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# BULLETIN

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

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Volume 98, Nos. 40-41

October 16, 2013

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### DIRECTORY

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# DOCKETS

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New Case Filed Up to October 8, 2013  
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**273-13-BZ**

321 East 60th Street, Northeast corner of East 60th Street and the Ed Koch Queensboro Bridge Exit, Block 1435, Lot(s) 15, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to vary the requirements of the zoning resolution to permit within a C8-4 commercial zoning district, the construction of an eight-story residential building containing 28 dwelling units which would not comply with the use regulations of §32-10. C8-4 district.  
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**274-13-BZ**

7914 Third Avenue, West Side of Third Avenue between 79th and 80th Street, Block 5978, Lot(s) 46, Borough of **Brooklyn, Community Board: 10**. Variance (§72-21) to permit the operation of a physical culture establishment on the second floor of the existing building contrary to §32-10 zoning resolution. C1-3/R6B zoning district. R6B/C1-3 district.  
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**275-13-BZ**

404-406 Broadway, located on the east side of Broadway just south of its intersection with Canal Street in TriBeCa, Block 196, Lot(s) 3, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow the operation of a physical culture establishment with the existing building. M1-5 zoning district. M1-5 district.  
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**276-13-BZ**

1629 First Avenue, West Side First Avenue between East 84th & East 85th Street., Block 1547, Lot(s) 23, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to permit physical culture establishment(PCE) on the ground floor, cellar & sub-cellar. C1-9 zoning district. C1-9 district.  
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**277-13-BZ**

1769 Fort George Hill, bounded by Fort George Hill to the east an NYCTA No.1 train tracks to the west, Block 2170, Lot(s) 180 & 190, Borough of **Bronx, Community Board: 12**. Variance (§72-21) to permit a proposed development of new 12-story mixed-use building with underground parking, two floors of community facility(church) space, with 125 multi-family residential units requires multiple bulk/are variances. R7-2 zoning district. R7-2 district.  
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**278-13-A**

121 Varick Street, Southwest corner of Varick Street and Dominick Street, Block 578, Lot(s) 67, Borough of **Manhattan, Community Board: 2**. Appeal of DOB determination that the advertising sign was not established as a lawful non-conforming use .M1-6 SHSD. M1-6 district.  
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**279-13-BZ**

218-222 West 35th Street, located on the south side of West 35th Street approximately 150 feet West of Seventh Avenue, Block 784, Lot(s) 54, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow the operation of a physical culture establishment(fitness center) on portions of the cellar and first floors and the entire second and third floors of a new building to be constructed. M1-6 zoning district. M1-6 district.  
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**280-13-BZ**

36-41 Main Street, lot extending from Main Street to Prince Street, between Northern Boulevard and 37th Avenue, Block 4971, Lot(s) 16, Borough of **Queens, Community Board: 7**. Variance (§72-21) to waive zoning sections §§33-122 &33-123 commercial floor area and §36-21 (parking), §§32-31; Special Permit (§73-36) to permit a physical culture establishment (PCE) with a portion of the proposed building. C4-2 & C4-3 zoning district. C4-2, C4-3 district.  
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**281-13-BZ**

350-370 Canal Street, premises is comprised of 3 properties located on the west portion of block 211 at the intersection of Canal Street and Church Street, Block 211, Lot(s) 3, 29, 7501, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical culture establishment (fitness center) on the cellar and first floor of the existing building. C6-2A zoning district. C6-2A Tribeca district.  
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**282-13-BZ**

556 Columbia Street, West side of Columbia Street between Bay Street and Sigourney Street, Block 601, Lot(s) 17, Borough of **Brooklyn, Community Board: 6**. Special Permit (§73-19) to permit construction of a school (The Basic Independent Schools). M1-1 zoning district. M1-1 district.  
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# DOCKETS

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**283-13-BZ**

4930 20th Avenue, Dahill Road and 50th Street; Avenue 1 & Dahill Road, Block 5464, Lot(s) 0081, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-36) to allow the operation of a physical culture establishment on the first floor of a one story building within M1-1 zoning district. M1-1 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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**OCTOBER 29, 2013, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 29, 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**

**74-49-BZ**

APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Avenue, LLC, owner.  
SUBJECT – Application August 26, 2013 – Extension of Time to obtain a Certificate of Occupancy for an existing parking garage which expired on January 11, 2012; Waiver of the Rules. M1-6 (Garment Center) zoning district.  
PREMISES AFFECTED – 515 Seventh Avenue, southeast corner of 7th Avenue and West 38th Street, Block 813, Lot 64, Borough of Manhattan.  
**COMMUNITY BOARD #5M**

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**647-70-BZ**

APPLICANT – Jeffrey A. Chester Esq/GSHLLP, for Channel Holding Company, Inc., owner; Cain Management II Inc., lessee.  
SUBJECT – Application August 1, 2013 – Amendment of a previously approved Special Permit (§73-211) which permitted the operation an automotive service station and auto laundry (UG 16B). Amendment seeks to convert accessory space into an accessory convenience store. C2-3/R5 zoning district.  
PREMISES AFFECTED – 59-14 Beach Channel Drive, Beach Channel Drive corner of Beach 59th Street, Block 16011, Lot 105, Borough of Queens.  
**COMMUNITY BOARD #**

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**APPEALS CALENDAR**

**90-12-A**

APPLICANT – Fried, Frank, Harris, Shriver & Jacobson, LLP, for Van Wagner Communications, LLC, owner.  
SUBJECT – Application September 11, 2013 – Reopening by the court and remanded back to BSA for reconsideration.  
PREMISES AFFECTED – 111 Varick Street, Block 578, Lot 71, Borough of Manhattan.  
**COMMUNITY BOARD #**

**221-13-A**

APPLICANT – Law Office of Jay Goldstein, PLLC, for Naseem Ali, owner.  
SUBJECT – Application July 22, 2013 – Appeal seeking that the owner has a common law vested right to continue construction and obtain a Certificate of Occupancy under the prior R3A zoning district. R2A zoning district.  
PREMISES AFFECTED – 239-26 87th Avenue, south side of 87th Avenue between 241st Street and 239th Street, Block 7966, Lot 54, Borough of Queens.  
**COMMUNITY BOARD #13Q**

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**ZONING CALENDAR**

**262-12-BZ**

APPLICANT – Patrick W. Jones, P.C., for Canyon & Cie LLC c/o Mileson Corporation, owner; Risingsam Management LLC, lessee.  
SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit a hotel (UG 5) contrary to use regulations (§42-00). M2-1 zoning district.  
PREMISES AFFECTED – 132-10 149th Avenue aka 132-35 132<sup>nd</sup> Street, bounded by 132nd Street, 149th Avenue and Nassau Expressway Service Road, Block 11886, Lot 12 and 21, Borough of Queens.  
**COMMUNITY BOARD #10Q**

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**154-13-BZ**

APPLICANT – Sheldon Lobel, P.C., for Ralph Avenue Associates, LLC, owner.  
SUBJECT – Application May 14, 2013 – Variance (§72-21) to allow the construction of a retail building (UG 6), contrary to use regulations (§22-10). R5 zoning district.  
PREMISES AFFECTED – 1054-1064 Bergen Avenue, bounded by Bergen Avenue to the north, Avenue K to the east, East 73rd Street to the south, and Ralph Avenue to the west, Block 8341, Lot (Tentative lot 135), Borough of Brooklyn.  
**COMMUNITY BOARD #18BK**

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**168-13-BZ**

APPLICANT – Lewis E Garfinkel, for Dovie Minzer, owner.  
SUBJECT – Application June 4, 2013 – 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.  
PREMISES AFFECTED – 1323 East 26th Street, east side of East 26th Street, 180' south of Avenue M, Block 7662, Lot 39, Borough of Brooklyn.  
**COMMUNITY BOARD #14BK**

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# CALENDAR

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**173-13-BZ**

APPLICANT – Greenberg Traurig, LLP, for 752 UWS, LLC, owner; 752 Paris Gym LLC, lessee.

SUBJECT – Application June 14, 2013 – Variance (§72-21) to legalize the existing commercial Paris Health Club facility which occupies the cellar, first floor and the first mezzanine of a 24-story residential building, contrary to (§22-00). R10-A zoning district.

PREMISES AFFECTED – 752-758 West End Avenue aka 260-268 West 97<sup>th</sup> Street, southeast corner of West End Avenue and West 97<sup>th</sup> Street, Block 1868, Tentative Lot 1401 (f/k/a part of 61), Borough of Manhattan.

**COMMUNITY BOARD #7M**

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**229-13-BZ**

APPLICANT – Rothkrug Rothrug & Spector LLP, for Country Leasing Limited Partnership, owner; Blink Nostrand Avenue, Inc., lessee.

SUBJECT – Application August 6, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Blink Fitness*) within an existing commercial building. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 3779-3861 Nostrand Avenue, 2928/48 Ave Z, 2502/84 Haring Street, Block bounded by Nostrand Avenue, Avenue Z, Haring Street and Avenue Y, Block 7446, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**232-13-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for SDF12 Bay Street, LLC, owner; Staten Island Fitness, LLC, lessee.

SUBJECT – Application August 9, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within portions of proposed commercial building. M1-1 zoning district.

PREMISES AFFECTED – 364 Bay Street, northwest corner of intersection of Bay Street and Grant Street, Block 503, Lot 1 and 19, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 8, 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**

**615-57-BZ**

APPLICANT – Sheldon Lobel, P.C. for Cumberland farms, INC., owner.

SUBJECT – Application May 10, 2013 – Extension of term (§11-411) of a previously granted variance for the continued operation of a (UG 16B) automotive service station (*Gulf*) with accessory uses, which expired on June 5, 2013. C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, Located on the north side of Horace Harding Expressway between Kissena Boulevard and 154th Place. Block 6731, Lot 1. Borough of Queens.

