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# BULLETIN

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

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### DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

**CHRISTOPHER COLLINS**, *Vice-Chair*

**DARA OTTLEY-BROWN**

**SUSAN M. HINKSON**

**EILEEN MONTANEZ**

*Commissioners*

**Jeffrey Mulligan**, *Executive Director*

**Becca Kelly**, *Counsel*

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<b>OFFICE -</b>	<b>250 Broadway, 29th Floor, New York, N.Y. 10007</b>
<b>HEARINGS HELD -</b>	<b>22 Reade Street, Spector Hall, New York, N.Y. 10007</b>
<b>BSA WEBPAGE @</b>	<b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b>

<b>TELEPHONE - (212) 386-0009</b>
<b>FAX - (646) 500-6271</b>

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Tuesday, June 4, 2013**

Morning Calendar .....528

**Affecting Calendar Numbers:**

551-37-BZ	233-02 Northern Boulevard, Queens
135-46-BZ	3802 Avenue U, Brooklyn
130-88-BZ	1007 Brooklyn Avenue, aka 3602 Snyder Avenue, Brooklyn
328-02-BZ	3 Park Avenue, Manhattan
93-08-BZ	112-12/24 Astoria Boulevard, Queens
608-70-BZ	351-361 Neptune Avenue, Brooklyn
240-01-BZ	110/23 Church Street, Manhattan
30-02-BZ	502 Park Avenue, Manhattan
27-05-BZ	91-11 Roosevelt Avenue, Queens
197-08-BZ	341-349 Troy Avenue, aka 1515 Carroll Street, Brooklyn
251-12-A	330 East 59 <sup>th</sup> Street, Manhattan
256-12-A	195 Havemeyer Street, Brooklyn
267-12-A	691 East 133 <sup>rd</sup> Street, Bronx
89-70-A	460 Thornycroft Avenue, Staten Island
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95-07-A	281 Oakland Street, Staten Island
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138-12-BZ	2051 East 19 <sup>th</sup> Street, Brooklyn
206-12-BZ	2373 East 70 <sup>th</sup> Street, Brooklyn
74-13-BZ	30/12 8 <sup>th</sup> Avenue, 252/66 West 26 <sup>th</sup> Street, Manhattan
35-11-BZ	226-10 Francis Lewis Boulevard, Queens
16-12-BZ	184 Nostrand Avenue, Brooklyn
43-12-BZ	25 Great Jones Street, Manhattan
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236-12-BZ	1487 Richmond Road, Staten Island
13-13-BZ & 14-13-BZ	98 & 96 DeGraw Street, Brooklyn
50-13-BZ	1082 East 24 <sup>th</sup> Street, Brooklyn
57-13-BZ	282 Beaumont Street, Brooklyn
62-13-BZ	2703 East Tremont Avenue, Bronx
63-13-BZ	11-11 44 <sup>th</sup> Drive, Queens
84-13-BZ	184 Kent Avenue, Brooklyn
85-13-BZ	250 Utica Avenue, Brooklyn

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# DOCKETS

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New Case Filed Up to June 4, 2013  
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## 102-95-BZVII

50 West 17th street, South side of West 17th Street between 5th Avenue and 6th Avenue, Block 818, Lot(s) 78, Borough of **Manhattan, Community Board: 5**. Extension of Term of a previously granted Special Permit (ZR73-244) for the continued operation of a UG12 Easting/Drinking Establishment (Splash) which expired on March 5, 2013 and an Amendment to modify the interior of the establishment. C6-4A zoning district. C8-4A district.  
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## 159-13-BZ

3791-3799 Broadway, Located on the west side of Broadway between 157th Street and 158th street., Block 2134, Lot(s) 180, Borough of **Manhattan, Community Board: 12**. Special Permit (§73-36) to permit the operation of a physical culture establishment within a portion of an existing building; Special Permit (§73-52) to permit the extension of the proposed PCE use into 25' feet of the residential portion of a zoning lot that is split between a C4-4 and R8 zoning district C4-4,R8 district.  
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## 160-13-BZ

1171-1175 East 28th Street, East side of East 28th Street between Avenue K and Avenue L, Block 7628, Lot(s) 16, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to the enlargement of a single home contrary to floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47). R2 zoning district. R2 district.  
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## 161-13-BZ

8 West 19th Street, South side of W. 19th Street, 160 ft. West of intersection of W. 19th st. and 5th avenue., Block 820, Lot(s) 7503, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture establishment within a portion of an existing building. C6-4A zoning district. C6-4A district.  
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## 162-13-BZ

120-140 Avenue of the Americas, sullivan street, Avenue of the Americas, Broome street, 100 feet south of Spring street. 10012, Block 490, Lot(s) 27,35, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit the construction of a residential and commercial building with 31 dwelling units ground floor retail and 11 parking spaces contrary to zoning regulations. M1-5B zoning district. M1-5B district.  
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## 163-13-BZ

133-10 39th Avenue, 39th Avenue, east of College Pt. Boulevard, Block 4973, Lot(s) 12, Borough of **Queens, Community Board: 7**. SPECIAL PERMIT-73-44: to permit the reduction of the allowed parking spaces contrary to Section 36-31 in a C4-2 district the alteration of the 2story and cellar Use Group 6 of professional offices also include a vertical and horizontal enlarged cellar third floor and a parking requirement category B1. C4-2 district.  
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## 164-13-A

307 West 79th Street, Northside of West 79th Street, between West End Avenue and Riverside Drive, Block 1244, Lot(s) 8, Borough of **Manhattan, Community Board: 7**. DETERMINATION: seeks reversal of NYC decision not to issue a Letter Of No Objection that would have stated that the use of New Class Law of MDL and Single Room Occupancy with permitted occupancy limited to a period of one week or more pursuant C/O No. 5310. district.  
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## 165-13-A

2437 Grand Course, East Fordham Road and East 184th Street., Block 3165, Lot(s) 34, Borough of **Bronx, Community Board: 2**. Appeal of DOB determination that the subject advertising sign is not entitled to non-conforming use status. C4-4 district.  
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## 166-13-A

945 Madison Avenue, Southeast intersection of Madison Avenue and East 75th Street., Block 1389, Lot(s) 50, Borough of **Manhattan, Community Board: 8**. DETERMINATION: Construction Code Determination by the Building Dept. regarding the interpretation of Building Code Sections 28-117, 28-102,4,3 and C2-116.0 in order to determine whether a public assembly permit is required for those portions of the art museum at the premises which were build pursuant to the 1938 Building Cede and which have not been altered since being built in 1966. C5-1/R8B district.  
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## 167-13-BZ

1614/26 86th Street and Bay 13 Street, Southwest corner of 86th Street and Bay 13 Street, Block 6363, Lot(s) 42, Borough of **Brooklyn, Community Board: 11**. Variance (§72-21) :to permit the enlargement of an existing one-story automobile sales establishment in a use group R5 district contrary to §22-10. R5 zoning district. R5 district.  
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# DOCKETS

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**168-13-BZ**

1323 East 26th Street, Block 7662, Lot(s) 39, Borough of **Brooklyn, Community Board: 14.** Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141(a); side yard (§23-461(a); less than the required rear yard; (§23-47) and perimeter wall height (§23-631. R3-2 zoning district. R-2 district.

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

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# CALENDAR

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**JUNE 18, 2013, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 18, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**SPECIAL ORDER CALENDAR**

**363-04-BZ**

APPLICANT – Herrick Feinstein, LLP; by Arthur Huh, for 6002 Fort Hamilton Parkway Partnership, owner; Michael Mendiovic, lessee.

SUBJECT – Application June 5, 2013 –Extension of Time to Complete Construction for a previously granted Variance (72-21) to convert an industrial building to commercial/residential use which expires on July 19, 2013. M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, West side of Fort Hamilton Parkway, between 60th Street and 61st Street, Block 5715, Lot 27, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**  
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**APPEALS CALENDAR**

**135-13-A thru 152-13-A**

APPLICANT – Eric Palatnik, PC, for Ovas Building Corp, owner.

SUBJECT – Applications May 10, 2013 – Proposed constructions of 18- two family dwellings not fronting on a legally mapped street contrary to General City Law Section 36. R3X (SSRD) zoning district.

PREMISES AFFECTED – 18, 22, 26, 30, 34, 38,42, 46, 50, 54, 58, 45, 39, 35, 31, 27, 23, 19, Serena Court, on Amboy Road, Block 6523, Lot 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 113, 102, 103, 105, 106, 107, 108, Borough of Staten Island.

**COMMUNITY BOARD #3SI**  
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**ZONING CALENDAR**

**259-12-BZ**

APPLICANT – Davidoff Hutcher & Citron LLP, for 5239 LLC, owner.

SUBJECT – Application August 29, 2012 – Variance (§72-21) to permit the development of a single-family house contrary to lot width requirement (§23-32). R1-1, NA-2 zoning district.

PREMISES AFFECTED – 5241 Independence Avenue, west side of Independence Avenue between West 252nd and 254th Streets, Block 5939, Lot 458, Borough of Bronx.

