an accessory use which "[o]ccupies not more than 25 percent of the total floor area and in no even more than 500 square feet of floor area" (§ 12-10 [accessory use][b][2]). The fact that the definition of accessory radio towers contains no such size restrictions supports the conclusion that the size and scope of these structures must be based upon an individualized assessment of need. Botanical Garden, 91 N.Y.2d at 422-23; and

WHEREAS, accordingly, the Appellant asserts that Botanical Garden reflects that there is no "bright line" height restriction in the Zoning Resolution beyond which an accessory antenna becomes non-accessory, and since there is no law, rule, or regulation which permits DOB to deem the Radio Tower non-accessory on the grounds of its purportedly excessive height, DOB thus makes an error of law in trying to forbid the Appellant's maintenance of the Radio Tower as non-accessory in the absence of a guiding statute; and

WHEREAS, the Appellant contends that DOB's reliance on BSA Cal. No. 14-11-A to support the position that size of a use can be relevant to whether it is "incidental to" and "customarily found in connection with" a principal use is similarly misguided; and

WHEREAS, specifically, the Appellant notes that in that case, in a discussion of the Botanical Garden case, the Board expressly rejected the use of size as a criterion in evaluating whether radio antennas are accessory uses, noting that "size can be a rational and consistent form of establishing the accessory nature of certain uses such as home occupations, caretaker's apartments, and convenience stores on sites with automotive use, but may not be relevant for other uses like radio towers…"; and

WHEREAS, the Appellant also distinguishes BSA Cal. No. 14-11-A from the subject case in that in the former there was an attempt to promulgate and follow universally applicable standards for determining accessory use in cellars, while in the subject case DOB's determination is limited to this single antenna and not based on any articulated standard; and

WHEREAS, finally, the Appellant argues that BSA Cal. No. 14-11-A is only implicated if it is conceded that the Radio Tower is somehow "too big" for the Building; however, the Appellant asserts that the Radio Tower is in no way "too big" for the site, as it is a standard-sized, if not smaller than standard-sized, amateur radio antenna chosen specifically for the types of communications that the amateur operator desires to engage in, the intended distance of communications, and the frequency band; and

WHEREAS, the Appellant also refutes DOB's contention that, because the Radio Tower both receives and transmits signals (as opposed to merely receiving signals) the subject Radio Tower is somehow not an accessory use; and

WHEREAS, the Appellant asserts that there is absolutely no support in any statute for this proposition, and the Zoning Resolution does not treat antennas differently depending on whether or not they transmit; and

CONCLUSION

WHEREAS, the Board has determined that the subject Radio Tower satisfies the ZR § 12-10 definition of an accessory use to the subject four-story residential building, such that the maintenance of the Radio Tower at the site does not require a special permit from the Board under ZR § 73-30; and

WHEREAS, specifically, the Board finds that the Radio Tower meets the criteria of an accessory use to the residence because it is: (a) located on the same zoning lot as the principal use (the residential building), (b) the Radio Tower use is clearly incidental to and customarily found in connection with a residential building, and (c) the Radio

Tower is in the same ownership as the principal use and is proposed for the benefit of the owner of the Building; and

WHEREAS, the Board agrees with the Appellant that the owner's hobby as an amateur ham radio operator is clearly incidental to the principal use of the site as a residence, and is not persuaded by DOB's argument that the Radio Tower is not clearly incidental to the Building merely because the height of the Radio Tower (40 feet) is comparable to that of the Building (58 feet); and

WHEREAS, the Board finds that the Appellant has submitted sufficient evidence reflecting that, when amateur radio antennas are found, they are customarily found appurtenant to residences, and agrees with the Appellant that the fact that amateur radio antennas are not a common accessory use is not dispositive as to whether or not such use is accessory to a residential building; and

WHEREAS, as to DOB's contention that the subject Radio Tower does not qualify as an accessory use because it functions differently than traditional aerials in that it both receives and transmits radio signals (as opposed to traditional aerials which merely receive radio signals), the Board agrees with the Appellant that the fact that the Radio Tower transmits radio signals is of no import as to whether or not it qualifies as an accessory use; and

WHEREAS, the Board notes that DOB has acknowledged that amateur ham radio antennas can qualify as accessory uses, and since all ham radio operators by definition both receive and transmit radio signals, it appears that DOB has accepted certain amateur radio towers which both receive and transmit radio signals as accessory uses; and

WHEREAS, as to DOB's contention that the subject Radio Tower does not qualify as an accessory use because it is significantly taller and more elaborate than traditional accessory radio towers, the Board finds that the Appellant has submitted sufficient evidence to establish that radio towers similar to the subject Radio Tower are customarily found in connection with residential buildings in New York City; and

WHEREAS, specifically, the Appellant submitted photographs of nine other ham radio towers maintained throughout the City, and the Board notes that several of the photographs depict radio towers similar in size to the subject Radio Tower; and

WHEREAS, the Board further notes that the Appellant was able to ascertain the height of five of the radio towers for which it submitted photographs, which include: (1) a radio tower with a height of approximately 40 feet located on the rooftop of an 11-story residential building with ground floor commercial use within an M1-5M zoning district in Manhattan; (2) a radio tower with a height of approximately 50 feet located on the rooftop of a 13-story residential building with ground floor commercial use within an R10-A zoning district in Manhattan; (3) a radio tower with a height of approximately 28 feet located on the rooftop of a nine- story residential building within an R8B zoning district in Manhattan; (4) a radio tower with a height of approximately 80 feet located in the backyard of a two-story residential building within an R4-1 zoning district in Brooklyn; and (5) a radio tower with a height of 15 feet located on the rooftop of a two-story residential building within an R2A zoning district in Queens; and