**COMMUNITY BOARD #7Q**

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for an extension of term for a previously granted variance for a gasoline service station, which expired on June 5, 2013; and

WHEREAS, a public hearing was held on this application on July 16, 2013 after due notice by publication in *The City Record*, with continued hearings on August 13, 2013, and September 10, 2013, and then to decision on October 8, 2013; and

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

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

WHEREAS, the subject site spans the full width of the block on the north side of Horace Harding Expressway between Kissena Boulevard and 154th Place; and

WHEREAS, the site is located partially within a C1-3 (R5B) zoning district and partially within a C1-3 (R4-1) zoning district, and is occupied by a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 1958 when, under the subject calendar number, the Board granted a variance for the alteration of an existing 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 January 9, 2007, the term of the grant was extended for ten years from the expiration of the prior grant; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term for a previously granted variance; and

WHEREAS, at hearing, the Board expressed concern regarding the lack of landscaping at the site; and

WHEREAS, in response, the applicant provided photographs showing: (1) the planting of 19 new evergreen trees along the site's rear retaining wall; and (2) the trimming of the existing shrubs and trees, as well as the lawn along 154th Place; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on January 14, 1958, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from June 5, 2013 to expire on June 5, 2023, *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received May 10, 2013' – (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 5, 2023;

THAT the above condition shall be listed on the certificate of occupancy;

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

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

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

(DOB Application No. 400032255)

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

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**274-59-BZ**

APPLICANT – Laurence Dalfino, R.A., for Richard Naclerio, Member, Manorwood Realty, LLC, owner.

SUBJECT – Application September 18, 2012 – Extension of term (§11-411) of a previously granted variance for the continued operation of a private parking lot accessory to a catering establishment, which expired on September 28, 2011; Waiver of the Rules. R-4/R-5 zoning district.

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# MINUTES

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PREMISES AFFECTED – 3356-3358 Eastchester Road aka 1510-151 Tillotson Avenue, south side of Tillotson Avenue between Eastchester Road & Mickle Avenue, Block 4744, Lot 1, 62, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for the continued use of a private parking lot for the catering establishment located at Block 4743, Lot 8, which expired on September 28, 2011; and

WHEREAS, a public hearing was held on this application on July 16, 2013, after due notice by publication in *The City Record*, with a continued hearing on September 10, 2013, and then to decision on October 8, 2013; and

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

WHEREAS, Community Board 12, Bronx, recommends approval of this application; and

WHEREAS, the subject site spans the full width of the block on the south side of Tillotson Avenue between Mickle Avenue and Eastchester Road, and is located partially within an R5 zoning district and partially within an R4 zoning district; and

WHEREAS, the site has approximately 29 feet of frontage along Eastchester Road, approximately 190 feet of frontage along Tillotson Avenue, approximately 83 feet of frontage along Mickle Avenue, and is occupied as a private parking lot for the catering establishment located across Eastchester Road at Block 4743, Lot 8; and

WHEREAS, the Board has exercised jurisdiction over the site since January 17, 1961 when, under the subject calendar number, the Board, pursuant to 1916 Zoning Resolution § 7h, granted a use variance to permit, in a residence district, the maintenance of a private parking lot for the patrons of the catering establishment at Block 4743, Lot 8, for a term of ten years; and

WHEREAS, subsequently, the grant was extended by the Board at various times, most recently, on October 29, 2002, when, under the subject calendar number, the Board extended the grant for a term of ten years, to expire on September 28, 2011; and

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

WHEREAS, the applicant states that the parking lot is fully attended and has a capacity of 37 automobiles, but does not have a booth because the automobiles are received

at the catering establishment located at Block 4743, Lot 8; and

WHEREAS, the applicant notes that the hours of operation for the parking lot are seven days per week from 10:00 a.m. to 11:00 p.m.; and

WHEREAS, the applicant further notes that the site has been maintained in accordance with all conditions of the prior grant, except that the landscaping does not conform to the approved plans; and

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

WHEREAS, at hearing, the Board expressed the following concerns about the site: (1) the lack of landscaping; (2) the condition of the concrete wall; and (3) the lack of striping in the parking lot; and

WHEREAS, in response, the applicant submitted an amended statement indicating that: (1) approximately ten hedges with a height of seven feet and a spread of approximately two feet will be planted adjacent to the residential lots, except where there is existing foliage; (2) the wall will be repaired and patched, as necessary; and (3) striping is unnecessary in the parking lot because it is fully attended; the applicant also notes that it calculated the capacity of 37 parking spaces using 300 sq. ft. per space rather than 200 sq. ft. per space, which is permitted for attended parking lots; and

WHEREAS, in addition, the applicant's amended statement indicates the following minor changes to the site: there is only one drain (instead of two); there is a sliding gate on Tillotson Avenue (instead of a double swinging gate); there is a single swinging gate on Eastchester Road (instead of a double swinging gate); and there are double lights (instead of single lights); and

WHEREAS, the Board finds that these minor site changes are in substantial compliance with the original grant; and

WHEREAS, based upon the above, the Board finds, pursuant to ZR §§ 11-411, 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 January 17, 1961, 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 from the prior expiration, to expire on September 28, 2021, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received June 21, 2013' - (3) sheets and 'August 28, 2013' - (1) sheet; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on September 28, 2021;

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

THAT all landscaping will be maintained according to the BSA-approved plans;

THAT the above conditions will be listed on the



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certificate of occupancy;

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

THAT DOB 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. 220140540)

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

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## 723-84-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Alameda Project Partners Ltd/Cristine Briguglio, owners.

SUBJECT – Application June 6, 2013 – Extension of term of a previously approved variance (§72-21) which permitted a medical office, which expired on October 30, 2012. R1-2 zoning district.

PREMISES AFFECTED – 241-02 Northern Boulevard, southeast corner of intersection Northern Boulevard and Alameda Avenue, Block 8178, Lot 1, 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 reopening and an extension of term for the continued use of a commercial building (Use Group 6) within an R1-2 zoning district, which expired on October 30, 2012; and

WHEREAS, a public hearing was held on this application on September 10, 2013, after due notice by publication in *The City Record*, and then to decision on October 8, 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 approval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application; and

WHEREAS, the subject site is an irregular corner lot located at the southeast corner of the intersection of Northern Boulevard and Alameda Avenue, within an R1-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since October 6, 1987, when, under BSA Cal. No. 724-84-A, the Board granted an appeal authorizing the installation of dry wells, subject to certain conditions; later that month, on October 30, 1987, under the subject calendar

number, the Board approved a variance to permit, within an R1-2 zoning district, the construction of a 22,130 sq. ft. three-story bank and office building (Use Group 6), which does not conform to applicable use regulations, for a term of 25 years, to expire on October 30, 2012; and

WHEREAS, subsequently, on November 29, 2005, the Board amended the grant to permit a gastroenterologist’s office on the ground floor; and

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

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may extend the term of a variance; and

WHEREAS, the applicant represents that no changes to the grant are proposed and that the site is in compliance with all conditions of the prior grants except that an amended certificate of occupancy was not obtained to reflect the 2005 amendment to the grant; and

WHEREAS, at hearing, the Board directed the applicant to submit proof regarding the site’s compliance with the landscaping and signage requirements of the prior BSA-approved plans; and

WHEREAS, in response, the applicant submitted photographs demonstrating compliance with the landscaping and signage requirements of the prior BSA-approved plans; and

WHEREAS, the Board has reviewed the application and has determined that this application is appropriate to grant, with certain conditions.

*Therefore it is Resolved*, that the Board of Standards and Appeals reopens and amends the resolution, as adopted on October 30, 1987, so that as amended this portion of the resolution shall read: “to grant an extension of the variance for a term of 25 years from the prior expiration, to expire on October 30, 2037, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received August 26, 2013’- (6) sheets and ‘October 3, 2013’- (2) sheets; and *on further condition*:

THAT the variance, as amended, shall expire on October 30, 2037;

THAT there shall be ten parking spaces reserved for the use of the medical office and that such spaces will be so designated by signage, as illustrated on the BSA approved plans;

THAT the hours of operation will be limited to Monday through Friday, 8:00 a.m. to 6:00 p.m.;

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

THAT an amended certificate of occupancy will be obtained by October 8, 2014;

THAT all conditions from prior resolutions not waived herein 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); and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning

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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 App. No. 420787143)

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

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## 161-99-BZ & 162-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Banner Garage LLC, owner; TSI East 76 LLC dba New York Sports Club, lessee.

SUBJECT – Application January 25, 2012 – Extension of term of a previously granted Special Permit (§73-36) which permitted the operation of a physical culture establishment which expired on June 28, 2010; Amendment to permit a change in the hours of operation; Extension of time to obtain a Certificate of Occupancy which expired on June 28, 2004; Waiver of the Rules. C2-5 (R8B) zoning district.

PREMISES AFFECTED – 349 & 353 East 76th Street, northerly side of East 76th Street between 2nd Avenue and 1st Avenue, Block 1451, Lot 4 & 16, Borough of Manhattan.

## COMMUNITY BOARD #8M

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

## THE VOTE TO GRANT –

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

## THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an amendment to modify the hours of operation and for an extension of term, which expired on June 28, 2010, for a physical culture establishment (“PCE”); and

WHEREAS, a public hearing was held on this application on September 10, 2013, 2013, after due notice by publication in *The City Record*, and then to decision on October 8, 2013; and

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

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

WHEREAS, the subject site is located on the north side of East 76th Street, between First Avenue and Second Avenue within a C2-5 (R8B) zoning district; and

WHEREAS, the site comprises two adjacent lots: Lot 14 (349 East 76th Street), which has 5,108 sq. ft. of lot area, and Lot 16 (353 East 76th Street), which has 2,614 sq. ft. of lot area; and

WHEREAS, the applicant represents that Lot 14 is occupied by a four-story commercial building with 20,432 sq. ft. of floor area, and Lot 16 is occupied by a four-story mixed commercial and residential building; the PCE occupies the

entire building on Lot 14 and 2,227 sq. ft. of floor area on the first story of the building on Lot 16; and

WHEREAS, initially, the Board exercised jurisdiction over only Lot 14; specifically, on July 20, 1993, under BSA Cal. No. 214-92-BZ, the Board granted a special permit pursuant to ZR § 73-36 to permit the operation of PCE in the entire building on Lot 14 for a term of ten years, to expire on July 20, 2003; and

WHEREAS, subsequently, on June 28, 2000, the Board, under the subject calendar numbers, granted special permits pursuant to ZR § 73-36 to permit the operation of the PCE in the entire building on Lot 14 and on the first story of the building on Lot 16; these special permits superseded the special permit granted under BSA Cal. No. 214-92-BZ, and they expired on June 28, 2010; and

WHEREAS, the applicant now seeks to change the hours of operation from Monday through Thursday, 6:00 a.m. to 11:00 p.m., Friday, 6:00 a.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 10:00 p.m. to Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday, 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant seeks to extend the term of the special permits for ten years; and

WHEREAS, the applicant notes that the PCE is operated as New York Sports Club; and

WHEREAS, based on its review of the record, the Board finds that the proposed change in hours of operation and ten-year extension of term are appropriate, with the conditions set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolutions, both of which are dated June 28, 2000, so that as amended this portion shall read: “to grant an amendment to change the hours of operation and to grant an extension of the special permits for a term of ten years from the prior expiration”; *on condition* that all work and site conditions shall comply with drawings marked ‘Received January 25, 2013’-(8) sheets (Lot 14) and ‘January 25, 2013’-(4) sheets (Lot 16)’; 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 from the expiration of the prior grants, to expire on June 28, 2020;

THAT the hours of operation be limited to Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday, 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.;

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

THAT a certificate of occupancy will be obtained for each of the above-referenced lots by October 8, 2014;

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

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); 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 Nos. 101766144 and 102105259)

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

## 605-84-BZ

APPLICANT – Sheldon Lobel, P.C., for Order Sons of Italy in America Housing Development Fund Company, Inc., owners.