**COMMUNITY BOARD #8BX**  
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**5-13-BZ**

APPLICANT – Goldman Harris LLC, for Queens College Special Projects Fund, Inc., owners.

SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of an education center (Use Group 3A) in connection with an existing community facility contrary to lot coverage, front yard, side yard, side yard setback, and planting strips. R5 zoning district.

PREMISES AFFECTED – 34-47 107th Street, eastern side of 107th Street, midblock between 34th and 37th Avenues, Block 1749, Lot 66, 67, Borough of Queens.

**COMMUNITY BOARD #3Q**  
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**99-13-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mehran Equities Ltd., owner; Blink Steinway Street, Inc., lessee.

SUBJECT – Application April 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink*) within an existing cellar and two-story commercial building contrary to Section 32-10. C4-2A zoning district.

PREMISES AFFECTED – 32-27 Steinway Street, 200' south of intersection of Steinway and Broadway, Block 676, Lot 35, Borough of Queens.

**COMMUNITY BOARD #1Q**  
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**102-13-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for 28-30 Avenue A LLC, owner; TSI Avenue A LLC dba New York Sports Club, lessee.

SUBJECT – Application April 11, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment/health club (*New York Sports Club*) on the second through fifth floors of a five-story and basement commercial building, contrary to Section §32-31. C2-5 (R7A/R8B) zoning district.

PREMISES AFFECTED – 28-30 Avenue A, East side of Avenue A, 79.5" north of East 2nd Street, Block 398, Lot 2, Borough of Manhattan.

**COMMUNITY BOARD #3M**  
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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, JUNE 4, 2013  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**551-37-BZ**

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

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

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

**COMMUNITY BOARD #11Q**

**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 term for the continued use of an automobile service station, which expired on July 15, 2012; and

WHEREAS, a public hearing was held on this application on January 15, 2013, after due notice by publication in *The City Record*, with continued hearings on February 12, 2013, March 19, 2013, and April 16, 2013, and then to decision on June 4, 2013; and

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

WHEREAS, Community Board 11, Queens, recommends a conditional approval of this application; the conditions are (1) that the term be limited to five years; (2) the plans reflect the shed and gate conditions; (3) the site be better maintained; and (4) the fence be repaired; and

WHEREAS, the site is located on the south side of Northern Boulevard between 234<sup>th</sup> Street and 233<sup>rd</sup> Street, within an R1-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 12, 1938 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on May 6, 2003, the Board granted an approval to extend the term for ten years from July 14, 2002 to expire on July 15, 2012; and

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

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) the poor site maintenance, (2) the damaged fence, and (3) excessive signage; and

WHEREAS, in response, the applicant provided photographs reflecting that (1) the site has been cleaned up, (2) the damaged fence at the rear has been repaired, and (3) the excess signage removed; and

WHEREAS, the applicant also revised its plans to reflect the metal shed onsite and the gate condition; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated April 12, 1938, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the prior expiration, to expire on July 15, 2022; *on condition* that all use and operations shall substantially conform drawings filed with this application marked ‘Received March 5, 2013’-(3) sheets; and *on further condition*:

THAT the term of the grant will expire on July 15, 2022;

THAT the site will be maintained free of debris and graffiti;

THAT signage will comply with C1 district regulations;

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

THAT a new certificate of occupancy will be obtained by November 21, 2013;

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.” (DOB Application No. 530/61)

Adopted by the Board of Standards and Appeals, June 4, 2013.

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## 135-46-BZ

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

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

PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38<sup>th</sup> Street, between Ryder Avenue and East 38<sup>th</sup> Street, Block 8555, Lot 37, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

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

## THE VOTE TO GRANT –

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

Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of an automobile repair shop, which expired on July 29, 2012, and an amendment to permit hand-washing of automobiles; and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, with continued hearings on January 29, 2013 and May 7, 2013, and then to decision on June 4, 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 18, Brooklyn, recommends a conditional approval of this application; the conditions are (1) the property be maintained with screened fencing and landscaping on both sides of the residential streets with no curb cuts on East 38th Street and Ryder Street; (2) lighting and signage only face Avenue U and be shielded so as not to interfere with the residential side streets; (3) no parking or storage of trucks and/or vehicles on the property; (4) hours of operation be limited to 9:00 a.m. to 6:00 p.m. for washing and auto repair work; (5) no mechanical equipment or venting for the operation of the hand car wash; and (6) all sewers and chemicals meet State DEC and NYC DEP requirements; and

WHEREAS, the subject site spans the full length of the south side of Avenue U between East 38th Street and Ryder Street, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since July 16, 1946, when under the subject calendar number, it granted a variance for a change of use, to allow the erection of a new building on an existing gasoline service station and parking for more than five (5) motor vehicles, minor repairs, brake testing and wheel alignment; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, most recently, on February 15, 2005, the Board granted an approval to extend the term for ten years from January 29, 2002 to expire on January 29, 2012; and

WHEREAS, the applicant now requests an additional extension of the term and seeks to modify the grant to allow hand-washing of automobiles on a portion of the site; and

WHEREAS, the applicant notes that a portion of a service bay will be eliminated to accommodate the hand-washing operation and that curb cuts on Ryder Street and 38th Street will be eliminated in connection with the renovation; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board directed the applicant to address the following concerns: (1) the apparent inactivity of the gasoline sales; (2) the presence of storage containers; and (3) the operational details of the hand-washing operation; and

WHEREAS, in response, the applicant explained that gasoline sales would resume once a supplier is found and pumps are reinstalled and that the storage containers were necessary for the cleanup and renovation of the site; and

WHEREAS, as to the operational details of the proposed hand-washing use, the applicant explained that it would be non-automated and would include hand-washing of automobiles with a hose, and hand-detailing and waxing; the applicant also represented that although the wash would be available to patrons Monday through Saturday from 7:00 a.m. to 7:00 p.m., the washing would be clearly incidental the principal use, in that only five to six cars per day are anticipated; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 16, 1946, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the prior expiration, to expire on January 29, 2022, and to allow for the addition of hand-washing of automobiles; *on condition* that all use and operations shall substantially conform drawings filed with this application marked ‘Received January 17, 2013’-(3) sheets; and *on further condition*:

THAT the term of the grant will expire on January 29, 2022;

THAT all lighting be directed away from adjacent residential uses;

THAT there will be no parking or storage of vehicles other than those awaiting service;

THAT the site will be maintained free of debris and graffiti;

THAT signage will comply with C2-2 district regulations;

THAT the above conditions will be listed on the

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certificate of occupancy;

THAT a new certificate of occupancy will be obtained by December 4, 2013;

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.”

(DOB Application No. 320429764)

Adopted by the Board of Standards and Appeals, June 4, 2013.

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## 130-88-BZ

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

SUBJECT – Application August 13, 2012 – Extension of Term of approved Special Permit (§73-211) for the continued operation of UG 16B gasoline service station (*Gulf*) which expired on January 24, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on October 12, 2003; Waiver of the Rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 1007 Brooklyn Avenue, aka 3602 Snyder Avenue, southeast corner of the intersection formed by Snyder and Brooklyn Avenues, Block 4907, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #17BK

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

## THE VOTE TO GRANT –

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

Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the term of a special permit for an automotive repair and accessory convenience store, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in *The City Record*, with continued hearings on March 5, 2013, April 16, 2013 and May 7, 2013, and then to decision on June 4, 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 17, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Brooklyn Avenue and Snyder Avenue, within an R4 (C2-2) zoning district; and

WHEREAS, the site is occupied by a one-story building that includes an automotive repair facility and an accessory convenience store; the site also contains five self-service gasoline dispensers beneath a steel canopy, an attendant’s kiosk, two curb cuts along Brooklyn Avenue and two curb cuts along Snyder Avenue; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 24, 1989, when, under the subject calendar number, the Board granted a special permit under ZR § 73-211 to permit the redevelopment of the existing automotive service station; the applicant represents that the development included replacement of fuel tanks and gasoline dispensers and the construction of a new service building; and

WHEREAS, on January 24, 1989, under BSA Cal. No. 131-88-A, the Board granted an appeal that permitted the use of self-service gasoline pumps; and

WHEREAS, on October 12, 1999, under the subject calendar, the Board extended the term of the special permit for ten years, expiring on January 24, 2009; and

WHEREAS, on May 14, 2002, under the subject calendar, the Board granted an extension of time to obtain a certificate of occupancy; pursuant to the grant, the certificate of occupancy was required to be obtained by October 12, 2003; however, a final certificate of occupancy was never obtained; and

WHEREAS, accordingly, the applicant seeks an extension of the term and an extension of time to obtain the certificate of occupancy; and

WHEREAS, as to the time period to obtain the certificate of occupancy, the applicant states that there are open Department of Buildings (“DOB”) violations that have delayed the issuance of the certificate of occupancy and that it will take approximately one year to remove the conditions that gave rise to the violations; and

WHEREAS, at hearing, the Board raised concerns regarding: (1) the site’s compliance with the applicable sign regulations; (2) the inadequate landscaping; (3) the presence of multiple vacuum stations on the site; and (4) whether street trees were provided; and

WHEREAS, in response, the applicant submitted: (1) a revised sign analysis and photographs demonstrating compliance with the sign regulations; (2) photographs depicting the installation of the planters and the presence of street trees; and (3) a revised statement indicating that three vacuums would be removed and the other one would be relocated and only used by patrons; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolutions, dated January 24, 1989, so that as amended this portion of the resolutions shall read: “to extend the term for ten years to expire January 24, 2019 and to grant an extension of time to obtain a certificate of occupancy to

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June 4, 2014, *on condition* that all use and operations shall substantially conform to drawings filed with this application marked "Received February 20, 2013"-(5) sheets; and *on further condition*:

THAT the term of the grant shall expire on January 29, 2019;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by June 4, 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." (DOB Application No. 579/87)

Adopted by the Board of Standards and Appeals, June 4, 2013.