WHEREAS, the Board considers the photographs submitted by the Appellant to be a representative sample of the amateur ham radio antennas maintained by the approximately 3,321 licensed ham radio operators located throughout the City, and finds that the photographs submitted to the Board, in particular those of the rooftop radio towers in Manhattan with heights of 40 feet and 50 feet, respectively, serve as evidence that radio towers similar in height to the subject Radio Tower with a height of 40 feet are customarily found in connection with residential buildings in the City; and

WHEREAS, the Board is not convinced by DOB's argument that these radio towers cannot be relied upon as evidence that radio towers similar in size to the subject Radio Tower are customarily found in connection with residential buildings merely because they are located on taller buildings than the subject Building; and

WHEREAS, the Board does not find the height of the building upon which a radio tower is to be located to be the controlling factor as to whether or not that radio tower is deemed to be an accessory use; and

WHEREAS, as to DOB's contention that the subject case is controlled and consistent with Botanical Garden, the Board acknowledges that the case reflects that it is appropriate to take the overall character of the particular area into consideration when determining whether an accessory use is clearly incidental to and customarily found in connection with the principal use, however, the Board agrees with the Appellant that the facts of the case actually weigh in favor of the Appellant's position; and

WHEREAS, in particular, the Board notes that DOB is requesting that the Board rely on Botanical Garden to support the position that the subject Radio Tower is not an accessory use, despite the fact that the ultimate holding in Botanical Garden was that the radio tower in question qualified as an accessory use based on similar arguments advanced by the Appellant in the subject case; and

WHEREAS, the Board agrees with the Appellant that the Court's determination that "the Zoning Resolution classification of accessory uses is based upon functional rather than structural specifics" Botanical Garden, 91 N.Y.2d at 421, and "[t]he fact that the definition of accessory radio towers contains no such size restrictions supports the conclusion that the size and scope of these structures must be based upon an individualized assessment of need" Botanical Garden, 91 N.Y.2d at 422-23, weighs in favor of the Radio Tower as an accessory use, as the Appellant submitted a needs analysis which reflects that the antenna height of 40 feet is based upon an individualized assessment of the owner's needs to communicate with Israel and the Middle East and is the minimum necessary height required for the ham radio tower to function properly in communicating with these areas of the world; and

WHEREAS, the Board also does not find support in Botanical Garden for DOB's contention that the Radio Tower

is non-accessory merely because there are no similarly-sized radio towers located on similarly-sized buildings in the immediately surrounding block, as in that case Fordham was the only university in the surrounding area and the Court supported the Board's consideration of the custom and usage of other universities which were not located near the site in reaching its determination that such radio antennas were customarily found as accessory uses to universities; and

WHEREAS, accordingly, the Board notes that while Botanical Garden set forth a standard that the overall character of the area should be taken into consideration in the accessory use analysis, the facts of that case itself reflect that such a standard does not require that there be an identical radio tower accessory to an identical building in the immediately surrounding area, as DOB appears to be requiring in the instant case; and

WHEREAS, the Board agrees with the Appellant that the fact that no other buildings on the immediate block have similar radio towers is not dispositive of whether the subject Radio Tower is an accessory use, and finds that the Appellant has submitted evidence that rooftop radio towers with heights of 40 feet are "customarily found in connection with" residential buildings in New York City; and

WHEREAS, as to BSA Cal. No. 14-11-A, the Board agrees with the Appellant that that case is also distinguishable from the subject case, as it was based on significantly different facts and in its decision the Board specifically noted that "size can be a rational and consistent form of establishing the accessory nature of certain uses such as home occupations, caretaker's apartments, and convenience stores on sites with automotive use, but may not be relevant for other uses like radio towers…"; and

WHEREAS, the Board further agrees with the Appellant that, unlike the subject case, BSA Cal. No. 14-11-A involved DOB's attempt to promulgate and follow a universally applicable standard for determining whether a cellar was an accessory use, which has since been memorialized in Buildings Bulletin 2012-008; and

WHEREAS, specifically, the Board notes that in BSA Cal. No. 14-11-A, DOB sought to apply a single objective standard to all cellars in every zoning district, while in the subject case DOB is proposing to make a case-by-case analysis of each amateur ham radio tower that is constructed in the City and make a discretionary determination as to whether it is accessory based upon factors such as the height of the radio tower, the height of the associated building, the prevalence of similar radio towers on similar buildings in the immediately surrounding area, the character of the surrounding area, and other subjective criteria; and

WHEREAS, the Board agrees with the Appellant that DOB has provided no provision of the Zoning Resolution or any other law, rule, or regulation which sets forth a standard for finding the subject Radio Tower non-accessory solely based upon its height; and

WHEREAS, the Board considers the lack of an objective standard for determining whether an amateur ham radio tower of a given height is accessory to be problematic and prone to arbitrary results, and while the Board does not make a determination as to whether amateur ham radio towers of any height may qualify as accessory, it recognizes that establishing a bright line standard for the permissible height of accessory radio towers may require an amendment to the Zoning Resolution or the promulgation of a Buildings Bulletin, as was the case in BSA Cal. No. 14-11-A; and

WHEREAS, the Board agrees with DCP that the size of a use can be relevant to whether it is "incidental to" and "customarily found in connection with" a principal use; however, it finds that in the case of amateur radio towers, unlike cellars and certain other uses, there is no articulated standard to guide DOB in determining at what height a particular radio tower becomes non-accessory; and

WHEREAS, as to the Appellant's argument that in not accepting the Radio Tower as an accessory use DOB has failed to "reasonably accommodate" the owner's needs contrary to federal laws and regulations, the Board recognizes that federal laws and FCC regulations favor the maintenance of ham radio equipment such as the Radio Tower and pre-empt local ordinances which prohibit the maintenance of such equipment; and

WHEREAS, however, because the Board has determined that the subject Radio Tower satisfies the ZR § 12-10 definition of accessory use, the Board deems it unnecessary to make a determination on the preemption issue in order to reach a decision on the merits of the subject appeal; therefore, the Board finds it appropriate to limit the scope of its determination accordingly; and

WHEREAS, the Board concludes that, based upon the above, the Radio Tower satisfies the ZR §12-10 criteria for an accessory use to the subject residential building.