SUBJECT – Application March 26, 2013 – Amendment of a previously granted variance (§72-21) to an existing seven-story senior citizen multiple dwelling to legalize the installation of an emergency generator, contrary to front yard requirements (§23-45). R5 zoning district.

PREMISES AFFECTED – 2629 Cropsy Avenue, Cropsy Avenue between Bay 43rd Street and Bay 44th Street, Block 6911, Lot 6, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

**ACTION OF THE BOARD** – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

## 189-96-BZ

APPLICANT – John C Chen, for Ping Yee, owner; Club Flamingo, lessee.

SUBJECT – Application May 14, 2013 – Extension of Term of a previously granted Special Permit (§73-244) of a UG12 Eating and Drinking establishment with entertainment and dancing, which expires on May 19, 2013. C2-3/R6 zoning district.

PREMISES AFFECTED – 85-10/12 Roosevelt Avenue, south side of Roosevelt Avenue, 58’ east side of Forley Street, Block 1502, Lot 4, Borough of Queens.

### COMMUNITY BOARD #4Q

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 October 22, 2013, at 10 A.M., for decision, hearing closed.

## 163-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee.

SUBJECT – Application July 26, 2013 – Extension of time to obtain a certificate of occupancy for a previously granted physical culture establishment (*Crunch Fitness*) which expired on July 17, 2013. C2-4/R7A zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, northwest

corner of intersection of Fulton Street and S. Felix Street, Block 2096, Lot 66, 99, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to October 29, 2013, at 10 A.M., for decision, hearing closed.

## 177-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Dankov Corporation, owner.

SUBJECT – Application July 23, 2013 – Extension of time to complete construction of a previously approved variance (§72-21) which permitted the construction of a two-story, two-family residential building, which expired on June 23, 2013. R5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, southeast corner of the intersection of Glenmore Avenue and Milford Street, Block 4208, Lot 17, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

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 October 29, 2013, at 10 A.M., for decision, hearing closed.

## APPEALS CALENDAR

### 29-12-A

APPLICANT – Vincent Brancato, owner

SUBJECT – Application February 8, 2012 – Appeal seeking to reverse Department of Building’s padlock order of closure (and underlying OATH report and recommendation) based on determination that the property’s commercial/industrial use is not a legal non-conforming use. R3-2 Zoning district.

PREMISES AFFECTED – 159-17 159<sup>th</sup> Street, Meyer Avenue, east of 159<sup>th</sup> Street, west of Long Island Railroad, Block 12178, Lot 82, Borough of Queens.

### COMMUNITY BOARD #12Q

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an appeal of an Order of Closure for the subject premises, issued by the Commissioner of the

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Department of Buildings (“DOB”) on November 23, 2010 (the “Order”), brought by the property owner (hereinafter “Appellant”); and

WHEREAS, the Order states, in pertinent part:

I have reviewed the record of charge and specification in the Petition and Notice of Hearing, dated February 1, 2010, and the Report and Recommendation of the Administrative Law Judge, dated November 1, 2010. The Report of the recommendation of the Administrative Law Judge recommended closure of the premises.

It is my determination that the maintenance and repair of steel containers, truck repair, and storage of commercial trucks constitutes illegal commercial and/or manufacturing uses in a residence district and, therefore, the subject premises is ORDERED CLOSED . . . ; and

WHEREAS, a public hearing was held on this appeal on July 9, 2013 after due notice by publication in *The City Record*, with a continued hearing on September 17, 2013, and then to decision on October 8, 2013; and

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

WHEREAS, the subject site is located on the north side of Meyer Avenue, between 159<sup>th</sup> Street and Bedell Street, in an R3-2 zoning district; and

WHEREAS, Lot 82 is irregularly-shaped with 86.56 feet of frontage on the north side Meyer Avenue to a depth of approximately 190 feet, 80 feet of frontage on the west side of Bedell Street to a depth of 100 feet, and a lot area of approximately 15,000 sq. ft.; and

WHEREAS, the site is occupied partially by open use, which the Appellant asserts is consistent with the historic use of iron works, and several metal shed structures; and

WHEREAS, the Appellant contests the Order, which states that “the maintenance and repair of steel containers, truck repair, and storage of commercial trucks” are illegal non-conforming uses in the subject zoning district; and

WHEREAS, accordingly, the primary questions on appeal are whether (1) the non-conforming use was established prior to 1947 when the site was first zoned residential and (2) the use has been continuous from 1947 until the present without an interruption of two years or more; and

## PROCEDURAL HISTORY

WHEREAS, in response to complaints raised, on October 7, 2009 and December 10, 2009, DOB performed inspections of Lot 82 and observed the site is in violation of the Zoning Resolution because it is being used for automobile repairs, commercial vehicle storage, contractor’s yards, and for junk salvage storage; and

WHEREAS, the October 7, 2009 inspection report for 159-17 Meyer Avenue states that the commercial trucks, excavator, trailer, and other equipment were observed as were

commercial vehicles in different stages of being repaired; trucks at the site were identified as All Seasons Carting, 159-17 Meyer Avenue; and

WHEREAS, the December 10, 2009 Padlock Inspection Report stated that no changes were observed from the last inspection and the property was continuing to be used for storage of commercial vehicles and a garage use for automotive repairs and storage; and

WHEREAS, DOB determined that the noted uses were not permitted in the subject R3-2 zoning district and proceeded to enforce against the Appellant pursuant to Administrative Code § 26-127.2, otherwise known as the Padlock Law, which provides DOB with the authority to declare illegal commercial uses in residential zoning districts to be a nuisance, and to then close such uses; and

WHEREAS, however, prior to the issuance of an Order of Closure, the Padlock Law provides that the owner is entitled to a hearing at the City’s Office of Administrative Trials and Hearings (“OATH”); and

WHEREAS, by Petition and Notice of Hearing before OATH, dated February 1, 2010, Appellant was charged with violating ZR § 22-00 based on inspections by DOB, between October 7, 2009 and December 10, 2009, reflecting that the yard and garage at the premises had been used for automobile repairs, commercial storage, contractor’s yards and junk salvage storage; and

WHEREAS, on February 18, 2010, DOB inspected and observed that there were not any changes since the last inspection and, again on April 19, 2010, DOB inspected and observed that there were not any changes since the last inspection and that it continued to be used for commercial activities including commercial trucks and equipment, a welding business, and container storage; and

WHEREAS, the OATH hearing was held on July 19, 2010; and

WHEREAS, by a Report and Recommendation, dated November 1, 2010, OATH issued a recommendation for closure of non-conforming use at the site; and

WHEREAS, based on the finding that the premises was being used for maintenance and repair of steel containers, truck repair and storage of commercial trucks in violation of ZR § 22-00 and that sufficient evidence of a legally created, prior non-conforming use had not been provided, the Administrative Law Judge recommended that the DOB Commissioner may order closure of the premises pursuant to Administrative Code § 28-212.2; and

WHEREAS, on November 23, 2010, after reviewing the administrative record and the Report and Recommendation, DOB Commissioner Robert D. LiMandri determined that the maintenance and repair of steel containers, truck repair and storage of commercial trucks constitutes illegal commercial and manufacturing uses in a residence district and ordered the premises closed; and

WHEREAS, pursuant to the City Charter, the Appellant may appeal the Order to the Board, and the Board has the authority to review the validity of the Order and the underlying issues *de novo*; it is not bound by any finding or

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determination of OATH, nor is any other party; and

WHEREAS, on March 23, 2011, the Appellant commenced a proceeding in court challenging the Closing Order as in violation of lawful procedure, affected with error of law, arbitrary and capricious, an abuse of discretion and contrary to substantial evidence; and

WHEREAS, the Appellant alleged in the petition, that it has operated an industrial iron works company at the site, including activities associated with storage, maintenance, fabrication and repairs to steel containers and this activity has repeatedly been confirmed and ratified by DOB as valid and additionally alleges that ample and uncontested evidence of similar operations dating back to 1940 was provided at the OATH hearing but ignored<sup>1</sup>; and

WHEREAS, the City moved to have the court proceeding dismissed for failure to exhaust administrative remedies as petitioner failed to appeal the Closing Order to the Board as required under New York City Charter § 666 and New York City Administrative Code § 28-103.4, before seeking judicial review; and

WHEREAS, on July 21, 2011, the City and the Appellant stipulated a withdrawal of the Article 78 proceeding and provided that the Appellant could file an appeal at the Board within a specified period; and

## SITE HISTORY

WHEREAS, zoning maps reflect that Lot 82 has been within a residential zoning district since 1947; and

WHEREAS, the site is commonly referred to as 159-17 Meyer Avenue; however, the lots and addresses, including the range of 159-09 through 159-17 are referenced in historic documents and associated with Lot 82; and

WHEREAS, sometime around 1922 a home was constructed at the site that was demolished in 1973; and

WHEREAS, the Appellant asserts that Vincent Brancato began renting the site in the 1950s before purchasing it from the City; and

WHEREAS, in 1961, Lot 82 was zoned R3-2, which it remains today; and

WHEREAS the Appellant does not have information to explain the full history of the configuration of Lot 82 and the surrounding lots, but Brancato's deed references Lots 82, 84, and 85, and due to the absence of Lots 84 and 85 on the current tax map, it seems that they were enveloped by Lot 82 at some point; and

WHEREAS, however, the Appellant states that Lot 82 has been occupied by iron works since prior to 1947 – first by A. Hoffman, then Brancato Iron Works, and since approximately 2003 by several tenants who continue the iron

works and related uses; and

WHEREAS, OATH accepted that Brancato Iron Works began operations at the site in 1958, when the site was already zoned residential and its use was continuous up until the date of the hearing; and

WHEREAS, at the Board's first hearing, DOB stated that it agreed that there was sufficient evidence to establish the use at 1958 but that 1947 is the operative date; and