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## 328-02-BZ

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

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

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

## COMMUNITY BOARD # 5M

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

## THE VOTE TO GRANT –

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

## THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a Physical Culture Establishment ("PCE"), which expired on January 1, 2013; and

WHEREAS, a public hearing was held on this application on May 7, 2013, after due notice by publication in *The City Record*, and then to decision on June 4, 2013; and

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

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

WHEREAS, the subject site spans the full length of the east side of Park Avenue between East 33rd Street and East

34th Street, partially within a C5-3 zoning district, partially within a C1-9 zoning district and partially within a C6-1 zoning district; and

WHEREAS, the site is occupied by a 42-story mixed use community facility and commercial building; and

WHEREAS, the PCE is located on the first floor and first floor mezzanine of the building; and

WHEREAS, on March 25, 2003, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36 to permit the legalization of the enlargement of an existing physical culture establishment, located on portions of the first floor and mezzanine level of a forty-two story school and commercial building; and

WHEREAS, the term of the original grant expired on January 1, 2013; and

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

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

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

WHEREAS, at hearing, the Board directed the applicant to: (1) revise its sign analysis to reflect the correct amount of signage permitted at the site; and (2) add a note to the plans indicating that an egress path with a 4'-0" width would be provided on all floors of the PCE: and

WHEREAS, in response, the applicant submitted a revised sign analysis and an amended plan including the egress path note; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, dated March 25, 2003, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years until January 1, 2023; *on condition* that the use and operation of the PCE shall substantially conform to BSA-approved plans, *on condition* that all work and site conditions shall comply with drawings marked "Received January 30, 2013"-(2) sheets and "May 20, 2013"—(2) sheets; and *on further condition*:

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

THAT this grant will be limited to a term of ten years, to expire on January 1, 2023;

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

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

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

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

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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. 103271950)

Adopted by the Board of Standards and Appeals, June 4, 2013.

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## 93-08-BZ

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

SUBJECT – Application February 5, 2013 – Extension of Time to Complete Construction of a Variance (§72-21) for the construction of a six-story transient hotel (UG 5) which expired on January 13, 2013; Amendment to construct a sub-cellar. R6A zoning district.

PREMISES AFFECTED – 112-12/24 Astoria Boulevard, southwest corner of intersection of Astoria Boulevard and 112<sup>th</sup> Place, Block 1706, Lot 5, 9, 11, Borough of Queens.

### COMMUNITY BOARD #3Q

**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 an extension of time to complete construction and obtain a certificate of occupancy in accordance with a variance, which expired on January 13, 2013, and an amendment to allow the construction of a sub-cellar level; and

WHEREAS, a public hearing was held on this application on May 21, 2013, after due notice by publication in *The City Record*, and then to decision on June 4, 2013; and

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

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

WHEREAS, the subject site is located on the southwest corner of Astoria Boulevard and 112th Place, within an R6A zoning district; and

WHEREAS, the site is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 13, 2009 when, under the subject calendar number, the Board granted a variance to permit the construction of a six-story and cellar hotel building, contrary to ZR § 22-00; and

WHEREAS, as of January 13, 2013, substantial construction had not been completed; accordingly, on that date, per ZR § 72-23, the variance lapsed; and

WHEREAS, the applicant represents that additional time is necessary to complete its environmental review and

remediation at the site; such measures are required because of a 2008 oil spill; and

WHEREAS, as to the proposed modification to the variance, the applicant seeks to create a sub-cellar below the cellar to accommodate accessory off-street parking for 28 automobiles, as well as an accessory gym and accessory laundry; and

WHEREAS, the applicant states that under the original grant, 14 parking spaces were provided at grade and 17 parking spaces were provided at the cellar level, for a total of 31 parking spaces; in order to provide 31 parking spaces under the proposed amendment, the applicant seeks to locate 3 parking spaces at grade to supplement the 28 parking spaces provided in the sub-cellar; and

WHEREAS, the applicant states that, according to the plans approved in connection with the original grant, it must excavate to the level of the sub-cellar in order to remove underground storage tanks; whereas, the plans for the original grant provided that the soil would be refilled, under the proposed amended plans a sub-cellar would be constructed; and

WHEREAS, the applicant represents that the inclusion of a sub-cellar will remove parking spaces from the street level, thereby reducing traffic and noise and increasing the floor area available for conference rooms and other amenities; and

WHEREAS, the applicant states that the proposed amendment allows it to defray the costs of the environmental remediation, which are significantly higher than was anticipated at the time of the original grant; and

WHEREAS, the applicant notes that neither the total floor area of the building nor the number of guest rooms is being altered by the proposed amendment; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 13, 2009, so that as amended this portion of the resolution shall read: “to extend the time to complete construction for a period of four years from June 4, 2013, to expire on June 4, 2017, and to permit the construction of a sub-cellar; on condition that all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘Received June 4, 2013- fourteen (14) sheets; and on further condition:

THAT construction will be completed and a certificate of occupancy obtained by June 4, 2017;

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

THAT the number of guest rooms, floor area, FAR, and accessory off-street parking spaces for the proposed building will be in accordance with the terms of the grant;

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

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DOB/other jurisdiction objection(s) only; and

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

Adopted by the Board of Standards and Appeals, June 4, 2013.

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## 608-70-BZII

APPLICANT – Walter T. Gorman, P.E., P.C., for Neptune Avenue Property LLC, owner. Dunkin Donuts Corporate Office, lessee.

SUBJECT – Application January 22, 2013 – Amendment (§11-412) to convert the previously granted UG16B automotive service station to a UG6 eating and drinking establishment (*Dunkin' Donuts*). R6 zoning district.

PREMISES AFFECTED – 351-361 Neptune Avenue, north west corner Brighton 3rd Street, Block 7260, Lot 101, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

**ACTION OF THE BOARD** – Laid over to July 16, 2013, at 10 A.M., for continued hearing.

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## 240-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Lionshead 110 Development LLC, owner; Lionshead 110 Development LLC, lessee.

SUBJECT – Application December 11, 2012 – Extension of term of a Special Permit (§73-36) for a physical culture establishment, which expired on December 17, 2012. C6-4(LM) zoning district.

PREMISES AFFECTED – 110/23 Church Street, southeast corner of intersection of Church Street and Murray Street, Block 126, Lot 27, Borough of Manhattan.

### COMMUNITY BOARD #1M

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 July 9, 2013, at 10 A.M., for decision, hearing closed.

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## 30-02-BZ

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

SUBJECT – Application January 28, 2013 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (*New York City Sports Club*) which expired on July 23, 2012; Amendment to permit the modification of approved

hours and signage; Waiver of the Rules. C5-3, C5-2.5(Mid zoning district.

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

### COMMUNITY BOARD # 8M

THE VOTE TO CLOSE HEARING –

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

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

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## 27-05-BZ

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

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

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

### COMMUNITY BOARD #3Q

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

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## 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

THE VOTE TO CLOSE HEARING –

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

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

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## APPEALS CALENDAR

### 251-12-A

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

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

PREMISES AFFECTED – 330 East 59<sup>th</sup> Street, west of southwest corner of 1st Avenue and East 59<sup>th</sup> Street, Block 1351, Lot 36, Borough of Manhattan.