Therefore it is Resolved that the subject appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated April 10, 2012, is hereby granted.

Adopted by the Board of Standards and Appeals, November 20, 2012.

The resolution has been revised to correct the amateur radio license No. which read "WTJGQ***" now reads "***W2JGQ***". Corrected in Bulletin Nos. 1-2, Vol. 98, dated January 16, 2013.**

***CORRECTION**

This resolution adopted on December 11, 2012, under Calendar No. 232-10-A and printed in Volume 97, Bulletin No. 51, is hereby corrected to read as follows:

232-10-A
APPLICANT – OTR Media Group, Incorporated, for 4th Avenue Loft Corporation, owner.
SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings' denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 zoning district.
PREMISES AFFECTED – 59 Fourth Avenue, 9th Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.
COMMUNITY BOARD #3M
ACTION OF THE BOARD – Appeal granted.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the First Deputy Commissioner of the Department of Buildings ("DOB") on November 23, 2010 (the "Final Determination"), which states, in pertinent part:

> The request to establish legality for a nonconforming advertising sign on the subject premises is hereby denied.
>
> The evidence submitted fails to establish that a lawful advertising sign was established and not discontinued as per 52-831; and

WHEREAS, a public hearing was held on this appeal on August 13, 2011 after due notice by publication in *The City Record*, with a continued hearing on October 23, 2012, and then to decision on December 11, 2012; 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, the subject site is located on the east side of Fourth Avenue, between East Ninth Street and East Tenth Street, within a C6-2A zoning district; and

WHEREAS, the site is occupied by an eight-story mixed-use commercial/residential building (the "Building"); the southern façade of the Building (the "Wall") has been used to display signage since approximately 1900, including a painted advertising sign on the upper corner of the Wall (the "Sign"), which is the subject of this appeal; and

WHEREAS, this appeal is brought on behalf of the lessee of the Sign (the "Appellant"); and

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

PROCEDURAL HISTORY

WHEREAS, on January 26, 2009, DOB issued a stop work order for "outdoor advertising company sign on display structure without permit…"; and

WHEREAS, on May 24, 2010, the Appellant filed a permit application (Job No. 120353606) with DOB for a 1,000 sq. ft. (25'-0" by 40'-0") non-illuminated painted advertising wall sign; the application stated that the sign complied with the non-conforming advertising sign regulations; and

WHEREAS, on June 8, 2010, DOB denied the permit application, finding that there was insufficient evidence that the sign was lawfully established and not discontinued; and

WHEREAS, on October 23, 2010, the Appellant filed a Zoning Resolution Determination Form ("ZRD1") with the Manhattan Borough Office requesting an override of all objections and a determination that the Sign is permitted as a legal non-conforming advertising sign; and

WHEREAS, on November 23, 2010, DOB issued the Final Determination denying the Appellant's ZRD1 request; and

WHEREAS, the Appellant initially sought a determination from the Board that signage located on the lower portion of the Wall was also permitted as a legal non-conforming advertising sign; however, the Appellant did not pursue its arguments with respect to the lower portion of the Wall; and

RELEVANT ZONING RESOLUTION PROVISIONS

> ZR § 12-10 (*Definitions)*
> Non-conforming, or non-conformity
> A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .
>
> * * *
>
> ZR § 52-11 (*Continuation of Non-Conforming Uses)*
> General Provisions
> A #non-conforming use# may be continued, except as otherwise provided in this Chapter.
>
> * * *
>
> ZR § 52-61 (*Discontinuance)*
> General Provisions
> If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non- conforming uses# in any #building or other structure# is

1 DOB notes that the Final Determination improperly cites ZR § 52-83 as the basis for the denial, and that ZR §§ 52-11 and 52-61 should have been cited, as DOB's determination was that insufficient evidence had been submitted to demonstrate that a painted wall advertising sign was lawfully established at the subject site and never discontinued for a period of two or more years.

discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within a C6-2A zoning district and that the Sign is not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming signs are permitted to remain, the Appellant must meet the Zoning Resolution's criteria for a "non-conforming use" as defined at ZR § 12-10; and

WHEREAS, ZR § 12-10 defines "non-conforming" use as "any lawful *use*, whether of a *building or other structure* or of a tract of land, which does not conform to any one or more of the applicable *use* regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto"; and

WHEREAS, additionally, the Appellant must comply with ZR § 52-61 (*Discontinuance, General Provisions)* which states that: "[i]f, for a continuous period of two years, either the *non-conforming use* of *land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land . . . shall thereafter be used only for a conforming *use*"; and

WHEREAS, in this case, the Appellant must also show that advertising signage existed on the Wall prior to June 28, 1940, the date the 1916 Zoning Resolution was amended to restrict advertising signage in the district where the subject site is located; and