## CRITERIA FOR MAINTAINING A NON-CONFORMING USE

WHEREAS, DOB and the Appellant agree that the site is currently within an R3-2 zoning district and that commercial and manufacturing uses active at the site, are not permitted as-of-right uses within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming iron works use is permitted to remain, the Appellant must meet the Zoning Resolution criteria for a "non-conforming use" as defined at ZR § 12-10; and

WHEREAS, ZR § 12-10 defines "non-conforming" use as "any lawful *use*, whether of a *building or other structure* or of a tract of land, which does not conform to any one or more of the applicable *use* regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto"; and

WHEREAS, additionally, ZR § 52-61 – Discontinuance - Non-Conforming Uses – General Provisions - states that: "If, for a continuous period of two years, either the *non-conforming use of land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land . . . shall thereafter be used only for a conforming *use*"; and

WHEREAS, accordingly, as per the Zoning Resolution, the Appellant must establish that the use was established before it became unlawful, by zoning, in this case in 1947 (as reflected on the 1947 zoning maps) and it must have continued without any two-year period of discontinuance since then; and

WHEREAS, neither DOB nor the Appellant contest that this is the appropriate standard to apply to the analysis of whether the non-conforming use may continue at the site; and

## APPELLANT'S ARGUMENTS

WHEREAS, the Appellant makes the following primary arguments in support of its position that the Order of Closure be reversed: (1) the commercial and industrial use has been established and was continuous since prior to 1947; and (2) the issuance of the Order of Closure and DOB's and OATH's actions were procedurally flawed; and

WHEREAS, the Appellant asserts that the site has been used as an industrial site as evidenced by its submissions dating back to at least 1940 when it was used for iron works; and

WHEREAS, the Appellant resubmitted all of its evidence from the OATH proceeding, which includes copies of resolved DOB complaint reports from 1990, 1995, and 2005 related to construction without a permit and illegal

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1 The Order was previously challenged in an Article 78 proceeding brought by Rock Hard Concrete in December 2010. (Rock Hard Concrete Corp v. Robert D. Limandri , DOB, OATH, City of New York and Vincent Brancato, Index No. 116018/10). Rock Hard Concrete ultimately vacated the site.

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occupancy (Block 12178, Lot 82; 159-09, 159-11, 159-15, 159-17 Meyer Avenue) which reflect DOB's acceptance of the use as non-conforming per notations which state that it is accepted as a pre-1961 use; and

WHEREAS, the Appellant also submitted (1) a notice in a 1940 Department of Housing and Building ledger for construction at 159<sup>th</sup> Street and Meyer Avenue identified as A. Hoffman premise; (2) a 1957/58 phone book advertisement; (3) a 1961 accountant's statement for Brancato Iron Works at 112-11 159<sup>th</sup> Street; (4) a 1970s permit for work at 159-17 Meyer Avenue; (5) the deed dated January 29, 1981, between the City and Vincent Brancato for the purchase of Lots 82, 84, and 84 at auction; (6) 1998, 2003, 2010 New York City Department of Finance property tax bills for 159-17 Meyer Avenue; (7) a series of emails between the Appellant, DOB, and the Administrative Law Judge; and (8) a lease agreement dated May 17, 2003 between Vincent Brancato and Rock Hard Concrete Corp. for 159-17 Meyer Avenue; and

WHEREAS, the Appellant notes that DOB accepted OATH's decision and, thus, accepted that the use was established at the site from 1958; and

WHEREAS, the Appellant submitted 19 affidavits during the OATH proceeding to establish the use at the site prior to 1961 as was initially believed to be the operative date; and

WHEREAS, the primary source is Vincent Brancato who founded Brancato Iron Works; he stated that he immigrated to the United States from Italy in 1950 at age 19 and that in 1955 he set up operations at 112-01-17 159<sup>th</sup> Street for its main offices and purchased the Hoffman Iron facility; Mr. Brancato provided records to help establish his presence on 159<sup>th</sup> Street back to the 1950s, including a 1965 torch license, 1957 Yellow Page advertisement and finance records as well as the 1940 DOB record that states A. Hoffman at 112-10 159<sup>th</sup> Street; and

WHEREAS, Mr. Brancato states that 159<sup>th</sup> Street was the mailing address used for all businesses on the block but that he rented Lot 82 on Meyer Avenue in the 1950s and states that other lots have since been consolidated into Lot 82; accordingly, Mr. Brancato states that Lot 82 includes 159-09 through 159-17 Meyer Avenue; and

WHEREAS, when it was learned that 1947, rather than 1961, was the operative date, Mr. Brancato supplemented his affidavit to address the 1947 threshold; he states that when he first saw the A. Hoffman site on Lot 82 in 1950, he could see that it had been there since before 1947, based on wear and tear; Mr. Brancato relies on the DOB records from 1940 with entries for A. Hoffman on Meyer Avenue support he conclusion that an iron works facility was established in 1940 prior to the 1947 date; and

WHEREAS, the Appellant's other affidavits include those from Rock Hard Concrete's president, former Brancato Iron Works employees, people who formerly worked and lived in the surrounding area, and other neighbors who said that there was consistent use of the site as iron works since the 1950s; and

WHEREAS, the affidavits address the consistency of the

type of work despite the change in occupants; and that the 1922 house at the site was used for industrial work until its demolition; and

WHEREAS, the Appellant submitted three other supplemental affidavits to address the period prior to 1947; those are from Thomas Griffin (the "Griffin Affidavit"), Edward Puppe (the "Puppe Affidavit"), and Andrew Jenkins (the "Jenkins Affidavit"); and

WHEREAS, Mr. Griffin states that due to a family business that was nearby, he visited the area between 1945 and 1975 and witnessed the iron works business during that period; and

WHEREAS, during the hearing process, Mr. Puppe submitted his affidavit which states that he worked in the Jamaica area including Meyer Avenue and 159<sup>th</sup> Street from 1946 to 1966 as a police officer and that all during that period "the entire stretch of land north of Meyer Avenue, including Lot 82 . . . was used for iron works and related industrial purposes"; and

WHEREAS, Mr. Puppe also states that he saw trucks, iron containers, piles of new and used steel as well as stacks of finished steel products and that in 1946, Lot 82 was part of Hoffman Iron Works which also had offices on 159<sup>th</sup> Street and that Brancato's use took over the site immediately after Hoffman left and was the same use, which continues today; and

WHEREAS, Mr. Jenkins states that he has had personal knowledge of the area from 1960 and was a DOB Deputy Commissioner from 1974 to 1978; he asserts that because DOB would not determine a use to be a lawfully established non-conforming use unless it was proven to have been established prior to the zoning change, the use has to have been legally established prior to 1947 as would have been required to satisfy any DOB review; and

WHEREAS, the Appellant asserts that DOB has not submitted any documents to refute the establishment of the use prior to 1947; and

WHEREAS, the Appellant asserts that since DOB and OATH accepted the initial affidavits which address the pre-1961 period, then they should accept the supplemental affidavits which address the pre-1947 period as there should be no distinction between the two sets of affidavits; and

WHEREAS, the Appellant also asserts that the photographs DOB submitted of homes on the block are from the 1930s and not 1940s and do not refute the eyewitness accounts of Mr. Puppe and Mr. Griffin regarding the pre-1947 character of the area; and

WHEREAS, the Appellant states that the absence of pre-1947 evidence should not be construed against it but rather for it where the reasonable presumption is that complaints against it since 1995 were closed based on proof; and

WHEREAS, the Appellant asserts that the paucity of evidence of residential use in the area in the 1930s and 1940s confirms that the block was occupied by commercial or industrial use, which became non-conforming in 1947; and

WHEREAS, as to the question of whether the current

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use is a departure from the established use to the extent that it constitutes a discontinuance of use, the Appellant asserts that the existing use is not junk salvage or storage, but rather continues to be iron works and repair of metal containers; and

WHEREAS, the Appellant asserts that OATH determined that the current uses were not junk salvage and DOB should be held to that since it adopted OATH's determination; and

WHEREAS, the Appellant asserts that there are the following procedural deficiencies: (1) DOB is never clear about the addresses it is enforcing against; (2) the Order is defective because it does not identify the correct addresses and must only apply to 159-17 Meyer Avenue; and (3) DOB abandoned the order as it did not enforce it in a timely manner; and

WHEREAS, the Appellant asserts that only the portion of the lot identified as 159-17 Meyer Avenue is subject to padlocking and not the remainder of Lot 82, but that, nonetheless, the remainder of Lot 82 has also been occupied by non-conforming use prior to 1947; and

## DOB'S POSITION

WHEREAS, DOB asserts that (1) the use was not established prior to 1947; (2) the current use reflects a discontinuance of the iron works; and (3) the Order applies to all of Lot 82; and

WHEREAS, DOB states that the relevant date by which the use must have been established is 1947 as it is not disputed that the site has been within a residential zoning district from 1947 through today, as reflected on 1947 and 1953 zoning maps; and

WHEREAS, DOB is not persuaded by the evidence that the Appellant submitted to support its claim that the site was occupied by the non-conforming use prior to 1950 when Vincent Brancato came to the United States from Italy and 1955 when he states he established his business on 159<sup>th</sup> Street; and

WHEREAS, DOB asserts that the Order of Closure was properly based upon OATH's Report and Recommendation, which found that the Appellant had not established a valid nonconforming use defense and recommended closure of the site to abate the illegal nuisance; and

WHEREAS, DOB states that the Appellant has not presented new facts to support its effort to establish the commercial and manufacturing uses; and

WHEREAS, DOB notes that during the course of the OATH proceeding, the Appellant provided evidence to support its claim that the use had existed at the site prior to 1961, but that ultimately, it was discovered that the operative date was actually 1947 and the Appellant subsequently submitted supplemental affidavits; and

WHEREAS, DOB notes that the evidence to establish the use prior to 1947 was initially limited to two affidavits from Vincent Brancato and the Griffin Affidavit, which it rejects as being not reliable enough to pre-date 1950 and that the Griffin Affidavit has no probative value since it is so general and dates back 65 years; and

WHEREAS, DOB notes that of the 19 affidavits

submitted during the OATH proceeding, only Vincent Brancato's observations date back prior to 1958 and that was to 1955; of all the other affiants, there was one recalling observations back to 1958 and another to 1959, with all the others spanning the period of 1960 to the present; and

WHEREAS, DOB states that affidavits are only credible if their narrative is consistent with other accounts obtained independently or with documentary evidence; and

WHEREAS, as to evidence, DOB states that the photographs and business documents do not confirm the presence of the use at the site prior to 1947; and

WHEREAS, DOB asserts that the fact that commercial and manufacturing uses may have been occurring on other zoning lots on Block 12178 under the Hoffman name does not support the subject claim about the use of Lot 82, especially since there was a dwelling built on Lot 82 in 1922; and