### COMMUNITY BOARD # 6M

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

**THE VOTE TO GRANT** –

Affirmative: .....0

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

**THE RESOLUTION** –

WHEREAS, the 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 July 17, 2012, denying registration for a sign at the subject premises (the “Final Determination”), which reads, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate as there was no indication that a permit was issued in connection with [the] permit receipt submitted. 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 March 19, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 7, 2013 and then to decision on June 4, 2013; and

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

WHEREAS, the subject premises (“the Premises”) is located on the south side of East 59th Street between First Avenue and Second Avenue, in an R8 (C2-5) zoning district; and

WHEREAS, the Premises is occupied by an eight-story commercial building; on the west wall of the building is an advertising sign (“the Sign”); and

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

WHEREAS, the Appellant states that the Sign is a

rectangular advertising with a surface area of 600 sq. ft. and located within 200 feet and within view of an approach to the Ed Koch-Queensborough Bridge, which is an arterial highway pursuant to Appendix H of the Zoning Resolution; and

WHEREAS, DOB states that the Premises has been located within an R8 (C2-5) zoning district since the adoption of the Zoning Resolution on December 15, 1961; and

WHEREAS, on March 6, 1981, DOB issued a permit in connection with application BN 4960/81 “to legalize non-illuminated sign painted on wall as advertising sign, 30’ x 20’ = 600 sq. ft.” (the “1981 Permit”); and

WHEREAS, on June 5, 2000, DOB issued a permit in connection with Application No. 102658713 to “install existing non-conforming non-illuminated advertising wall sign, changeable copy permitted, within 200’-0” and the view of the approach to the 59th Street Bridge” (the “2000 Permit”); included with the permit application is a January 10, 2000 Reconsideration approving the sign as non-conforming (“the Reconsideration”); and

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

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

### REGISTRATION REQUIREMENT

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

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

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

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

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

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

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

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

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

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

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

## REGISTRATION PROCESS

WHEREAS, on a date uncertain, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching a copy of the 1981 Permit as evidence of establishment of the Sign; and

WHEREAS, on March 8, 2012, DOB issued a Notice of Sign Registration Deficiency, stating that “[DOB is] unable to accept the sign for registration at this time (due to your) failure to provide proof of legal establishment”; and

WHEREAS, by emails dated March 22, 2012 and March 28, 2012, the Appellant submitted a response to DOB, asserting that the Sign was legally established by the 1981 Permit; and

WHEREAS, DOB determined that March 22, 2012 and March 28, 2012 emails lacked sufficient evidence of the Sign’s establishment, and on July 17, 2012, issued the Final Determination denying registration; and

## RELEVANT STATUTORY PROVISIONS

1916 Zoning Resolution § 1(q)

A “business sign” is a sign which directs attention to a business or profession conducted upon the premises. An “advertising sign” is a sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered

elsewhere than upon the premises.

1916 Zoning Resolution § 21-B

Additional Advertising Sign Restrictions. No advertising sign shall hereafter be erected, placed or painted, nor shall any existing advertising sign be structurally altered, in any use district within 200 feet of an arterial highway shown as a “principal route”, “parkway” or “toll crossing” on the “Master Plan of Arterial Highways and Major Streets,” provided such arterial highway has been designated by the City planning Commission as an arterial highway to which the provisions of this section shall apply, or within 200 feet of a public park of one-half acre or more in area, if such advertising sign is within view of such arterial highway or park; and

1916 Zoning Resolution Designation of Arterial Highways to

Which Section 21-B Shall Apply

Principal Routes—

Queensboro Bridge and Approaches

\* \* \*

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; 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

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its non-conforming status, pursuant to section 49-16 of this chapter.

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RCNY § 49-16 – Non-conforming Signs

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

## THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because: (1) the Sign was established as an advertising sign prior to June 28, 1940 and may therefore be maintained as a legal non-conforming advertising sign; and (2) equitable estoppel prevents DOB from taking enforcement action against the Sign; and

WHEREAS, the Appellant contends that that the Sign was established prior to June 28, 1940; in support of this contention, the Appellant has submitted two historical photographs from 1912 and 1942 of the Sign with the message "Wallach's Superior Laundry"; and

WHEREAS, in addition, the Appellant asserts that the 1981 Permit, the 2000 Permit, a 1970 lease, and an affidavit from the managing agent of the net lessee of the building at the Premises indicating that the Sign has been in existence since 1959, confirm the Sign's establishment and status as a non-conforming use; and

WHEREAS, the Appellant states that the 2000 Permit encompasses the "explicit approval" of the legal status of the Sign by the borough commissioner; and

WHEREAS, the Appellant asserts that the Board previously found a reconsideration to be sufficient evidence of establishment in BSA Cal. No. 95-12-A; and

WHEREAS, accordingly, the Appellant states that there is sufficient evidence to support the lawful establishment of the Sign; and

WHEREAS, the Appellant asserts that it has relied on the 2000 Permit and the Reconsideration for several years and made substantial investments relative to the continued operation of the Sign; and

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

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

and may be invoked as a rare exception; and

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

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

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

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

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

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

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

## DOB'S POSITION

WHEREAS, DOB asserts that the Appellant has not submitted sufficient evidence to demonstrate that an advertising sign was established at the Premises in that: (1) the photographic evidence submitted by the Appellant demonstrates establishment of a business (accessory) sign rather than an advertising sign; and (2) the Reconsideration issued in connection with the 2000 Permit cannot be relied upon as evidence of the establishment of a non-conforming advertising sign before June 28, 1940; and

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WHEREAS, DOB states that in order to demonstrate the lawful establishment of an advertising sign at the Premises, the Appellant must provide proof of the existence of an advertising sign prior to June 28, 1940, the date that the 1916 Zoning Resolution was amended to prohibit advertising signs within 200 feet of arterial highways; and

WHEREAS, DOB contends that the Appellant's photographs from 1912 and 1940 depict a "business sign" pursuant to 1916 ZR § 1(q); to support this contention, DOB has submitted excerpts from advertisements from 1907, 1909, 1912, 1913-1914 and 1918-1919 showing that the message on the sign, "Wallach's Superior Laundry," was a service offered at 330 East 59th Street, which is the Premises; DOB notes that a "business sign" under the 1916 Zoning Resolution is equivalent to an "accessory" sign under the 1961 Zoning Resolution; and

WHEREAS, consequently, DOB asserts that there is insufficient evidence of the establishment of an advertising sign at the Premises prior to June 28, 1940; and

WHEREAS, DOB also contends that to the extent that DOB issued the 1981 Permit and 2000 Permit, it did so contrary to the Zoning Resolution; and

WHEREAS, as to the Reconsideration, DOB asserts that it was issued in error; specifically, DOB asserts that the evidence reviewed by the borough commissioner and mentioned in the Reconsideration—a 1969 Lease, the 1981 Permit and a photo—demonstrates that he was unaware that the relevant date for the establishment of a non-conforming advertising sign at the Premises is June 28, 1940; and

WHEREAS, DOB notes that the Reconsideration in the instant matter is distinguishable from the reconsideration at issue in BSA Cal. No. 95-12-A; and

WHEREAS, DOB states that in BSA Cal. No. 95-12-A, the appellant argued, and the Board accepted, that a 1999 Reconsideration issued by the Manhattan Borough Commissioner reflected the DOB's acknowledgement that the use of advertising signs at the subject premises had been established prior to November 1, 1979; however, in that case, the Appellant only needed to provide evidence that an advertising sign was erected prior to November 1, 1979 in order to gain non-conforming status under ZR § 42-55, and the 1999 Reconsideration specifically cited to an alleged advertising sign lease dated May 24, 1978 (a year and a half prior to the relevant date the sign needed to be established in order for the sign to obtain non-conforming use status); and

WHEREAS, DOB states that, in contrast, the 2000 Reconsideration does not cite to nor indicate in any way that the borough commissioner reviewed *any* evidence prior to or even within two and a half decades of June 28, 1940, the relevant date that the Sign must have been erected in order for the Sign to have lawful non-conforming status; accordingly, DOB contends that the Reconsideration was erroneous and cannot be the basis for determining lawful establishment of the Sign as non-conforming; and

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

## CONCLUSION

WHEREAS, the Board finds that: (1) DOB properly denied the Sign registration because the Appellant has not met its burden of demonstrating that the Sign was established prior to June 28, 1940 as an advertising sign; and (2) DOB is not equitably estopped from correcting its erroneous issuance of the 1981 Permit, the Reconsideration, and the 2000 Permit; and

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

WHEREAS, the Board agrees with DOB that the 1912 photograph submitted by the Appellant depicts a business (accessory) sign rather than an advertising sign; the Board notes that the Appellant's 1942 photograph is indecipherable; and

WHEREAS, the Board also agrees with DOB that the Reconsideration in this case is distinguishable from the reconsideration at issue in BSA Cal. No. 95-12-A, in that it is clear from the Reconsideration that it did not take into account evidence of establishment from the relevant date; as such, the Board finds that the Reconsideration was erroneous and unreliable and that the 2000 Permit should not have been issued; and

WHEREAS, thus, the Board finds that the Appellant's reliance on the 2000 Permit as evidence of the establishment of an advertising sign is misplaced; and

WHEREAS, as to the balance of the Appellant's evidence, which comprises the affidavit, 1981 Permit and the 1970 Lease, neither individually, nor in the aggregate, do they provide a sufficient basis for the Board to conclude that an advertising sign was established at the Premises prior to June 28, 1940; and

WHEREAS, the Board notes that even if it were to conclude that the Sign was established as a non-conforming advertising sign prior to June 28, 1940, there is insufficient evidence in the record to demonstrate the requisite continuous use set forth in ZR § 52-61; and

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

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

WHEREAS, the Board notes that the Appellant, by its own admission, has enjoyed approximately 50 years' worth of revenue from an advertising sign that has never been permitted by the Zoning Resolution at the Premises; and

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

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Sign.

Therefore it is Resolved that this appeal, challenging a Final Determination issued on July 17, 2012, is denied.

Adopted by the Board of Standards and Appeals, June 4, 2013.

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## 256-12-A

APPLICANT – Davidoff Hatcher & Citron LLP, City Outdoor.