WHEREAS, accordingly, DOB asserts that as per the Zoning Resolution, the Appellant must establish that the use was lawfully established before it became unlawful, by zoning, on June 28, 1940 as well as on December 15, 1961, the date the 1961 Zoning Resolution was enacted, and it must have continued without any two-year period of discontinuance since December 15, 1961; and

WHEREAS, thus, the Board notes that the standard to apply to the subject sign is (1) the sign existed lawfully on June 28, 1940 and December 15, 1961, and (2) that the use did not change or cease for a two-year period since December 15, 1961. See ZR §§ 12-10, 52-61; and

LAWFUL ESTABLISHMENT

WHEREAS, the Appellant states that a sign has existed on the Wall since at least 1900, originally as a painted advertising sign; and

WHEREAS, the Appellant contends that advertising signage existed on the Wall prior to June 28, 1940, the date the 1916 Zoning Resolution was amended to define and distinguish "advertising" signs from "accessory" signs; and

WHEREAS, the Appellant states that while the 1940 text amendment restricted advertising signage in the district where the subject site is located, by that time the Wall had been used to display signage, including advertising signage, for approximately 40 years; and

WHEREAS, the Appellant asserts that the Wall continued to be used for advertising signage prior to and after December 15, 1961; and

WHEREAS, in support of the existence of advertising signage on the Wall prior to June 28, 1940, the Appellant submitted photographs, copies of the business directory for the City of New York, and newspaper/magazine articles; and

WHEREAS, in support of the existence of the signage on the Wall prior to and since December 15, 1961, the Appellant submitted photographs reflecting that a "Hebrew National" painted advertising sign was located on the upper portion of the Wall from at least June 1, 1960 through 1965 or later; and

WHEREAS, accordingly, the Appellant states that a painted advertising sign was lawfully established on the upper portion of the Wall prior to the enactment of the 1961 Zoning Resolution; and

WHEREAS, DOB states that it accepts the Appellant's photographic and documentary evidence of the existence of advertising signage prior to June 28, 1940 through 1960; and

WHEREAS, DOB further states that it accepts the Appellant's evidence demonstrating the "Hebrew National" painted advertising sign existed prior to 1961 through 1965; and

WHEREAS, accordingly, DOB agrees that an advertising sign was lawfully established at the site prior to December 15, 1961 and lawfully existed on December 15, 1961, and therefore the owner of the site achieved a right to maintain a painted advertising sign in the same location and position of the "Hebrew National" sign, provided that such sign was not discontinued for a period of two or more years; and

CONTINUITY OF THE SIGN

WHEREAS, at the outset, DOB states that the Appellant has submitted sufficient evidence to demonstrate continuity of the non-conforming advertising sign on the top portion of the Wall from 1961 through 1992 and from 2005 until the filing of subject appeal; and

WHEREAS, accordingly, the Board finds it appropriate to limit its review of the continuity of the Sign to the period from 1992 through 2005, which is the only time period for which DOB has alleged a discontinuance of the Sign for a period in excess of two years, contrary to ZR § 52-61; and

- Appellant's Position

WHEREAS, the Appellant submitted photographs, leases, and letters as primary evidence to establish the continuity of use of the Sign between 1992 and 2005; and

WHEREAS, the Appellant also submitted an affidavit from Patrick Curley, a resident of the Building and President of the 4th Avenue Loft Corporation stating that a sign has been located on the south facing wall from 1978 continuously through the present (the "Curley Affidavit"), and an affidavit from Chris Mitrofanis, the owner of the adjacent retail establishment at 59 Fourth Avenue, stating that the upper wall has been used for advertising signs continuously from 1984 through 2009, with no two-year period of discontinuance

during that time (the "Mitrofanis Affidavit") (collectively, the "Affidavits"); and

WHEREAS, in support of the existence of the Sign in 1992, the Appellant submitted: (1) a photograph of a painted advertising sign for "Tower Records" on the upper portion of the Wall, along with evidence that the photograph was taken in approximately 1992; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1993, the Appellant submitted: (1) the 1992 photograph of the Tower Records advertising sign; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1994, the Appellant submitted: (1) the 1992 photograph of the Tower Records advertising sign; (2) an option agreement dated July 14, 1994 between the owner and Transportation Displays Incorporated/TDI ("TDI") granting the exclusive option for TDI to lease the south wall of the Building for the purpose of affixing advertising copy thereto for one year (the "1994 Option Agreement"); and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1995, the Appellant submitted: (1) a photograph showing the Building with the same painted advertising sign for "Tower Records" which it asserts was taken in June 1995 (the "Appellant's June 1995 Photograph"); (2) the 1994 Option Agreement; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1996, the Appellant submitted: (1) the June 1995 Photograph of the "Tower Records" sign; (2) the 1994 Option Agreement; and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1997, the Appellant submitted: (1) a photograph showing a sign with illegible copy on the upper portion of the Wall, dated October 1997; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1998, the Appellant submitted: (1) the 1997 photograph; and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 1999, the Appellant submitted: (1) a photograph showing an advertising sign for "Fetch-O-Matic" on the upper portion of the Wall, along with evidence that the photograph was taken in 1999 or 2000 (the "1999/2000 Fetch-O-Matic Photograph"); and (2) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2000, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) an October 6, 2000 letter from Vista Media Group, Inc., stating that it assumed the lease rights and obligations under the lease with TDI/Outdoor Systems/Infinity, and noting that the monthly lease payment was enclosed (the "October 6, 2000 Letter"); and (3) the Affidavits; and