WHEREAS, DOB finds the representations and recollections about the historic use of the site to be so broad as to cover the block as a whole, which fails to provide sufficient detail to support a claim that Lot 82 has been occupied by the non-conforming use during all relevant periods; and

WHEREAS, DOB submitted tax photographs, which it states were taken between 1939 and 1941, which reflect homes at 112-33 and 112-31 159<sup>th</sup> Street (Lots 1 and 3); and 159-17 and 159-05 Meyer Avenue (Lots 82 and 86) and building data that indicates that they all existed in 1958 when the first of the four was demolished; one was demolished in 1973 and the other two remain; and

WHEREAS, DOB asserts that the evidence that four homes existed on the block until at least 1958 refutes two supplemental affidavits (the Puppe Affidavit and the Jenkins Affidavit); the Puppe Affidavit states that the entire stretch along Meyer Avenue from 159<sup>th</sup> Street to the railroad was used for iron works; and

WHEREAS, DOB asserts that the subject portion of Meyer Avenue was very different than it is today and had a number of residences not noted in the Puppe Affidavit; and

WHEREAS, DOB finds that in addition to the recollection being set more than 60 years in the past, it is also not reliable because Mr. Puppe fails to recognize the true character of the block, which included residences; and

WHEREAS, similarly, DOB dispels of the Jenkins Affidavit for failing to reach back to 1947 as Jenkins' involvement with the site began in 1960 and that he says that in his former position at DOB, he would not have allowed the use to continue if he had not had evidence that it was lawfully established prior to 1947; and

WHEREAS, DOB notes that no documentary evidence has been submitted by Jenkins or the Appellant to support the claim that DOB even received evidence to establish the pre-1947 use at the site; and

WHEREAS, DOB notes that in 2009, it initiated an enforcement proceeding against the commercial and manufacturing uses at the site after inspections revealed it was being used for automobile repairs, commercial vehicle storage, contractors' yards, and for junk salvage storage; such uses are contrary to the Zoning Resolution because they are

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within use groups which are not permitted in the subject R3-2 zoning district; and

WHEREAS, specifically, commercial vehicle repair and storage are both Use Group 16 (ZR § 32-25); contractors' yards, including iron works and container carting are within Use Group 17 (ZR § 42-14); and the storage of salvage auto parts and junk salvage are Use Group 18 (ZR § 42-15); and

WHEREAS, further, DOB states that the uses are in violation of the Building Code because they are not supported by the legal use documents on file with DOB; the only documents on record are a 1912 New Building Application for a dwelling that was presumably the one demolished in 1973; and

WHEREAS, DOB maintains that the evidence demonstrates that Use Group 18 junk salvage storage is present at the site; based on its inspector's observations, there were numerous damaged empty metal containers at the site, which it deems constitute junk salvage/storage; and

WHEREAS, as to what portion of the lot is subject to the Order, DOB asserts that all of Lot 82 is subject to it as the Order describes the premises as 159-17 Meyer Avenue "a/k/a Lot 82" rather than saying "a portion of Lot 82"; and

WHEREAS, DOB states that the fact that the OATH petition did not list the range of addresses at Lot 82 does not limit the scope of the padlock action given, in particular, the fact that some premises do not have street addresses as is fairly common for undeveloped land; and

WHEREAS, DOB states that it is currently investigating other lots on the block as it appears that illegal uses extend beyond Lot 82; and

## CONCLUSION

WHEREAS, the Board finds that the record fails to reflect that the non-conforming use was established on Lot 82 prior to 1947 when it was zoned for residential use; and

WHEREAS, the Board does not find that the four supplemental affidavits (from Brancato, Griffin, Puppe, and Jenkins) provide a sufficient level of detail or information about the site prior to 1947; and

WHEREAS, first, the Board notes that by Mr. Brancato's own testimony, he states that he did not enter the United States until 1950 and did not visit first the site until several years after that, so his statements about the use of the site prior to 1947 are purely speculative; and

WHEREAS, as to the Griffin Affidavit, the Board notes that it is very general, based on the assertion that Mr. Griffin's family had a business near the site during the period of 1945 to 1975, but does not include any detail or isolated point of reference in time as the Board finds would be difficult to do for period more than 65 years ago; and

WHEREAS, as to the Puppe Affidavit, the Board agrees with DOB that Mr. Puppe's statement that the whole blockfront from 159<sup>th</sup> Street to the railroad was used for iron works calls into question the precision of his recollections of that period more than 65 years ago given that historic records show that there were several homes along Meyer Avenue in the 1940s until their demolition beginning in 1958 according to City records; additionally, as with the Griffin Affidavit,

there is a lack of specificity and precision; and

WHEREAS, finally, as to the Jenkins Affidavit, the Board notes that Mr. Jenkins' personal observations did not begin until 1960 and the Board is not persuaded by the statement that the use must have been established prior to 1947 or DOB would not have dismissed complaints and allowed it to continue; and

WHEREAS, the Board notes that DOB erroneously relied on a 1961 establishment date as reflected in its complaint reports and the early stages of the proceedings in the matter; and

WHEREAS, the Board notes that there is nothing in the record that confirms that DOB ever required or that the Appellant proved the establishment of the use in 1947; and

WHEREAS, the Board notes that the only other pre-1947 evidence in the record – the 1940 DOB ledger – is not legible but seems to reflect a "dwelling, garage, shop" and does not speak to the establishment of an iron works on Lot 82; and

WHEREAS, the Board agrees with DOB that Lot 82 is subject to the Order of Closure, in the absence of any evidence or arguments in the record to limit it to 159-17 Meyer Avenue; and

WHEREAS, during the hearing process, the Board directed the Appellant to photograph the current uses at the site and to provide a map of where the different addresses on Lot 82 are located to support its argument that 159-17 Meyer Avenue should be considered distinct from other addresses and the Order should only cover that one portion of the site; and

WHEREAS, the Appellant failed to provide photographs or the map and never explained how different addresses fit into Lot 82; and

WHEREAS, in fact, the Board notes that the Appellant has claimed that addresses are somewhat interchangeable across the block as the Meyer Avenue addresses where the use is located are not always used while there has been consistent use of a 159<sup>th</sup> Street address for the offices; and

WHEREAS, based on site visits and a review of recent aerial photographs, the Board finds that it is difficult even to conclude that the entire use is within Lot 82 as certain site conditions seem to straddle other lots, including Lot 74, Lot 80, Lot 101, and even into Bedell Street; and

WHEREAS, the Board understands that DOB is investigating the legality of other uses on the block; and

WHEREAS, the Board recognizes that on a site with a significant amount of open use and temporary structures, it is difficult to differentiate between portions of the site, particularly on a site with significant depth in relation to actual street frontage; and

WHEREAS, as to the question of continuity, the Board notes that so long as the Use Group 17 use was established prior to 1947, the Zoning Resolution would allow for it to convert to another Use Group 17 or 16 use, but not to Use Group 18; and

WHEREAS, the Board notes that truck repair is Use Group 16 and metal finishing or heat treatment or



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manufacturing is Use Group 17, both of which would be permitted to continue if the Use Group 17 iron works had been established in 1947 and not discontinued; and

WHEREAS, the Board cannot definitively conclude based on its own observations nor is it persuaded by DOB that the current use constitutes a discontinuance of the iron works use or another use that would be permitted if the non-conforming use were established in 1947; and

WHEREAS, however, the Board notes that the record before it does not thoroughly address the question of continuity of use to an extent that the Board can make a determination; and

WHEREAS, the Board refrains from addressing whether there were any procedural irregularities associated with the OATH proceeding as it is able to exercise its zoning expertise with regard to non-conforming use independent of the OATH proceeding and as, noted above, its review of the facts and the record is *de novo*; and

WHEREAS, additionally, the Board notes that the Appellant has had nearly four years since DOB's first inspection in 2009 to gather evidence to support its claims of establishment and continuity of use and finds four years to be an ample amount of time to assemble evidence and defend its position; and

WHEREAS, in sum, the Board concludes as follows: (1) the non-conforming use has not been established prior to 1947; (2) the whole of Lot 82 is the appropriate subject of the review; and (3) any use of the site which does not conform to R3-2 zoning district regulations must cease; and

Therefore it is Resolved, that this appeal, which challenges an Order of Closure issued by DOB on November 23, 2010, is denied.

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

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## 75-13-A

APPLICANT – Law Office of Fredrick A. Becker, for 5 Beekman Property Owner LLC by Ilya Braz, owner.

SUBJECT – Application February 20, 2013 – Appeal of §310(2) of the MDL relating to the court requirements (MDL §26(7)) to allow the conversion of an existing commercial building to a transient hotel. C5-5(LM) zoning district.

PREMISES AFFECTED – 5 Beekman Street, south side of Beekman Street from Nassau Street to Theater Alley, Block 90, Lot 14, Borough of Manhattan.

### COMMUNITY BOARD #1M

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

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, the decision of the Executive Director of

the NYC Development Hub, dated February 7, 2013, acting on Department of Buildings Application No. 121329268 reads, in pertinent part:

Proposed conversion of an office building to a Use Group 5 transient hotel does not comply with MDL Section 26(7), in that legally required windows open onto an existing inner court; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary court requirements in order to allow for the proposed conversion of the subject building from office and adult vocational school uses (Use Groups 6 and 9) to a transient hotel (Use Group 5), contrary to MDL § 26(7); and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in *The City Record*, with a continued hearing on August 13, 2013, and then to decision on October 8, 2013; and

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

WHEREAS, the subject site is a rectangular lot located on the south side of Beekman Street and extending from Theater Alley to Nassau Street, within a C5-5 district within the Special Lower Manhattan District; and

WHEREAS, the site has approximately 100 feet of frontage along Beekman Street, approximately 146 feet of frontage along Nassau Street, approximately 150 feet of frontage along Theater Alley, and a lot area of 14,937 sq. ft.; and

WHEREAS, the site is occupied by a ten-story commercial building that was constructed between 1881 and 1890 and is known as the Temple Court Building and Annex (the “Building”); and

WHEREAS, on February 10, 1998, the Building was designated as an individual landmark by the New York City Landmarks Preservation Commission (“LPC”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 19, 2004, when, under BSA Cal. No. 383-03-A, the Board authorized the retention of an open, unenclosed access stair contrary to the 1938 Building Code and the MDL in connection with a proposed conversion from office and adult vocational school uses (Use Groups 6 and 9) to residences (Use Group 2); and