OWNER OF PREMISES: 195 Havemeyer Corporation.

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

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

### COMMUNITY BOARD #1BK

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

**THE VOTE TO GRANT** –

Affirmative: .....0

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

**THE RESOLUTION** –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated July 30, 2012, denying registration for a sign at the subject premises (the “Final Determination”), which reads, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 21, 2013 and then to decision on June 4, 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 premises (“the Premises”) is located on the southeast corner of the intersection of Havemeyer Street, Borinquen Place and South Fourth Street, in a C4-3 zoning district; and

WHEREAS, the Premises is occupied by a three-story commercial building; two advertising signs are located on the roof of the building, one facing east (“the East Sign”)

and one facing west (“the West Sign”); DOB accepted the registration application for the West Sign based on a 1940 tax photograph of the sign, but rejected the application for the East Sign; and

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

WHEREAS, the Appellant states that the East Sign is a rectangular advertising sign with a surface area of 672 sq. ft. and located within 900 feet and within view of the Brooklyn-Queens Expressway (the “BQE”); DOB states that the Sign is located within 200 feet of the BQE; and

WHEREAS, the Premises has been located within a C4-3 zoning district since the adoption of the Zoning Resolution on December 15, 1961; under the 1916 Zoning Resolution, the premises was located within a Business Use district; and

WHEREAS, on April 29, 1915, DOB issued a sign structure maintenance permit (Certificate of Registration No. 1,578) for the Premises (the “1915 Permit”); and

WHEREAS, on December 4, 1917, DOB issued a sign structure maintenance permit (Certificate of Registration No. 2,987) for the Premises (the “1917 Permit”); and

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

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

### REGISTRATION REQUIREMENT

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

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

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

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

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

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

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

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

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

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

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

## REGISTRATION PROCESS

WHEREAS, on a date uncertain, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted a Sign Registration Application for the East Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching a copies of the 1915 Permit and 1917 Permit as evidence of establishment of the East Sign; and

WHEREAS, on March 8, 2012, DOB issued a Notice of Sign Registration Deficiency, stating that “[DOB is] unable to accept the sign for registration at this time (due to your) failure to provide proof of legal establishment”; and

WHEREAS, by letter dated May 22, 2012, the Appellant submitted a response to DOB, including historical leases and photographs and asserting that the East Sign was legally established; and

WHEREAS, DOB determined that the May 22, 2012 submission lacked sufficient evidence of the East Sign’s establishment, and on July 30, 2012, issued the Final Determination denying registration; and

## RELEVANT STATUTORY PROVISIONS

1916 Zoning Resolution § 4(a)

In a business district no building or premises shall be used, and no building shall erected which is arranged, intended or designed to be used, for any of the following specified trades, industries or uses:

(49) business and advertising signs

\* \* \*

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; and

\* \* \*

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

General Provisions

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

\* \* \*

ZR § 52-61 *Discontinuance*

General Provisions

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

\* \* \*

Building Code § 28-502.4 – Reporting Requirement

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

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

\* \* \*

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

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

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RCNY § 49-16 – Non-conforming Signs

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

## THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because: (1) the East Sign was established as an advertising sign prior to June 28, 1940 and may therefore be maintained as a legal non-conforming advertising sign; and (2) equitable estoppel prevents DOB from taking enforcement action against the East Sign; and

WHEREAS, the Appellant contends that the East Sign was established prior to June 28, 1940; in support of this contention, the Appellant has submitted the 1915 Permit and the 1917 Permit and two affidavits as proof of the establishment of the East Sign; and

WHEREAS, in addition, the Appellant asserts that a 1962 photograph, a 10-year lease that commenced in 1965, a two-year lease that commenced in 1975, a six-year lease that commenced in 1977, a 1982 photograph, a six-year lease that commenced in 1983, a six-year lease that commenced in 1989, a six-year lease that commenced in 1995, a four-year lease that commenced in 2001, a one-year lease that commenced in 2005, and a 10-year lease that commenced in 2006, confirm the Sign's continuous use and legal status as a non-conforming use; and

WHEREAS, accordingly, the Appellant states that there is sufficient evidence to support the non-conforming use status of the East Sign; and

WHEREAS, the Appellant asserts that it has relied on DOB's tacit approval of the East Sign for several years and made substantial investments relative to the continued operation of the East Sign; and

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

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

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

WHEREAS, the Appellant notes that in DeMasco, the

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

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

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

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

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

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

## DOB'S POSITION

WHEREAS, DOB asserts that: (1) the Appellant has not submitted sufficient evidence to demonstrate that the East Sign was established as an advertising sign at the Premises prior to June 28, 1940; and (2) even if the Board were to find that the East Sign was established, there is compelling evidence that the East Sign advertising use was discontinued between May 13, 2009 and April 7, 2012, and the use must therefore terminate pursuant to ZR § 52-61; and

WHEREAS, DOB states that in order to demonstrate the lawful establishment of an advertising sign at the Premises, the Appellant must provide proof of the existence of an advertising sign prior to June 28, 1940, the date that the 1916 Zoning Resolution was amended to prohibit advertising signs within Business Use districts; and

WHEREAS, DOB notes that on June 28, 1940, the Premises was not within 200 feet of the BQE, because that arterial highway did not open until 1950; and

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WHEREAS, DOB contends that the Appellant's evidence, which consists of the 1915 and 1917 permits and the two affidavits, is not sufficient under Rule 49 to demonstrate that the East Sign established as an advertising sign prior to June 28, 1940; and

WHEREAS, DOB states that Rule 49 indicates that proof that an advertising sign "was erected, but that does not establish that it was advertising, will not be sufficient;" and

WHEREAS, DOB notes that the Appellant does not state the date that the advertising sign was installed, but indicates instead that the East Sign's existence as an advertising sign is documented by the 1915 and 1917 permits; and

WHEREAS, DOB asserts that the only decipherable word on the 1915 Permit is "Havemeyer" and the only decipherable words on the 1917 Permit are "SE corner Havemeyer St & South 4th Street"; and

WHEREAS, DOB contends that because there is proof that the West Sign existed at the Premises prior to June 28, 1940 (as discussed above, DOB accepted the registration application for the West Sign), it is reasonable to conclude that the maintenance permits were issued to maintain the West Sign structure rather than the East Sign structure; and

WHEREAS, DOB also states that two 1940 tax photographs from the Municipal Archives demonstrate that the East Sign was not established; specifically, DOB asserts that in the photographs, the supporting scaffold structure behind the West Sign is visible and no East Sign can be seen in the location where it is installed today; and

WHEREAS, finally, DOB states that the Appellant's two affidavits are submitted without supporting documentation and therefore, per Rule 49, cannot be relied upon to demonstrate that the East Sign has existed continuously since 1940; and

WHEREAS, consequently, DOB asserts that there is insufficient evidence of the establishment of an advertising sign at the Premises prior to June 28, 1940; and

WHEREAS, DOB contends that even if the Board were to find that the East Sign was established, there is uncontroverted evidence that the East Sign was discontinued between May 13, 2009 and April 7, 2012, and the use must therefore terminate, per ZR § 52-61; and

WHEREAS, specifically, DOB has submitted photographs obtained from Pictometry (an online aerial oblique imaging and mapping service), which depict the East Sign with no copy in 2009, 2010 and 2012; and

WHEREAS, to counter these photographs, the Appellant submitted photographs, which DOB describes as "undated photographs of the West Sign, which are not relevant, and undated photographs of the East Sign, which are completely black with no message visible"; and

WHEREAS, DOB also notes that the lease that the Appellant submitted as evidence of the existence of the East Sign from 2009-2012 is ambiguous, in that it does not specify whether it is for the West Sign (which, again, DOB accepted as non-conforming) or the East Sign (which DOB asserts never became non-conforming), or both; and

WHEREAS, further, DOB states that even if the lease did authorize the Appellant to maintain the East Sign at the Premises, there is no evidence to show that the right under the lease was exercised; and

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

## CONCLUSION

WHEREAS, the Board finds that: (1) DOB properly denied the East Sign registration because the Appellant has not met its burden of demonstrating that the East Sign was established prior June 28, 1940 as an advertising sign; and (2) DOB is not equitably estopped from taking enforcement action against the East Sign; and

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

WHEREAS, the Board agrees with DOB that the 1915 and 1917 permits are not sufficient to establish the non-conforming status of the East Sign prior to the June 28, 1940 amendment to the 1916 Zoning Resolution that prohibited advertising signs in Business Use districts; and

WHEREAS, the Board notes that neither permit on its face indicates that it is for advertising, and neither permit indicates whether it is applicable to the East Sign or the West Sign; and

WHEREAS, the Board agrees with DOB that the 1940 tax photographs showing the West Sign would have also shown the East Sign, and that the absence of the East Sign of such photographs is compelling evidence that it did not exist prior to June 28, 1940; and

WHEREAS, accordingly, the Board finds that the East Sign was not established as an advertising sign prior to June 28, 1940; and

WHEREAS, however, even if the Board had found that the East Sign was established, it agrees with DOB that photographic evidence demonstrates that the East Sign did not display advertising copy from 2009-2012; and

WHEREAS, the Board finds that DOB's photographic evidence of discontinuance is not refuted by the Appellant's evidence of continuity; specifically, the Board agrees with DOB that: (1) the Appellant's lease is ambiguous and, at most, is merely evidence of the existence of a right, rather than evidence of the exercise of that right; and (2) the Appellant's affidavits are of limited evidentiary value because they are unsupported by objective, independently verifiable evidence; and (3) the Appellant's East Sign photographs are of limited evidentiary value because they are undated and of such poor quality that the sign's message cannot be determined; and

WHEREAS, accordingly, the Board agrees with DOB that even if the East Sign were considered established as a non-conforming use, the use was discontinued, per ZR § 52-61; and

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

WHEREAS, the Board distinguishes the Appellant's

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

WHEREAS, the Board notes that the Appellant, by its own admission, has enjoyed approximately 72 years' worth of revenue from an advertising sign that has never been permitted by the Zoning Resolution at the Premises; and

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

*Therefore it is Resolved* that this appeal, challenging a Final Determination issued on July 30, 2012, is denied.