WHEREAS, in support of the existence of the Sign in 2001, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) the October 6, 2000 Letter; (3) a "Wallscape Rental Agreement" dated August 27, 2001 granting Vista Media Group, Inc., the use of a portion of the south wall of the property for the display of signage, for a term of five years, commencing on January 15, 2002 (the "August 27, 2001 Five-Year Lease"); and (4) the Affidavits; and

WHEREAS, in support of the existence of the Sign from 2002 through 2005, the Appellant submitted: (1) the 1999/2000 Fetch-O-Matic Photograph; (2) the August 27, 2001 Five-Year Lease; and (3) the Affidavits; and

WHEREAS, based on the above, the Appellant asserts that it has established that the Sign was continuously in existence as an advertising sign from 1992 through 2005, without any two-year period of discontinuance; and

- Department of Buildings' Position

WHEREAS, DOB asserts that there is insufficient evidence to show continuity of the non-conforming advertising sign on the upper portion of the Wall from 1992 through 2005; and

WHEREAS, DOB states that its Sign Enforcement Unit discovered a photograph dated 1995 on a website called nycsubway.org, which shows only the faded remnants of a painted sign on the upper portion of the Wall (the "1995 DOB Photograph"); and

WHEREAS, DOB further states that it is unable to reconcile the fact that the photograph allegedly taken in June 1995 submitted by the Appellant shows only a slightly faded painted advertising sign for Tower Records while the 1995 DOB Photograph shows a significantly faded painted advertising sign; and

WHEREAS, DOB notes that the Appellant's June 1995 Photograph was originally submitted at the Board's October 23, 2012 hearing as taken in June 1993, and asserts that if the photograph was taken in June 1995 then the Appellant is claiming that the Tower Records painted sign existed from 1987 to June 1995 with only slight fading, but from June 1995 until the time when the 1995 DOB Photograph was taken, the painted Tower Records advertising sign faded away significantly; and

WHEREAS, DOB notes that the 1997 photograph submitted by the Appellant similarly shows only the faded remnants of a painted sign on the upper portion of the Wall; and

WHEREAS, DOB states that its Sign Enforcement Unit also discovered a photograph on the flickr.com website dated September 10, 2001, which again shows only the faded remnants of a painted sign on the upper portion of the Wall (the "September 10, 2001 DOB Photograph"), which is consistent with the 1995 DOB Photograph and the Appellant's 1997 photograph; and

WHEREAS, DOB further states that the September 10, 2001 DOB Photograph shows the identical advertising sign on the lower portion of the Wall (entitled "Rivet Up") as existed on the Appellant's June 1995 Photograph; and

WHEREAS, DOB asserts that the September 10, 2001 DOB Photograph calls into question the authenticity of the Appellant's June 1995 Photograph because it is not plausible that an advertising copy for "Rivet Up" existed both in June 1995 and on September 10, 2001, particularly when there are several photographs between that time period which show a different advertising copy on the lower portion of the Wall; and

WHEREAS, DOB notes that the Appellant's June 1995

Photograph and the 1999/2000 Fetch-O-Matic Photograph are from "private collections" and that the Appellant has not submitted affidavits from the photographer attesting to the date they were taken, and indicates that as such they should be given less weight than the 1995 DOB Photograph and the September 10, 2001 DOB Photograph, both of which are publicly available; and

WHEREAS, accordingly, based on the photographs from 1995, 1997, and 2001 which DOB contends show only the faded remnants of a painted sign, and the questionable credibility of the Appellant's June 1995 Photograph, DOB concludes that the Appellant has failed to establish the continuity of the advertising sign on the upper portion of the Wall, as required by ZR § 52-61; and

APPELLANT'S RESPONSE TO DEPARTMENT OF BUILDINGS' ARGUMENTS

WHEREAS, in response to DOB's position regarding the authenticity of the Appellant's June 1995 Photograph, the Appellant asserts that 1995 is the most likely year that the photograph was taken; and

WHEREAS, the Appellant states that the date of this photograph was determined by scrutinizing the details of the photograph, including: (1) a scaffolding in front of the building located at 21 Astor Place (Block 545, Lot 7503), and that DOB records indicate that Permit No. 101007928 was approved on March 13, 1995 for a sidewalk shed at the site; (2) the building at 770 Broadway is boarded with a sidewalk shed and therefore the Kmart store that currently occupies the space, and which the Appellant established through a newspaper article opened in November 1996, had not yet opened; and (3) a 23-story building that was constructed on East 12th Street between Third Avenue and Fourth Avenue in 1996 is not visible in the photograph, and therefore was not constructed yet; and

WHEREAS, therefore, Appellant argues that the photograph was clearly taken prior to the 1996 opening of Kmart at 770 Broadway and the completion of the 23-story building, and the existence of the sidewalk shed at 21 Astor Place indicates that it was taken after March 13, 1995; and

WHEREAS, the Appellant states that the 1995 DOB Photograph shows that the lower portion of the Wall was occupied by an advertisement for an Old Navy store that the Appellant contends did not open until November of 1995, and therefore argues that the photograph was more likely taken in 1996 or later, because there are leaves on the trees in the photograph; and

WHEREAS, as to the September 10, 2001 DOB Photograph, the Appellant contends that the date on the photograph is likely incorrect, as the photograph is from flickr.com, and the dating system for the website relates to the date the photograph was uploaded, not necessarily the date it was taken; and

WHEREAS, the Appellant provides an example of a photograph on flickr.com that was taken in 1978 but for which the website states "this photo was taken on July 16, 2006"; therefore, the Appellant asserts that the date listed on the website for the photograph is not necessarily an accurate depiction of the date the photograph was taken; and