WHEREAS, in 2009, another application was filed with the Board, under BSA Cal. No. 12-09-A, seeking MDL and 1938 Building Code waivers in connection with a proposed conversion from office and adult vocational school uses (Use Groups 6 and 9) to transient hotel (Use Group 5); this application was withdrawn on July 19, 2011; and

WHEREAS, the applicant notes that, despite the Board's action under BSA Cal. No. 383-08-A, the Building was never converted to residential use and has been vacant for many years; and

WHEREAS, the applicant now proposes to convert the Building to a transient hotel use (Use Group 5) with 287 rooms (the “Proposal”); and

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WHEREAS, the applicant states that while the proposed use is permitted as-of-right in the underlying zoning district, the Building's existing inner court, as defined by MDL § 4(32), does not comply with the applicable provisions of the MDL; and

WHEREAS, the Board notes that pursuant to MDL § 4(9), transient hotels are considered "class B" multiple dwellings; therefore the proposed hotel use must comply with the relevant provisions of the MDL; and

WHEREAS, pursuant to MDL § 30(2), every room in a multiple dwelling must have one window opening directly upon a street or upon a lawful yard, court or space above a setback located on the same lot as that occupied by the multiple dwelling; and

WHEREAS, the applicant states that of the 287 rooms proposed, 32 rooms (11 percent) would have required windows opening onto the existing inner court; and

WHEREAS, MDL § 26(7) states that, except as otherwise provided in the Zoning Resolution, (1) an inner court shall have a minimum width of four inches for each one foot of height of such court and (2) the area of such inner court shall be twice the square of the required width of the court, but need not exceed 1,200 sq. ft. so long as there is a horizontal distance of at least 30 feet between any required living room window opening onto such court and any wall opposite such window; and

WHEREAS, the applicant states that the Building's existing inner court with a height of 121 feet does not comply with the requirements of MDL § 26(7), in that it has a width of 30'-8¼" and a depth of 16'-2¾", and an area of 514 sq. ft., but is required, per MDL § 26(7) to have a minimum width of 40'-5" and a minimum depth of 30'-0" and an area of 1,200 sq. ft.; as such, the applicant requests that the Board waive compliance with that provision pursuant to MDL § 310; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the Building was constructed in the 1880s and completed around 1890; therefore it is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL § 26(7) specifically relates to the minimum dimensions of courts; therefore the Board has the power to vary or modify the subject provision pursuant to MDL § 310(2)(a)(3); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict

compliance with the MDL; and

WHEREAS, the applicant states that, in order for all of the hotel units in the proposed hotel to have windows that open onto a street or a lawful yard or court, as required by MDL § 30(2), extensive structural work would be required to enlarge the inner court to a complying dimension, including construction of new foundations below the annex cellar, shoring of the two existing floor beams down to the foundation, the installation of three new beams on the edge of the new opening, the installation of a new metal deck and concrete topping between the edge beam and the remaining interior floor beam, the demolition of each floor and wall for one story below, and the installation of a new light well façade; and

WHEREAS, as an alternative to the creation of a complying court, the applicant explored the feasibility of a design in which the inner court was not altered and the rooms were configured so that no room used the inner court to satisfy MDL § 30(2); and

WHEREAS, the applicant represents that both complying configurations significantly increase costs and reduce revenue; and

WHEREAS, specifically, the applicant represents that providing a complying inner court would result in a reduction in the number of hotel rooms from 287 to 263 (24 rooms) and a loss of 6,669 sq. ft. of floor area; further, the construction cost of providing a complying court would exceed the proposed design cost by approximately \$23,000 per room; and

WHEREAS, as to the design in which the inner court is not altered and the rooms are reconfigured, the applicant represents that such a design would result in a reduction in the number of rooms from 287 to 255 (32 rooms) and construction costs in excess of the proposed design of approximately \$31,000 per room; and

WHEREAS, further, the applicant asserts that both complying designs would generate significantly less annually than the proposal; specifically, the complying inner court design would generate approximately \$2,500,000 less than the proposal and the reconfigured rooms design would generate approximately \$3,400,000 less than the proposal; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of MDL § 26(7); and

WHEREAS, the applicant states that the requested variance of MDL § 26(7) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, the applicant represents that the Building was constructed to meet the demands of a late-19th Century office and, as such, is unsuitable to satisfy the demands of a modern office, but can be altered to provide transient accommodations to business travelers and tourists in Lower Manhattan; and

WHEREAS, the applicant notes that only 11 percent of the rooms will use the existing inner court for light and ventilation and that, because the rooms will be occupied for

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less than 30 days, and, presumably, by visitors who will spend a significant portion of their time touring the city or conducting business outside their room, the impact of the deficient court upon the health, safety and welfare of the occupants of the hotel will be, at most, negligible; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the building, which, as noted above, was designated by LPC as an individual landmark in 1998; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC approving the proposed interior alterations, dated April 30, 2013, and a Permit for Minor Work from LPC approving the exterior alterations, dated March 27, 2013; and

WHEREAS, based on the above, the Board finds that the proposed variance to MDL § 26(7) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of MDL § 26(7) is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decision of the Executive Director of the NYC Development Hub, dated February 7, 2013, acting on Department of Buildings Application No. 121329268, is modified and that this application is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received June 3, 2013" - twelve (12) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

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

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

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

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## 126-13-A

APPLICANT – Sheldon Lobel, PC, for Woodmere Development LLC, owner.

SUBJECT – Application April 30, 2013 – Appeal of NYC Department of Buildings’ determination that a rear yard is required at the boundary of a block coinciding with a railroad right-of-way. R7B Zoning District.

PREMISES AFFECTED – 65-70 Austin Street, 65th Road and 66th Avenue, Block 3104, Lot 101, Borough of Queens.

### COMMUNITY BOARD # 6Q

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 November 26, 2013, at 10 A.M., for decision, hearing closed.

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## 134-13-A

APPLICANT – Bryan Cave, for Covenant House, owner.  
SUBJECT – Application May 9, 2013 – Appeal of NYC Department of Buildings’ determination regarding the right to maintain an existing advertising sign. C2-8/HY zoning district.

PREMISES AFFECTED – 538 10th Avenue aka 460 West 41st Street, Tenth Avenue between 41st and 42nd Streets, Block 1050, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to October 22, 2013, at 10 A.M., for decision, hearing closed.

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## 194-13-A thru 205-13-A

APPLICANT –Sanna & Loccisano P.C. by Joseph Loccisano, for Leonello Savo, owner.

SUBJECT – Application July 3, 2013 – Construction of single detached residences not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SSRD) zoning district.

PREMISES AFFECTED – 36, 35, 31, 27, 23, 19, 15, 11, 12, 16, 20, 24 Savona Court, west side of Savona Court, 326.76’ south of the corner form by Station Avenue and Savona Court, Block 7534, Lot 320, 321, 322, 323, 324, 325, 326, 327, 330, 331, 332, 335, Borough of Staten Island.

### COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to October 22, 2013, at 10 A.M., for decision, hearing closed.

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## 237-13-A thru 242-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for RLP LLC, owners.

SUBJECT – Application August 12, 2013 – Construction of six buildings not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SSRD) zoning district.

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PREMISES AFFECTED – 11, 12, 15, 16, 19, 20 Nino Court, 128.75 ft. south of intersection of Bedell Avenue and Hylan Boulevard, Block 7780, Lot 22, 30, 24, 32, 26, 34, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

**247-13-A**

APPLICANT – Sheldon Lobel, P.C., for Castle Hill Equities, LLC, owners.

SUBJECT – Application August 22, 2013 – Common Law Vested Right to continue development of proposed six-story residential building under prior R6 zoning district. R5A zoning district.

PREMISES AFFECTED – 123 Beach 93rd Street, western side of Beach 93rd Street with frontage on Shore Front Parkway and Cross Bay Parkway, Block 16139, Lot 11, Borough of Queens.

**COMMUNITY BOARD #14Q**

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 October 29, 2013, at 10 A.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## ZONING CALENDAR

**301-12-BZ**

**CEQR #13-BSA-050Q**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Jam Realty of Bayside LLC, owner.

SUBJECT – Application October 22, 2012 – Special permit (§73-52) to allow a 25 foot extension of an existing commercial use into a residential zoning district, and §73-63 to allow the enlargement of a legal non-complying building. C2-2(R4) and R2A zoning districts.

PREMISES AFFECTED – 213-11/19 35th Avenue, Block 6112, Lot 47, Borough of Queens.

**COMMUNITY BOARD #11Q**

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 21, 2012, acting on Department of Buildings Application No. 420113745, reads in pertinent part:

The subject building is located on a zoning lot split into R2A and C2-2/R4 zoning districts (and) enlargement of vertical and horizontal at R2A portion of building is contrary to ZR 22-00 (and) enlargement of C2-2/R4 portion of building exceed[s] maximum permitted FAR, contrary to ZR 33-121; and

WHEREAS, this is an application under ZR §§ 73-52, 73-63, and 73-03, to permit, on a site partially within an R2A zoning district and partially within a C2-2 (R4) zoning district, the legalization of an extension of an existing commercial use within portions of an existing building within the R2A portion of the zoning lot, contrary to ZR § 22-00, and the enlargement of a non-complying, non-residential building within the C2-2 portion of the zoning lot, contrary to ZR § 33-121; and

WHEREAS, a public hearing was held on this application on July 16, 2013 after due notice by publication in *The City Record*, with continued hearings on August 13, 2013 and September 10, 2013, and then to decision on October 8, 2013; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application, on condition that there will be no parking or driving on the sidewalk; and

WHEREAS, the subject site is an irregular corner lot located at the northwest corner of the intersection of 35th Avenue and Bell Boulevard, partially within an R2A zoning district and partially within a C2-2 (R4) zoning district; and

WHEREAS, the site has approximately 133 feet of frontage along 35th Avenue, approximately 32 feet of frontage along Bell Boulevard, and a lot area of 4,435 sq. ft.; and

WHEREAS, the site is occupied by a two-story eating and drinking establishment (Use Group 6) with 4,556 sq. ft. of floor area (2,471 sq. ft. of floor area (0.75 FAR) within the C2-2 (R4) portion of the zoning lot; and 2,085 sq. ft. of floor area (1.82 FAR) within the R2A portion of the zoning lot); and

WHEREAS, the applicant represents that the commercial uses have existed at the site since well before December 15, 1961, when the current R2A portion of the site was zoned R2; therefore, the commercial use in that portion of the lot is legally non-conforming; and

WHEREAS, the applicant notes that, in recent years (since 2005), a portion of the rear alley along the northern border of the site was enclosed and a small enlargement was constructed along the western border of the site; because these additions were located within the R2A portion of the lot, the amount of commercial floor area in the residence district