Adopted by the Board of Standards and Appeals, June 4, 2013.

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## 267-12-A

APPLICANT – Davidoff Hutcher & Citron LLP, for Robert McGivney, owner.

SUBJECT – Application September 5, 2012 – Appeal from Department of Buildings' determination that the sign is not entitled to continued non-conforming use status as an advertising sign. M1-2 & R6A zoning district.

PREMISES AFFECTED – 691 East 133rd Street, northeast corner of Cypress Avenue and East 133rd Street, Block 2562, Lot 94, Borough of Bronx.

### COMMUNITY BOARD #1BX

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

#### THE VOTE TO GRANT –

Affirmative: .....0

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

#### THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Bronx Borough Commissioner of the Department of Buildings (“DOB”), dated August 6, 2012, denying registration for a sign at the subject premises (the “Final Determination”), which reads, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration. Signs within 200 feet of an arterial may not be replaced or reconstructed as per § 42-55. 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 April 16, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 21, 2013 and then to decision on June 4, 2013; and

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

WHEREAS, the subject premises (“the Premises”) is located on the northeast corner of the intersection of East 133rd Street and Cypress Avenue, in an M1-2/R6A zoning district within a Special Mixed Use District (MX-1) as of March 9, 2005; prior to that date, the Premises was zoned M1-2; and

WHEREAS, the Premises is occupied by a two-story residential building; on the west wall of the building is an advertising sign with a surface area of approximately 288 sq. ft. (“the Sign”); and

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

WHEREAS, the Appellant states that the Sign is located within 900 feet and within view of the Bruckner Expressway, an arterial highway pursuant to Appendix H of the Zoning Resolution; DOB states that the Sign is located 114 feet from the Bruckner Expressway; and

WHEREAS, the Appellant seeks a reversal of DOB's rejection of the registration of the Sign based on DOB's determination that it was not permitted to be reconstructed pursuant to ZR § 52-83; during the appeal process, the issue became whether the Sign was discontinued pursuant to ZR § 52-61; and

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

#### REGISTRATION REQUIREMENT

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

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

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

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

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

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing

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permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

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

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

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

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

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

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

## REGISTRATION PROCESS

WHEREAS, on a date uncertain, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted a Sign Registration Application for the East Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching a copy of a 1979 illuminated sign permit and various lease agreements from 1965, 1977, 1985, 1993, 2007 and 2008, as evidence of the Sign’s non-conforming use establishment and continuous use; and

WHEREAS, on May 17, 2012, DOB issued a Notice of Sign Registration Deficiency, stating that it was “unable to accept the sign for registration at this time (because the sign (was) removed/replaced contrary to ZR 42-55”); and

WHEREAS, by letter dated July 28, 2012, the Appellant submitted a response to DOB, indicating that while the Sign had been removed, it was replaced within two years of removal; and

WHEREAS, in response, DOB determined that the Sign was not permitted to be reconstructed, and on July 30, 2012, it issued the Final Determination denying registration;

and

## RELEVANT STATUTORY PROVISIONS

### ZR § 12-10 *Definitions*

Non-conforming, or non-conformity

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

\* \* \*

### ZR § 32-662

Additional Regulations for Advertising Signs  
C6-5 C6-7 C7 C8

In all districts, as indicated, no #advertising sign# shall be located, nor shall an existing #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 or #public park#.

\* \* \*

### 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,

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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 Sections 32-66 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) or 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

\* \* \*

## ZR § 123-40 Sign Regulations

In Special Mixed Use Districts, the provisions regulating signs in C6-1 Districts, as set forth in Section 32-60, shall apply for any sign.

\* \* \*

## Building Code § 28-502.4 – Reporting Requirement

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

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

\* \* \*

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

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

\* \* \*

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

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

## THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because: (1) the Sign was permitted to be reconstructed pursuant to ZR §§ 42-55 and 52-83; (2) DOB is estopped from disavowing its April 3, 2003 letter stating that ZR §§ 42-55 and 52-83 permit the

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reconstruction of a non-conforming advertising sign within 200 feet of an arterial highway in a Manufacturing District; and (3) sufficient evidence exists that the Sign was not discontinued pursuant ZR § 52-61; and

WHEREAS, during the registration process and in the instant appeal, the Appellant asserts that ZR §§ 42-55 and 52-83 authorize the reconstruction of the Sign; and

WHEREAS, the Appellant and DOB agree that the Sign was established as a non-conforming advertising sign pursuant to ZR § 42-55(c), in that sufficient evidence was presented to DOB demonstrating that the sign existed and was used for advertising prior to May 31, 1968; and

WHEREAS, the Appellant's assertion is based on an April 3, 2003 opinion letter ("the 2003 Opinion") from a DOB attorney, which in pertinent part provided that:

an advertising sign other than a flashing sign in a manufacturing district within 200 feet and in view of an arterial highway that is covered by ZR 42-55(c)(1) . . . or . . . ZR 42-55(c)(2) . . . may be structurally altered, reconstructed or replaced pursuant to ZR 52-83. ZR 52-83 is inapplicable to an advertising sign on an arterial highway in a manufacturing zone that is regulated by ZR 42-55 except as provided in ZR 42-55(c); and

WHEREAS, the Appellant contends that the proper interpretation of the interplay between ZR §§ 42-55 and 52-83 is found in the 2003 Opinion's plain, unambiguous language, which DOB never disclaimed or modified until the issuance of the Final Determination; and

WHEREAS, the Appellant asserts that the Final Determination—which stated that "signs within 200 feet of an arterial may not be replaced or reconstructed as per § 42-55"—ignores ZR § 42-55(c)(1), which provides that an advertising sign located within 660 feet of an arterial highway that is erected prior to June 1, 1968 shall have legal non-conforming status pursuant to ZR § 52-83; and

WHEREAS, the Appellant contends that the references to ZR § 52-83 in ZR § 42-55 and to ZR § 42-55 in ZR § 52-83 are to clarify that signs conferred non-conforming use protection pursuant to ZR § 42-55 are entitled to reconstruct pursuant ZR § 52-83, and that an interpretation to the contrary would be illogical; and

WHEREAS, further, the Appellant asserts that ZR § 42-55(a)(2) was intended to prohibit the reconstruction of illegal advertising signs, not limit the reconstruction of signs deemed non-conforming pursuant to ZR § 42-55(c); and

WHEREAS, the Appellant states that it reasonably relied in good faith on the 2003 Opinion when it removed the Sign to perform façade repairs; and

WHEREAS, the Appellant contends that DOB's rejection of the Sign from registration notwithstanding its 2003 Opinion constitutes an unexplained and arbitrary failure to conform to agency precedent, contrary to Matter of Charles A. Field Delivery Serv., Inc., 66 N.Y.2d 516, 520, 488 N.E.2d 1223, 1227 (1985) and Richardson v. Comm'r of New York City Dep't of Soc. Servs., 88 N.Y.2d 35, 39, 665 N.E.2d 1059 (1996); and

WHEREAS, accordingly, the Appellant contends that its reconstruction of the Sign was authorized by the plain text of the Zoning Resolution and sanctioned by DOB in its 2003 Opinion; and

WHEREAS, the Appellant asserts that the Sign was removed on August 17, 2009 and replaced on August 12, 2011; and

WHEREAS, in support of this assertion, the Appellant has submitted four documents: (1) an undated work order from Lamar Outdoor Advertising ("Lamar"), which indicates that the work to be done is "please arrange to have the following 30 sheet removed 740120-Bruckner Blvd EL 5 F N of E 133rd St Address: 691 E 133rd St/Bron" and that the work was completed on August 17, 2009; (2) an August 25, 2009 Survey that includes photographs of the Premises without the Sign and indicates on the photographs and on the lot diagram where the "remnants of a sign" were located; (3) an August 5, 2011 work order from Lamar to Josie Rodriguez, which indicates that the work to be done at the Premises is "retro fit one wall mounted 30 sheet steel panel" and that the work was completed on August 12, 2011; and (4) an August 12, 2011 invoice from the Metropolitan Sign & Rigging Corp., which indicates a request for payment to Lamar for "retrofit one wall mounted 30 sheet steel panel"; and