WHEREAS, as to DOB's concerns regarding the 1999/2000 Fetch-O-Matic Photograph, the Appellant submitted an affidavit from the photographer (the Mitrofanis Affidavit) which states that the photograph was taken in or around 1999, and the Appellant also submitted an August 29, 2000 press release for FetchOMatic.com, announcing an upcoming advertising campaign for the new company; and

WHEREAS, in response to DOB's indication that the photographs submitted by the Appellant should be given less weight because they are from private collections rather than publicly accessible sources, the Appellant notes that DOB Technical Policy and Procedure Notice 14/1988, which DOB issued to establish guidelines for DOB's review of whether a non-conforming use has been continuous, does not state that an appellant must provide publicly accessible photographs, or that such photographs are given more weight than photographs from private collections; and

WHEREAS, accordingly, the Appellant claims that the dates of the photographs it submitted from 1995, 1997, and 1999/2000 are credible, and along with the Affidavits, the 1994 Option Agreement, the 2000 Letter, and the 2001 Five-Year Lease, are sufficient to establish the continuous use of the advertising sign on the upper portion of the Wall from 1992 through 2005; and

CONCLUSION

WHEREAS, the Board finds that the Appellant has met its burden of establishing that the Sign was lawfully established prior to December 15, 1961 and has been in continuous use, without any two-year interruption since that date; and

WHEREAS, specifically, the Board finds the evidence submitted by the Appellant sufficient to establish the continuous use of the Sign on the upper portion of the Wall from 1992 through 2005, the only time period contested by DOB; and

WHEREAS, as to the evidence submitted by the Appellant to establish the continuous use of the Sign during this time period, the Board notes that the Appellant provided evidence in the form of photographs, leases, option agreements, letters, and affidavits, and that some combination of this evidence was provided for each year beginning from 1992 through 2005; and

WHEREAS, as to the credibility of the Appellant's June 1995 Photograph, the Board finds the Appellant's methodology for determining the date of the photograph compelling, in that it clearly was taken prior to 1996, and the presence of the sidewalk shed in front of the 21 Astor Place building, for which the Appellant found a permit was issued by DOB on March 13, 1995, indicates that it was likely taken in 1995; and

WHEREAS, the Board does not consider the fact that the Appellant originally presented the photograph at the Board's October 23, 2012 hearing as being taken in June 1993 to undermine the credibility of the photograph; and

WHEREAS, specifically, the Board notes that even if

the photograph was taken in June 1993, it still serves as relevant evidence of the continuity of the Sign, as it reflects that the same Tower Records sign that is shown in the 1992 photograph remained in place in 1993; and

WHEREAS, as to the 1995 DOB Photograph, the Board notes that it shows a faded sign on the upper portion of the Wall, similar to that shown in the 1997 photograph submitted by the Appellant; however, the Board does not find that these photographs necessarily contradict the Appellant's June 1995 Photograph; and

WHEREAS, as to the 1999/2000 Fetch-O-Matic Photograph, the Board finds the Mitrofanis Affidavit combined with the August 29, 2000 press release submitted by the Appellant to be sufficient evidence to establish that the photograph was taken in 1999 or 2000; and

WHEREAS, as to the September 10, 2001 DOB Photograph, the Board agrees with the Appellant that the dating system for the website flickr.com is not reliable, in that it does not conclusively reflect the date the photograph was actually taken; and

WHEREAS, the Board disagrees with DOB's contention that the September 10, 2001 DOB Photograph necessarily calls into question the authenticity of the Appellant's June 1995 Photograph because there is an identical advertising sign for "Rivet Up" on the lower portion of the Building in both photographs; rather, the Board finds that the presence of the "Rivet Up" sign in both photographs actually makes it more likely that the September 10, 2001 DOB Photograph was actually taken closer to the date of the Appellant's June 1995 Photograph, since the Board finds the Appellant's evidence that the latter photograph was taken prior to 1996 to be compelling and because there is no "Rivet Up" sign in the 1999/2000 Fetch-O-Matic Photograph; and

WHEREAS, the Board agrees with the Appellant that the fact that the Appellant's June 1995 Photograph and 1999/2000 Fetch-O-Matic Photograph are from private collections while the photographs submitted by DOB are publicly accessible does not automatically entitle the latter to more weight; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted sufficient evidence to establish that the Sign has been in continuous use from 1992 through 2005, without any two-year interruption; and

WHEREAS, the Board accepts DOB's determination that the painted advertising sign was lawfully established prior to June 28, 1940 as well as December 15, 1961 and has been in continuous use without any two-year interruption from 1961 through 1992 and from 2005 until the date the subject application was filed; and

WHEREAS, the Board notes that while the Appellant is requesting that the Board permit a 25'-0" by 40'-0" (1,000 sq. ft.) painted advertising sign on the upper portion of the Wall, the permitted size and location of the Sign is limited to the dimensions and location of the Hebrew National sign which existed on the site from 1960 through 1965; and

WHEREAS, while no evidence has been submitted as to the exact dimensions of the Hebrew National sign, the Board notes that if DOB determines that the Appellant's requested dimensions of 25'-0" by 40'-0" (1,000 sq. ft.) exceed the dimensions of the Hebrew National sign, the latter will be controlling; and

Therefore it is Resolved that this appeal, challenging a Final Determination issued on November 23, 2010, is granted.

Adopted by the Board of Standards and Appeals, December 11, 2012.