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increased, contrary to ZR § 22-00; and

WHEREAS, the applicant proposes to: (1) pursuant to ZR § 73-52, extend the use regulations applicable in the C2-2 (R4) portion of the lot 25 feet to the west along the northern lot line, thereby legalizing the portion of the enclosure of the alley within the R2A portion of the lot; (2) pursuant to ZR § 73-63, enlarge the portion of the restaurant within the C2-2 (R4) portion of the lot from 4,291 sq. ft. (1.02 FAR) to 4,590 sq. ft. (1.09 FAR); and (3) demolish the small enlargement constructed along the western border of the site; and

WHEREAS, as to floor area changes under the proposal, the applicant states that the commercial floor area within the R2A portion of the district will decrease—because of the extension of the district boundary—from 2,085 sq. ft. (1.82 FAR) to 265 sq. ft. (1.09 FAR), while the floor area within the C2-2 (R4) portion of the lot will increase from 2,471 sq. ft. (0.75 FAR) to 4,590 sq. ft. (1.09 FAR); and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided that: (1) without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (2) such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold single ownership requirement, the applicant submitted deeds and historic Sanborn maps establishing that the subject property has existed in single ownership since prior to December 15, 1961; and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence showing that the zoning lot was in single ownership prior to December 15, 1961 and continuously from that time onward; and

WHEREAS, as to the threshold 50 percent requirement, 3,326 sq. ft. (75 percent) of the site's total lot area of 4,435 sq. ft. is located within the C2-2 (R4) zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the first finding, the applicant represents that it would not be economically feasible to use or develop the R2A portion of the zoning lot for a permitted use; and

WHEREAS, specifically, the applicant states the residential portion of the lot is too small—approximately 35 feet wide and 35 feet deep—to accommodate a complying building; further, a complying use, particularly a residence, would be nearly impossible to market because it would be surrounded by non-residential uses; and

WHEREAS, the Board agrees that it would not be

economically feasible to use or develop the remaining portion of the zoning lot, zoned R2A, for a permitted use; and

WHEREAS, as to the second finding, the applicant states that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, the applicant states that Bell Boulevard is predominantly commercial in nature, including two gasoline stations at the intersection of Bell Boulevard and 35th Avenue; the applicant also notes that the commercial use has existed at the site for decades; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C2-2 (R4) zoning district portion of the lot into the R2A portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, ZR § 73-63 permits the enlargement of a non-complying, non-residential building provided that: (1) such building existing on December 15, 1961; (2) the enlargement does not create any new non-compliance or increase the degree of any existing non-compliance; and (3) the enlargement does not increase the floor area beyond ten percent of the maximum permitted FAR in the underlying district; and

WHEREAS, the applicant represents that DOB records indicate that the building was constructed around 1930 and that the proposal neither creates a new non-compliance, nor increases the degree of any existing non-compliance; and

WHEREAS, the applicant states that the maximum permitted FAR in the C2-2 (R4) district is 1.0 and that the proposal—including the extension of the district boundary pursuant to ZR § 73-52—results in a commercial FAR of 1.09; thus, the enlargement may be permitted under ZR § 73-63; the applicant notes that the remaining commercial floor area (265 sq. ft.) is lawfully non-conforming, as stated above; and

WHEREAS, accordingly, the Board finds that the proposal satisfies the threshold requirements of ZR § 73-63; and

WHEREAS, at hearing, the Board requested clarification regarding the footprint of the building prior to the recent enlargements; and

WHEREAS, in response, the applicant submitted a survey of the building completed prior to 2005 and deeds for the relevant lots covering the time period in question; and

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

WHEREAS, the proposed action 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 granting of the proposed special permits is outweighed by the advantages to be

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derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-52, 73-63, and 73-03; and

WHEREAS, the project is classified as an unlisted action pursuant to 6 NYCRR Part 17.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA050Q, dated April 5, 2013; and

WHEREAS, the EAS documents that the operation of the bank 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 §§ 73-52, 73-63, and 73-03, to permit, on a site partially within an R2A zoning district and partially within a C2-2 (R4) zoning district, the legalization of an extension of an existing commercial use within portions of an existing building within the R2A portion of the zoning lot, contrary to ZR § 22-00, and the enlargement of a non-complying, non-residential building within the C2-2 portion of the zoning lot, contrary to ZR § 33-121; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 7, 2013" – five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: 265 sq. ft. (1.09 FAR) within the R2A portion of the lot and 4,590 sq. ft. (1.09 FAR) within the C2-2 (R4);

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

THAT the Department of Buildings must ensure

compliance with all 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, October 8, 2013.

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**322-12-BZ**  
**CEQR #13-BSA-062K**

APPLICANT – Law Office of Fredrick A. Becker, for Marc Edelstein, owner.

SUBJECT – Application December 6, 2012 – Variance (§72-21) to permit the enlargement of a single-family residence, contrary to open space and lot coverage (§23-141); less than the minimum required front yard (§23-45) and perimeter wall height (§23-631). R5 (OP) zoning district.

PREMISES AFFECTED – 701 Avenue P, 1679-87 East 7th Street, northeast corner of East 7th Street and Avenue P, Block 6614, Lot 60, Borough of Brooklyn.

**COMMUNITY BOARD # 12BK**

**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 .....

Negative:.....5  
.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 11, 2012, and acting on Department of Buildings Application No. 320397691 reads, in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required;
2. Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted;
3. Proposed plans are contrary to ZR 113-55 and 23-631 in that the proposed wall height exceeds the maximum permitted; and
4. Proposed plans are contrary to ZR 113-542 and 23-45 in that the proposed front yards are less than the minimum required; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district within the Special Ocean Parkway District, the enlargement of an existing single-family semi-detached home that does not provide the required open space, lot coverage, perimeter wall height, or front yards, contrary to ZR §§ 23-141, 23-631, 23-45, 113-542, and 113-55; and

WHEREAS, a public hearing was held on this application on August 13, 2013, after due notice by publication in *The City Record*, with a continued hearing on September 17, 2013, and then to decision on October 8, 2013;

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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 12, Brooklyn, recommends disapproval of this application; and

WHEREAS, certain members of the surrounding community submitted oral and written testimony in opposition to the application, citing concerns about the proposed building's overall bulk and the impact of construction upon surrounding neighbors; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Avenue P and East Seventh Street, within an R5 zoning district within the Special Ocean Parkway District; and

WHEREAS, the site has 90 feet of frontage along East Seventh Street, 17 feet of frontage along Avenue P, and 1,710 sq. ft. of lot area; and

WHEREAS, the site has an irregular shape; its lot width varies from 17 feet at its narrowest point (along the Avenue P frontage) to 27 feet along its northern boundary (running perpendicular to East Seventh Street); and

WHEREAS, the site is currently occupied by a two-story, semi-detached, single-family home with approximately 1,505.30 sq. ft. of floor area (0.88 FAR); and

WHEREAS, the applicant proposes to enlarge the existing first and second stories of the building contrary to the open space, lot coverage, perimeter wall, and front yard requirements, and increase the floor area from 1,505.30 sq. ft. (0.88 FAR) to 2,415.75 sq. ft. (1.41 FAR) (a maximum of 2,565 sq. ft. (1.50 FAR) is permitted); and

WHEREAS, in particular, the applicant proposes to decrease its open space from 52 percent to 39 percent (a minimum open space of 45 percent is required, per ZR § 23-141(b)), increase its lot coverage from 48 percent to 61 percent (a maximum lot coverage of 55 percent is permitted, per ZR § 23-141(b)), maintain its existing non-complying perimeter wall height of 23'-11" (a maximum perimeter wall height of 21'-0" is permitted, per ZR § 113-55), and maintain its existing non-complying front yard depths of 0'-6 ¾" along East Seventh Street and 5'-7 3/16" along Avenue P (two front yards of no less than 10 feet each are required, per ZR § 113-542); the applicant notes that the proposed enlargement complies in all other respects with the applicable bulk regulations; and

WHEREAS, because the proposed enlargement does not comply with the R5/Special Ocean Parkway District regulations, a variance is requested; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying zoning regulations: (1) the lot's small size and narrowness; (2) the underdevelopment of the existing home; and (3) the orientation of the existing home on the corner lot; and

WHEREAS, the applicant represents that with only

1,710 sq. ft. lot area, the site has less lot area than every lot in the R5 district except one; further, the site's lot width of 17 feet (for the majority of the lot) makes it the narrowest corner lot out of the 38 corner lots in the applicant's R5 district study;

WHEREAS, in addition, the applicant states that all other corner lots in the district have at least 2,000 sq. ft. of lot area and the average lot area is 3,335.7 sq. ft. (nearly twice that of the subject site); and

WHEREAS, the applicant represents that based on the lot size and narrow width, and its location as a corner lot, any conforming enlargement would be severely restricted by the underlying yard and open space requirements and would not be able to provide livable space for the enlarged home; and

WHEREAS, the applicant also states that the existing home with a floor area of 1,505 sq. ft. (0.88 FAR) is underdeveloped compared to the allowable square footage of 2,565 sq. ft. (1.5 FAR); and

WHEREAS, the applicant notes that the existing home is the fifth smallest of 37 homes occupying corner lots, the average being 2,995 sq. ft; and

WHEREAS, as to the orientation of the existing home on the lot, the applicant states that because the home is currently 16'-3 5/8" in width with a non-complying front yard of 0'-6 ¾", an as-of-right enlargement providing the required 10'-0" front yard would result in a building width of only seven feet in the enlarged portion of the building from exterior wall to exterior wall, which yields a livable space with a width of approximately five feet; thus, an as-of-right enlargement would not even yield rooms that meet the minimum dimensional requirements for habitability, let alone accommodate modern living space; and

WHEREAS, the applicant states that because other corner lots in the district have more lot width, the front yard requirements can be satisfied without overwhelming the living space; the subject site, on the other hand, is too narrow to provide complying front yards; and

WHEREAS, the applicant also contrasts the site's as-of-right enlargement limitations with other semi-detached interior lots on the block, noting that such lots generally require one side yard (the equivalent of the site's East Seventh Street front yard because the site is a corner lot) of only four feet; thus, other lots on the block have between three and six more feet of lot width, but have yard requirements that are generally six feet less than the subject lot's; and

WHEREAS, therefore, the applicant asserts that its site is uniquely burdened and cannot realize its potential floor area without the requested waivers to floor area, open space, and lot coverage; and