WHEREAS, the Appellant states that the two documents indicating removal and two documents indicating reconstruction are sufficient evidence that the Sign was not discontinued for a period of two or more years; as such, the Appellant states that use of the Sign for advertising was never discontinued per ZR § 52-61; and

WHEREAS, accordingly, the Appellant asserts that the Board should reverse DOB's Final Determination that the Sign was not permitted to be reconstructed, and find that the Sign may remain pursuant to ZR § 52-11; and

## DOB'S POSITION

WHEREAS, DOB asserts that: (1) the Sign was permitted to be reconstructed pursuant to ZR § 52-83; and (2) photographic evidence demonstrates that the Sign was discontinued for a period of more than two consecutive years, and the use must therefore terminate pursuant to ZR § 52-61; and

WHEREAS, DOB states that the Sign was permitted to be reconstructed pursuant to ZR § 52-83, because at the time of reconstruction it was within a zoning district that allowed reconstruction of non-conforming advertising signs; and

WHEREAS, DOB notes that, as a threshold matter, it accepted the Sign as having been established as a non-conforming advertising sign pursuant to ZR § 42-55(c); and

WHEREAS, DOB states that because the Premises is within an M1-2/R6A zoning district within a Special Mixed Use District (MX-1), per ZR § 123-40, the sign regulations applicable in C6-1 district are applicable; therefore, per ZR § 52-83, the Sign was permitted to be reconstructed; and

WHEREAS, DOB states that despite language in the 2003 Opinion suggesting otherwise, no advertising sign may be structurally altered, relocated or reconstructed if that sign

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is located in a district regulated by ZR §§ 42-55 or 32-662 and is within 200 feet of an arterial highway; and

WHEREAS, DOB contends that although ZR § 52-83 generally allows a non-conforming advertising sign to be altered, reconstructed, or replaced, this allowance is limited by an exception clause, which states, “except as otherwise provided in Sections 32-66 or 42-55”; and

WHEREAS, therefore, DOB states that where a non-conforming advertising sign is in a district covered by ZR § 52-83 and either ZR § 32-662 or ZR § 42-55, the exception clause in ZR § 52-83 is applicable because it is the more restrictive requirement<sup>1</sup>; and

WHEREAS, DOB states that although the Sign was permitted to be reconstructed pursuant to ZR §§ 52-83 and 123-40, photographic evidence demonstrates that the Sign was discontinued for a period of more than two consecutive years, and the use must therefore terminate pursuant to ZR § 52-61; and

WHEREAS, DOB asserts that, contrary to the Appellant’s statements, the Sign was removed at least as early as July 5, 2009 and not replaced until at least August 12, 2011, which DOB accepted as the date that the Appellant restored the Sign to the wall of the building at the Premises; and

WHEREAS, in support of this assertion, DOB has submitted the following photographic evidence from Pictometry (an online aerial oblique imaging and mapping service) to demonstrate that the Sign was absent from the building for more than two consecutive years: (1) four photographs from July 5, 2009, each from a different angle, showing the absence of the Sign and the Sign structure; (2) four photographs from July 15, 2009, each from a different angle, showing the absence of the Sign and the Sign structure; (3) an April 4, 2010 photograph showing the absence of the Sign and the Sign structure; (4) four photographs from April 5, 2010 each from a different angle, showing the absence of the Sign and the Sign structure; and (5) four photographs from February 27, 2012 each from a different angle, showing the Sign and the Sign structure in place (which DOB submitted as a contrast to the several photographs showing the absence of the Sign and the Sign

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<sup>1</sup> DOB asserts that, per ZR § 11-22, the provision that results in the elimination of the non-conforming sign (ZR § 52-83) rather than its continued existence (ZR § 42-55(c)) is the “more restrictive” and, therefore, controlling provision. In relevant part, ZR § 11-22 provides that:

whenever any provision of this Resolution and any other provision of law, whether set forth in this Resolution or in any other law, ordinance or resolution of any kind, impose overlapping or contradictory regulations over the use of land, or over the use or bulk of buildings or other structures, or contain any restrictions covering any of the same subject matter, the provision which is more restrictive or imposes higher standards or requirements shall govern.

structure); and

WHEREAS, at hearing, the Board requested additional information regarding the credibility of the dated aerial images created by Pictometry; and

WHEREAS, in response, DOB states that the Pictometry International Corporation is a provider of geo-referenced, oblique aerial imagery founded in 2000; that Pictometry is a subscription-only database that maintains a fleet of 72 aircraft which have captured over 210 million data-rich aerial images; that Pictometry’s patented imagery capturing system is designed to produce orthogonal and oblique aerial images that reveal the front and sides of buildings from up to 12 different angles; and

WHEREAS, DOB notes that Pictometry provides aerial imagery for federal, state and local governments, including the United States Department of Homeland Security, the Connecticut Department of Information Technology, and county assessors nationwide; Pictometry also provides aerial imagery for public safety, insurance, and utility professionals; and

WHEREAS, in addition, DOB notes that Pictometry images have been used as DOB exhibits in at least three other appeal cases before the Board regarding the registration of advertising signs; and

WHEREAS, DOB states that the Pictometry images are compelling evidence that the Sign was discontinued from at least July 5, 2009 to August 12, 2011 and must therefore terminate, pursuant to ZR § 52-61; and

WHEREAS, accordingly, DOB asserts that it properly denied the registration of the Sign as a non-conforming advertising sign; and

## CONCLUSION

WHEREAS, the Board finds that DOB properly denied the registration of the Sign as non-conforming advertising sign because the Appellant failed to rebut DOB’s evidence that the Sign was removed and not replaced within two years; and

WHEREAS, the Board notes that the Sign’s establishment pursuant to ZR § 42-55 and the Appellant’s right to reconstruct the Sign pursuant to ZR § 52-83 are not in dispute; and

WHEREAS, however, the Board finds that, based on the evidence in the record, the Sign was removed and not replaced within two years of removal; and

WHEREAS, the Board finds DOB’s photographic evidence showing that the Sign did not exist at the Premises as of July 5, 2009 compelling; and

WHEREAS, the Board notes that DOB sufficiently demonstrated the credibility of the dated aerial images provided by Pictometry; and

WHEREAS, the Board finds the Appellant’s evidence showing that the Sign was removed on August 17, 2009 insufficient in light of DOB’s photographic evidence to the contrary; and

WHEREAS, the Board notes that DOB did not dispute the Appellant’s assertion or supporting evidence that the Sign was restored to the Premises on August 12, 2011; and

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WHEREAS, the Board also notes that the Appellant provided no additional evidence or arguments to dispute DOB's assertion with supporting evidence that the Sign was removed no later than July 5, 2009 and restored no sooner than August 12, 2011; and

WHEREAS, accordingly, the Board finds that the Sign did not exist at the Premises for at least two years and 36 days; thus, the non-conforming advertising sign use must terminate pursuant to ZR § 52-61; and

WHEREAS, therefore, the Board finds that DOB properly rejected the Appellant's registration of the Sign as a non-conforming advertising sign.

*Therefore it is Resolved* that this appeal, challenging a Final Determination issued on August 6, 2012, is denied.

Adopted by the Board of Standards and Appeals, June 4, 2013.

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## 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 (Thornycroft 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 July 23, 2013, at 10 A.M., for continued hearing.

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## 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 (Thornycroft 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 July 23, 2013, at 10 A.M., for continued hearing.

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## 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 (Thornycroft 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 July 23, 2013, at 10 A.M., for continued hearing.

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## 308-12-A

APPLICANT – Francis R. Angelino, Esq., for LIC Acorn Development LLC, owner.

SUBJECT – Application November 8, 2012 – Request that the owner has a common law vested right to continue construction and obtain a Certificate of Occupancy under the prior M1-3 zoning district. M1-2/R5D zoning district. PREMISES AFFECTED – 39-27 29th Street, east side 29th Street, between 39th and 40th Avenues, Block 399, Lot 9, Borough of Queens.

### COMMUNITY BOARD #1Q

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

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## 346-12-A

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

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

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

### COMMUNITY BOARD #1BK

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

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## 111-13-BZY thru 119-13-BZY

APPLICANT – Sheldon Lobel, P.C., for Chapel Farm Estates, Inc., lessee.

SUBJECT – Applications April 24, 2013 – Extension of time (§11-332b) to complete construction of a major development commenced under the prior Special Natural Area zoning district regulations in effect on October 2004. R1-2/NA-2 zoning district.