***The resolution has been amended. Corrected in Bulletin Nos. 1-2, Vol. 98, dated January 16, 2013.**

***CORRECTION**

This resolution adopted on October 16, 2012, under Calendar No. 168-11-BZ and printed in Volume 97, Bulletin Nos. 41-43, is hereby corrected to read as follows:

168-11-BZ
CEQR #12-BSA-037K
APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.
SUBJECT – Application October 27, 2011 – Variance (§72-21) to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a four-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area ratio, open space ratio, lot coverage, front yard, side yard, rear yard, height and setback, side and rear setback, front yard planting, special landscaping, and parking, contrary to ZR §§ 23-131, 23-141, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-633, 23-662, 24-11, 24-17, 24-351, 24-593, 25-31, 25-35, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561.
PREMISES AFFECTED – 2085 Ocean Parkway, L-shaped lot on the corner of Ocean Parkway and Avenue U, Block 7109, Lot 50 (tentative), Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 1, 2012, acting on Department of Buildings Application No. 320345710 reads, in pertinent part:

> Proposed community facility (Use Group A-3 house of worship) building in an R5 (OP Special District), R6A (OP Special District) and R5 (Subdistrict within OP Special District) does not comply with the following bulk regulations:
> 1. Proposed Floor Area Ratio (FAR) exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141, 24-11 and 24-17
> 2. Proposed Open Space Ratio (OSR) is less than minimum required pursuant to ZR Sections 113-11, 23-141, 24-11, 113-503
> 3. Proposed lot coverage exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141, 24-11, 24-17, 113-503, 23-131
> 4. Proposed front yard is less than front yard required pursuant to ZR Sections 113-12, 23-45, 23-451, 113-11, 24-351, 23-633
> 5. Proposed side yards are less than side yards required pursuant to ZR Sections 113-11, 23-464, 113-543 and 23-461
> 6. Proposed rear yard is less than rear yard required pursuant to ZR Sections 113-11, 23-471, 23-543, 113-544, 23-53
> 7. Proposed height and setback exceeds the minimum required pursuant to ZR Sections 113-11, 23-631, 24-593, 23-633
> 8. Proposed side and rear yard setbacks exceed the minimum required pursuant to ZR Sections 113-11 and 23-662
> 9. Proposed development violates front yard planting requirements as per ZR Sections 113-12, 23-45 and 23-451
> 10. Proposed development violates special landscaping regulations as per ZR 113-30
> 11. Proposed development provides less than required parking spaces as per ZR Sections 113-561, 25-31 and 25-35; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a four-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area ratio, open space ratio, lot coverage, front yard, side yard, rear yard, height and setback, side and rear setback, front yard planting, special landscaping, and parking, contrary to ZR §§23-131, 23-141, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-633, 23-662, 24-11, 24-17, 24-351, 24-593, 25-31, 25-35, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561; and

WHEREAS, a public hearing was held on this application on June 12, 2012, after due notice by publication in *The City Record*, with continued hearings on July 24, 2012 and August 21, 2012, and then to decision on October 16, 2012; and

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

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

WHEREAS, City Council Member Domenic Recchia provided testimony in support of the proposal; and

WHEREAS, a neighbor initially provided opposition to the proposal, but did not submit continued testimony; and

WHEREAS, this application is being brought on behalf of Congregation Bet Yaakob (the "Synagogue"), a non-profit religious entity which will occupy the proposed Edmond J. Safra Synagogue building; and

WHEREAS, the subject site is an L-shaped corner lot fronting Ocean Parkway and Avenue U, with frontages of approximately 50 feet along Ocean Parkway and 143 feet along Avenue U within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special

Ocean Parkway Subdistrict) zoning districts; and

WHEREAS, the subject site has a lot area of 8,840 sq. ft. with 6,500 sq. ft. in the R5 (Special Ocean Parkway District), 1,800 sq. ft. in the R6A (Special Ocean Parkway District), and 540 sq. ft. in the R5 (Special Ocean Parkway Subdistrict); and

WHEREAS, the subject site, which was formerly two separate lots – 48 and 50 – was occupied by two two-story homes, which were demolished in anticipation of construction at the site; and

WHEREAS, the applicant proposes the following parameters: four stories; a floor area of 20,361 sq. ft. (2.30 FAR) (a maximum community facility floor area of 14,335 sq. ft. and an aggregate between the R5 and R6A zoning districts of 1.62 FAR is permitted); a lot coverage of 79 percent (maximum permitted lot coverage ranges from 55 to 60 percent); an open space of 21 percent (the minimum required open space ranges from 40 to 45 percent); a maximum wall height of 60'-0" and a maximum total height of 62'-4" (the maximum permitted height ranges from 35'-0" (R5) to 50'-0" (R6A)); and no parking spaces (a minimum of 17 parking spaces are required); and

WHEREAS, as to yards, the applicant notes that the site is partially a corner lot and partially an interior lot, thus the yard requirements vary across the site; however, it will provide a front yard with the required depth of 30'-0" along Ocean Parkway but no front yard along Avenue U (a front yard with a depth of 10'-0" is required); a rear yard with a depth of 4'-0" on the corner portion (a rear yard with a depth of 8'-0" is required on the corner portion); the required rear yard with a depth of 30'-0" on the interior portion of the lot, but no front yard in the interior portion of the lot (a front yard with a depth of 10'-0" is required); and

WHEREAS, the proposal provides for the following uses: (1) a social hall and small kitchen at the cellar level; (2) the daily sanctuary and men's mikvah at the first floor; (3) the main sanctuary on the second floor; (4) additional worship area, including a worship gallery for female congregants at the third floor; and (5) a board room and two offices on the fourth floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the growing congregation currently of approximately 600 worshippers; (2) to provide a separate worship space for male and female congregants; (3) to provide sufficient separation of space so that multiple activities may occur simultaneously; and (4) to provide accessory space including offices and a social hall; and