WHEREAS, further, since the existing home has an existing non-complying perimeter wall of 23'-11", it would be impractical to enlarge the home and, at the same time, provide a complying perimeter wall at 21 feet for the enlarged section without significant structural changes included potentially lowering the existing second floor or creating a floor to ceiling height within the enlarged section of approximately seven feet; and

WHEREAS, based upon the above, the Board finds that

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the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board agrees that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood or impact adjacent uses; and

WHEREAS, the applicant states that the proposal will maintain the existing non-complying front yards and reduce the existing side yard from a complying 30'-3" to a complying 20 feet; and

WHEREAS, the applicant notes that its design minimizes neighborhood impact by locating the majority of the enlargement at the rear of the site; however, such design required a modest reduction in side yard width; and

WHEREAS, the applicant states that the enlargement will maintain the existing building height of 33'-8" (the maximum permitted height is 35 feet) and pull the ridge toward the rear of the site, which will result in a roofline and streetscape that is compatible with the character of the surrounding area; and

WHEREAS, finally, the applicant notes that the proposed FAR is well within the maximum permitted in the district and that the proposed open space and lot coverage deviate less than 13 and 11 percent, respectively, from the requirements; and

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

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

WHEREAS, the applicant asserts that the proposal is the minimum variance necessary to afford relief; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R5 zoning district within the Special Ocean Parkway District, the enlargement of an existing single-family semi-detached home that does not provide the required open space, lot coverage, perimeter wall height, or front yards, contrary to ZR §§ 23-141, 23-631, 23-45, 113-542, and 113-55; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 3, 2013"- (10) sheets; and *on further condition*:

THAT the parameters of the proposed building will be limited to: two stories, a maximum perimeter wall height of 23'-11", a maximum building height of 33'-8", a maximum floor area of 2,415.75 sq. ft. (1.41 FAR), minimum open space of 39 percent, maximum lot coverage of 61 percent, and front yards with minimum widths of 0'-6 3/4" and 5'-7 3/16", as per 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 objection(s);

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

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

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

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

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## 169-13-BZ

### CEQR #13-BSA-149K

APPLICANT – Greenberg Traurig, for Joseph Schottland, owner.

SUBJECT – Application June 5, 2013 – Special Permit (§73-621) to legalize the enlargement of a two-family residence, contrary to floor area regulations (§23-145). R6 (LH-1) zoning district.

PREMISES AFFECTED – 227 Clinton Street, east side of Clinton Street, 100' north of the corner formed by the intersection of Congress Street and Clinton Street, Block 2297, Lot 5, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

**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 May 6, 2013, acting on Department of Buildings ("DOB") Application No. 320221309, reads in pertinent part:

Total proposed zoning floor area of 5,736 square feet, including 366 square feet at the attic level, exceeds maximum allowed in R6 district for Quality Housing development, per ZR 23-145; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R6 zoning district within a limited height district (LH-1) within the Cobble Hill Historic District, the legalization of an enlargement of a two-family



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residence, which does not comply with the zoning requirements for floor area ratio (“FAR”), contrary to ZR § 23-145; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in *The City Record*, and then to decision on October 8, 2013; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is an interior lot located on the east side of Clinton Street, between Amity Street and Congress Street, within an R6 zoning district within a limited height district (LH-1) within the Cobble Hill Historic District; and

WHEREAS, the site has a lot area of 2,261.5 sq. ft. and is occupied by a two-family residence (the “Subject Building”) with a floor area of 5,376 sq. ft. (2.38 FAR); and

WHEREAS, the applicant states that in October 2010, the owner filed Application No. 320221309 to perform certain alterations to the Subject Building, including renovations of the first story, rear façade and roof; and

WHEREAS, the applicant states that the increase in floor area is located in the attic and was originally excluded from floor area by DOB when Application No. 320221309 was approved; however, subsequently, DOB determined that the 366 sq. ft. was required to be included in floor area because it was to be used for dwelling purposes; and

WHEREAS, accordingly, the applicant seeks to legalize the increase in the floor area from 4,974 sq. ft. (2.2 FAR) to 5,376 sq. ft. (2.38 FAR); the applicant notes that the maximum floor area permitted is 4,975.3 sq. ft. (2.2 FAR); and

WHEREAS, the special permit authorized by ZR § 73-621 is available to enlarge buildings containing residential uses that existed on December 15, 1961, or, in certain districts, on June 20, 1989; therefore, as a threshold matter, the applicant must establish that the Subject Building existed as of that date; and

WHEREAS, the applicant represents, and the Board accepts, that the Subject Building has existed in its pre-enlarged state since 1957, when DOB issued Certificate of Occupancy No. 156051 in connection with alterations authorized under Alteration Application No. 87/1957; and

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

WHEREAS, as to the floor area ratio, the applicant represents that the proposed floor area is 108 percent of the maximum permitted; and

WHEREAS, as to lot coverage, the applicant represents that the enlargement did not alter the existing, complying lot coverage of 58.2 percent (the maximum permitted lot coverage is 60 percent); and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, the applicant represents that the enlargement will have no negative effects on the community, in that it does not increase the density or use of the building and does not modify the building’s envelope in any horizontal direction; further, the applicant asserts that the slight increase in height involved in the enlargement has no appreciable impacts on the privacy, quiet, light or ventilation of the adjacent buildings or the neighborhood; and

WHEREAS, the Landmarks Preservation Commission has approved the enlargement by Certificate of Appropriateness, dated January 24, 2011; and

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

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-621 and 73-03, to permit, within an R6 zoning district within a limited height district (LH-1) within the Cobble Hill Historic District, the legalization of an enlargement of a two-family residence, which does not comply with the zoning requirements for floor area ratio (“FAR”), contrary to ZR § 23-145; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received August 29, 2013”– (11) sheets; and *on further condition*:

THAT the maximum floor area of the building will be 5,376 sq. ft. (2.38 FAR), 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;

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

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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, October 8, 2013.

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## **62-12-BZ**

APPLICANT – Akerman Senterfitt LLP, for VBI Land Inc., owner.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of commercial building, contrary to use regulations (§22-00). R7-1 zoning district. PREMISES AFFECTED – 614/618 Morris Avenue, northeastern corner of Morris Avenue and E 151th Street, Block 2411, Lot 1, Borough of Bronx.

### **COMMUNITY BOARD #1BX**

**ACTION OF THE BOARD** – Laid over to November 19, 2013, at 10 A.M., for adjourned hearing.

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## **77-12-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Goldy Jacobowitz, owner.

SUBJECT – Application April 3, 2012 – Variance (§72-21) to permit a new residential building, contrary to use regulations (§42-00). M1-1 zoning district. PREMISES AFFECTED – 91 Franklin Ave, 82'-3" south side corner of Franklin Avenue and Park Avenue, Block 1899, Lot 24, Borough of Brooklyn.

### **COMMUNITY BOARD #3BK**

**ACTION OF THE BOARD** – Laid over to November 19, 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 October 29, 2013, at 10 A.M., for adjourned hearing.

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## **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**

**ACTION OF THE BOARD** – Laid over to October 22, 2013, at 10 A.M., for deferred decision.

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## **279-12-BZ**

APPLICANT – Akerman Senterfitt LLP, for Bacele Realty, owner.

SUBJECT – Application September 20, 2012 – Variance (§72-21) to permit a bank (UG 6) in a residential zoning district, contrary to §22-00. R4/R5B zoning district.

PREMISES AFFECTED – 27-24 College Point Boulevard, northwest corner of the intersection of College Point Boulevard and 28th Avenue, Block 4292, Lot 12, Borough of Queens.

### **COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to November 19, 2013, at 10 A.M., for adjourned hearing.

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## **55-13-BZ**

APPLICANT – Stuart A. Klein, Esq., for Yeshivas Novominsk, owners.

SUBJECT – Application February 1, 2013 – Variance (§72-21) to permit the enlargement of an existing yeshiva and dormitory (*Yeshiva Novominsk*), contrary to floor area (§24-11), wall height and sky exposure plane (§24-521), and side yard setback (§24-551). R5 zoning district.

PREMISES AFFECTED – 1690 60th Street, north side of 17th Avenue between 60th and 61st Street, Block 5517, Lot 39, Borough of Brooklyn.

### **COMMUNITY BOARD #12BK**

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

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## **94-13-BZ**

APPLICANT – Vinod Tewari, for Peachy Enterprise, LLC, owner.

SUBJECT – Application March 25, 2013 – Special Permit (§73-19) to allow a school, contrary to use regulation (§42-00). M1-3 zoning district.

PREMISES AFFECTED – 11-11 40<sup>th</sup> Avenue aka 38-78 12<sup>th</sup> Street, Block 473, Lot 473, Borough of Queens.

### **COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Laid over to November 19, 2013, at 10 A.M., for deferred decision.

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**122-13-BZ**

APPLICANT – Law Office of Fredrick A Becker, for Jacqueline and Jack Sakkal, owners.

SUBJECT – Application April 29, 2013 – Special Permit (§73-621) for the enlargement of an existing two-family home to be converted into a single family home, contrary to floor area (§23-141). R2X (OP) zoning district.

PREMISES AFFECTED – 1080 East 8th Street, west side of East 8th Street between Avenue J and Avenue K, Block 6528, Lot 33, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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

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**129-13-BZ**

APPLICANT – Lewis E. Garfinkel, for Tammy Greenwald, owner.

SUBJECT – Application May 7, 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(a)); side yards (§23-461(a)); less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1010 East 22nd Street, west side of East 22nd Street, 264' south of Avenue I, Block 7585, Lot 61, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to October 29, 2013, at 10 A.M., for continued hearing.

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**158-13-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Golf & Body NYC, owners.

SUBJECT – Application May 20, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Golf & Body*). C6-6(MID) zoning district.

PREMISES AFFECTED – 883 Avenue of the Americas, southwest corner of the Avenue of the Americas and west 32nd Street, Block 807, Lot 1102, Borough of Manhattan.

**COMMUNITY BOARD #5M**

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 29, 2013, at 10 A.M., for decision, hearing closed.

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**159-13-BZ**

APPLICANT – Sheldon Lobel, P.C., for Melvin Friedland & Lawrence Friedland, owners; 3799 Broadway Fitness Group, LLP, lessees.

SUBJECT – Application May 24, 2013 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Planet Fitness*); Special Permit (§73-52) to allow the extension of the proposed use into 25' feet of the residential portion of the zoning lot. C4-4 and R8 zoning districts.

PREMISES AFFECTED – 3791-3799 Broadway, west side of Broadway between 157th Street and 158th Street, Block 2134, Lot 180, Borough of Manhattan.

**COMMUNITY BOARD #12M**

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 October 29, 2013, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*