PREMISES AFFECTED –

5031, 5021 Grosvenor Avenue, Lots 50, 60, 70, 5030 Grosvenor Avenue, Block 5830, Lot 3930, 5310 Grosvenor Avenue, Block 5839, Lot 4018, 5300 Grosvenor Avenue,

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Block 5839, Lot 4025, 5041 Goodridge Avenue, Block 5830, Lot 3940, 5040 Goodridge Avenue, Block 5829, Lot 3635, 5030 Goodridge Avenue, Block 5829, Lot 3630. Borough of Bronx

## COMMUNITY BOARD #8BX

### 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 July 9, 2013, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## ZONING CALENDAR

### 138-12-BZ

#### CEQR #12-BSA-127K

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

PREMISES AFFECTED – 2051 East 19<sup>th</sup> Street, between Avenue U and Avenue T, Block 7324, Lot 64, 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 April 26, 2012, acting on Department of Buildings Application No. 300938822 reads, in pertinent part:

[t]he existing one-family residence in an R5 zoning district has a deficient north side yard and is contrary to Section 23-461 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the proposed legalization of an enlargement of a single-family home, which does not comply with the zoning requirements for side yards, contrary to ZR § 23-461; and

WHEREAS, a public hearing was held on this application on April 9, 2013, after due notice by publication in *The City Record*, with a continued hearing on May 7, 2013 and then to decision on June 4, 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 15, Brooklyn, recommends approval of the application; and

WHEREAS, a member of the surrounding community appeared and provided testimony in opposition to the application, primarily on the basis that he considered the enlargement to be excessive; and

WHEREAS, the subject site is located on the east side of East 19th Street, between Avenue T and Avenue U; and

WHEREAS, the subject site has a total lot area of 3,269.5 sq. ft., and is occupied by a single-family home with a complying floor area of approximately 3,206.2 sq. ft. (0.98 FAR); the maximum permitted floor area is 4,087 (1.25 FAR); and

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

WHEREAS, the applicant proposes to legalize a 1999 enlargement that resulted in the north side yard width being 2'-0" instead of the required 5'-0"; the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each;

WHEREAS, the applicant notes that a permit was obtained from DOB for the 1999 enlargement and that the plans complied with the Zoning Resolution; however, the contractor deviated from the plans, resulting in the deficient side yard; and

WHEREAS, the applicant also notes that the south side yard has an existing non-complying width of 7'-8" and that this width was maintained in the 1999 enlargement; and

WHEREAS, the applicant represents that the building complies in all other respects with the applicable provisions of the Zoning Resolution; and

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

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning

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district, the proposed legalization of an enlargement of a single-family home, which does not comply with the zoning requirements for side yards, contrary to ZR § 23-461; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received May 23, 2013"- (9) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,206.2 sq. ft. (0.98 FAR), a north side yard with a minimum width of 2'-0" and a south side yard with a minimum width of 7'-8", as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, June 4, 2013.

## 206-12-BZ

### CEQR #12-BSA-150K

APPLICANT – George Guttmann, for Dmitriy Kotlarsky, owner.

SUBJECT – Application July 2, 2012 – Special Permit (§73-621) to legalize the conversion of the garage into recreation space, contrary to floor area regulations (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 2373 East 70<sup>th</sup> Street, between Avenue W and Avenue X, Block 8447, Lot 67, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**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, June 4, 2013.

## 74-13-BZ

### CEQR #13-BSA-100M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Chelsea W26 LLC, owner; Blink Eighth Avenue, Inc., lessee.

SUBJECT – Application February 20, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink Fitness*). C6-2A zoning district.

PREMISES AFFECTED – 308/12 8th Avenue, 252/66 West 26th Street, southeast corner of the intersection of 8th Avenue and West 26th Street, Block 775, Lot 7502, Borough of Manhattan.

### COMMUNITY BOARD #4M

**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 February 7, 2013, acting on Department of Buildings Application No. 120655237, reads in pertinent part:

Proposed Physical Culture Establishment within C6-2A zoning district not permitted as-of-right as per Section ZR 32-10 and a special permit from the Board of Standards and Appeals is required; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-2A zoning district, the operation of a physical culture establishment ("PCE") in certain portions of the cellar and first story of a 12-story mixed commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 21, 2013, after due notice by publication in *The City Record*, and then to decision on June 4, 2013; 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, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Eighth Avenue and West 26th Street; and

WHEREAS, a 12-story new building is under construction at the site; upon completion, the building will be occupied by residential and commercial uses; and

WHEREAS, the site has 123 feet of frontage along Eighth Avenue, 83.5 feet of frontage along West 26th Street, and a total lot area of 32,111 sq. ft.; and

WHEREAS, the proposed PCE will occupy a total of 400 sq. ft. of floor area on the first story and 14,635 sq. ft. of

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floor space in the cellar; and

WHEREAS, the PCE will be operated as Blink; and

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

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

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

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

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

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

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

WHEREAS, the project is classified as an Unlisted pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA100M, dated February 15, 2013; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and

makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C6-2A zoning district, the operation of a physical culture establishment (“PCE”) in certain portions of the cellar and first story of a 12-story building mixed commercial and residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 9, 2013” – Four (4) sheets and *on further condition*:

THAT the term of this grant will expire on June 4, 2023;

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

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

THAT the hours of operation will not exceed Monday through Saturday, from 5:00 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.;

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

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

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

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

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, June 4, 2013.

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**35-11-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Othel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105’ west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

**COMMUNITY BOARD #13Q**

**ACTION OF THE BOARD** – Laid over to June 18, 2013, at 10 A.M., for adjourned hearing.  
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## **16-12-BZ**

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

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district. PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

### **COMMUNITY BOARD #4BK**

**ACTION OF THE BOARD** – Laid over to July 23, 2013, at 10 A.M., for deferred decision.

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## **43-12-BZ**

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

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district. PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

### **COMMUNITY BOARD #2M**

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

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## **195-12-BZ**

APPLICANT – The Law Offices of Eduardo J. Diaz, for Garmac Properties LLC, owner.

SUBJECT – Application June 15, 2012 – Re-instatement (§11-411) of a previously approved variance which allowed a two-story office building (UG6) and four parking spaces, which expired on May 13, 2000. Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 108-15 Crossbay Boulevard, between 108th and 109th Avenues. Block 9165, Lot 291. Borough of Queens.

### **COMMUNITY BOARD #10Q**

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

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## **236-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Thomas Savino, owner.

SUBJECT – Application July 31, 2012 – Variance (§72-21) to permit the extension of an existing medical office, contrary to use ((§ 22-10) and side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 1487 Richmond Road, northwest corner of intersection of Richmond Road and Norden Street, Block 869, Lot 372, Borough of Staten Island.

### **COMMUNITY BOARD #2SI**

**ACTION OF THE BOARD** – Laid over to July 9,

2013, at 10 A.M., for continued hearing.

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

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

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

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

### **COMMUNITY BOARD #6BK**

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

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## **50-13-BZ**

APPLICANT – Lewis E. Garfinkel, for Mindy Rebenwurz, owner.

SUBJECT – Application January 29, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461); and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1082 East 24th Street, west side of East 24th Street, 100' north of corner of Avenue K and East 24th Street, Block 7605, Lot 79 Brooklyn.

### **COMMUNITY BOARD #14BK**

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

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## **57-13-BZ**

APPLICANT – Eric Palatnik, P.C., for Lyudmila Kofman, owner.

SUBJECT – Application February 2, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

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

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## **62-13-BZ**

APPLICANT – Sheldon Lobel, P.C., for BXC Gates, LLC, owner.

SUBJECT – Application February 7, 2013 – Special Permit (§73-243) to legalize the existing eating and drinking establishment (*Wendy's*) with an accessory drive-through facility. C1-2/R6 zoning district.

PREMISES AFFECTED – 2703 East Tremont Avenue,

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# MINUTES

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property fronts on St. Raymond's Avenue to the northwest, Williamsbridge Road to the northeast, and East Tremont Avenue to the southwest, Block 4076, Lot 12, Borough of Bronx.

## **COMMUNITY BOARD #10BX**

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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## **63-13-BZ**

APPLICANT – Sheldon Lobel, P.C., for Cel-Net Holdings, Corp., owner; The Cliffs at Long Island City, LLC, lessee. SUBJECT – Application February 11, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Cliffs*). M1-4/R7A (LIC) zoning district. PREMISES AFFECTED – 11-11 44th Drive, north side of 44th Drive between 11th Street and 21st Street, Block 447, Lot 13, Borough of Queens.

## **COMMUNITY BOARD #2Q**

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

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## **84-13-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 184 Kent Avenue Fee LLC, owner; SoulCycle Kent Avenue, LLC, lessee.

SUBJECT – Application March 5, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*SoulCycle*) within portions of an existing cellar and seven-story mixed-use building. C2-4/R6 zoning district.

PREMISES AFFECTED – 184 Kent Avenue, northwest corner of intersection of Kent Avenue and North 3rd Street, Block 2348, Lot 7501, Borough of Brooklyn.

## **COMMUNITY BOARD #1BK**

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

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## **85-13-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for St. Matthew's Roman Catholic Church, owner; Blink Utica Avenue, Inc., lessee.

SUBJECT – Application March 5, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within existing building. C4-3/R6 zoning district.

PREMISES AFFECTED – 250 Utica Avenue, northeast

corner of intersection of Utica Avenue and Lincoln Place, Block 1384, Lot 51, Borough of Brooklyn.

## **COMMUNITY BOARD #8BK**

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 July 9, 2013, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*