WHEREAS, the applicant states that the as-of-right building would allow for a social hall of only 1,197 sq. ft. (to accommodate 80 people); a daily sanctuary of only 542 sq. ft. (to accommodate 37 people); and a main sanctuary of only 1,183 sq. ft. (to accommodate 95 people) – all of which are far too small to accommodate the Congregation; and

WHEREAS, further, the applicant asserts that the necessary women's balcony and men's mikvah could not be provided in an as-of-right scheme; and

WHEREAS, the applicant states that the height and setback waivers permit the double-height ceiling of the second floor main synagogue which is necessary to create a space for worship and respect and an adequate ceiling height for the third floor women's balcony; and

WHEREAS, the applicant states that the parking waiver is only related to the portion of the site within the R5 zoning district and that there is not a parking requirement for a house of worship under R6A zoning district regulations; and

WHEREAS, the applicant notes that approximately 95 percent of congregants live within walking distance of the site and must walk for reasons of religious observance; and

WHEREAS, the applicant states that 76 percent of the congregation lives within a three-quarter-mile radius of the site, which exceeds the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification for a locally-oriented house of worship; and

WHEREAS, the applicant states that it requests a waiver of the Special Ocean Parkway District's special landscaping requirements for the front yard along Ocean Parkway as the front yard is necessary for a ramp and the main entrance; and

WHEREAS, the applicant notes that the site will be landscaped with trees and shrubbery along Avenue U, where the proposed building has 113'-0" of frontage, as well as along Ocean Parkway; and

WHEREAS, the applicant states that the congregation has occupied a nearby rental space for the past three years, which accommodates only 275 seats and is far too small to accommodate the current membership of 600 adults; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to construct a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, space for religious counseling, and a multipurpose room for educational and social programming; and

WHEREAS, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; and

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

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, in addition to its programmatic needs, the applicant states that there are unique physical conditions of the site – including its L-shape; the narrow yet deep easternmost portion (formerly Lot 48); the location of multiple zoning

district and special district boundary lines within the site; and the high groundwater condition contribute to the hardship at the site; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the Board notes that certain of the site conditions contribute to the hardship associated with the site such as the irregularity of the long narrow easternmost portion; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit 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 states that that the proposed use is permitted in the subject zoning districts; and

WHEREAS, as to bulk, the applicant performed a study of buildings within approximately a ½-mile radius of the site, which reflects that there are 18 buildings that are taller, contain more floor area and/or have a higher FAR than the proposed building; and

WHEREAS, further, the applicant notes that DOB has approved plans for a six-story 20-unit apartment building with a height of 70'-0" for the site adjacent to the east at 623 Avenue U; and

WHEREAS, as to yards, the applicant notes that the side yard and front yard conditions were existing longstanding non-compliances with the historic residential use of the site; and

WHEREAS, specifically, the applicant notes that the homes had non-complying yard conditions, including that the home on Lot 50 was built to the front lot line along Avenue U and the home on Lot 48 only provided a front yard with a depth of 1'-11" on Avenue U and was built to the side lot line; and

WHEREAS, further, the applicant notes that although the yards do not meet the minimum yard requirements for a community facility, the proposal does reflect a front yard with a depth of 30'-0" along Ocean Parkway, a side yard with a width of 4'-0" adjacent to the neighboring site on Ocean Parkway, and a rear yard with a depth of 30'-0" is provided on former Lot 48; and

WHEREAS, as to the Special Ocean Parkway District's landscaping and front yard planting requirements, the applicant asserts that it will maintain landscaping and provide trees and shrubbery along Avenue U, where the Synagogue has 113'-0" of frontage, as well as plantings along Ocean Parkway; and

WHEREAS, as to parking, the applicant notes that the majority of congregants will walk to the site and that there is not any demand for parking; and

WHEREAS, further, as noted above, the applicant represents that 76 percent of congregants live within a three-quarter-mile radius of the site and thus are within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the Board notes that, based on the applicant's representation, this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship - but for the fact that a maximum of ten spaces can be waived in the subject R5 zoning district under ZR § 25-35; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, during the hearing process, the Board directed the applicant to review the design of the rear of the building to determine if it could be shortened and to explain the mechanical space needs; and

WHEREAS, in response, the project architect explained how each element of the building design is required; specifically, he explained that as much mechanical use as possible had been relocated to the mechanical mezzanine and that it would not be able to relocate additional use from the rear of the building to the roof of the building above the fourth floor; and

WHEREAS, accordingly, the Board finds that this action will neither 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 applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue could occur on the existing lot; and

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

WHEREAS, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed to meet its programmatic needs; and

WHEREAS, 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. 12BSA037K, dated May 31, 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 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, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a four-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area ratio, open space ratio, lot coverage, front yard, side yard, rear yard, height and setback, side and rear setback, front yard planting, special landscaping, and parking, contrary to ZR §§ 23-131, 23-141, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-633, 23-662, 24-11, 24-17, 24-351, 24-593, 25-31, 25-35, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561; *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 August 8, 2012" – (16) sheets; and *on further condition*:

THAT the building parameters will be: four stories; a maximum floor area of 20,361 sq. ft.; a maximum wall height of 60'-0" and total height of 62'-4"; a minimum open space of 1,866 sq. ft.; and a maximum lot coverage of 6,968 sq. ft. (79 percent), as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use will be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT the above conditions shall 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;

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

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

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, October 16, 2012.

***The resolution has been amended**. **Corrected in Bulletin Nos. 1-2, Vol. 98, dated January 16, 2013.**