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# BULLETIN

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

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Volume 98, Nos. 42-43

October 31, 2013

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### DIRECTORY

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Tuesday, October 22, 2013**

Morning Calendar .....865

**Affecting Calendar Numbers:**

606-75-BZ	421 Hudson Street, Manhattan
139-92-BZ	52-15 Roosevelt Avenue, Queens
189-96-BZ	85-10/12 Roosevelt Avenue, Queens
699-46-BZ	224-01 North Conduit Avenue, Queens
327-88-BZ	136-36 39 <sup>th</sup> Avenue, aka 136-29 & 136-35A Roosevelt Avenue, Queens
405-01-BZ	1275 36 <sup>th</sup> Street, aka 123 Clara Street, Brooklyn
19-05-BZ	151 West 28 <sup>th</sup> Street, Manhattan
219-07-BZ	11 West 36 <sup>th</sup> Street, Manhattan
87-13-A	174 Canal Street, Manhattan
134-13-A	538 10 <sup>th</sup> Avenue, Manhattan
194-13-A thru 205-13-A	Savona Court, Staten Island
58-13-A	4 Wiman Place, Staten Island
110-13-A	120 President Street, Brooklyn
131-13-A & 132-13-A	43 & 47 Cecilia Court, Staten Island
224-13-A	283 Carroll Street, Brooklyn
226-13-A	29 Kayle Court, Staten Island
35-11-BZ	226-10 Francis Lewis Boulevard, Queens
199-12-BZ	1517 Bushwick Avenue, Brooklyn
54-12-BZ	65-39 102 <sup>nd</sup> Street, Queens
254-12-BZ	850 Third Avenue, aka 509/519 Second Avenue, Brooklyn
282-12-BZ	1995 East 14 <sup>th</sup> Street, Brooklyn
90-13-BZ	166-05 Cryders Lane, Queens
100-13-BZ	1352 East 24 <sup>th</sup> Street, Brooklyn
105-13-BZ	1932 East 24 <sup>th</sup> Street, Brooklyn
120-13-BZ	1815 Forest Avenue, Staten Island
121-13-BZ	1514 57 <sup>th</sup> Street, Brooklyn
133-13-BZ	1915 Bartow Avenue, Bronx
161-13-BZ	8 West 19 <sup>th</sup> Street, Manhattan
162-13-BZ	120-140 Avenue of Americas, aka 72-80 Sullivan Street, Manhattan
187-13-BZ	1024-1030 Southern Boulevard, Bronx
213-13-BZ	3858-60 Victory Boulevard, Staten Island
235-13-BZ	132 West 31 <sup>st</sup> Street, Manhattan

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# DOCKETS

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New Case Filed Up to October 22, 2013  
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**284-13-BZ**

168-42 Jamaica Avenue, Located on the south side of Jamaica Avenue approximately 180 feet east of the intersection formed by 168th Place and Jamaica Avenue, Block 10210, Lot(s) 22, Borough of **Queens, Community Board: 12**. Special Permit (§73-36) to permit the operation of a physical culture establishment(fitness center) on the cellar and the first floor of the ne building. R6-A/C2-4 (DJ) zoning district. R6A/C2-4;DJ district.  
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**285-13-BZ**

495 Flatbush Avenue, Located on the east side of Flatbush Avenue approximately 110 feet northwest of its intersection with Lefferts Avenue, Block 1197, Lot(s) 6, Borough of **Brooklyn, Community Board: 9**. Special Permit (§73-36) to allow the operation of a physical culture establishment(fitness center) on the first and the second floors of the existing building. C8-6 zoning district. C8-6 district.  
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**286-13-BZ**

2904 Voohries Avenue, Voohries Avenue, between Nostrand Avenue and a dead end portion of East 29th Street, Block 8791, Lot(s) 201, Borough of **Brooklyn, Community Board: 15**. Variance (§72-21) proposed enlargement of an existing one story residential home pursuant to §23-45 front yard, §23-161 side yards; §23-141 floor area floor area ratio and lot coverage and §25-621(B) parking requirements of the zoning resolutions. R4 zoning district. R4 district.  
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**287-13-A**

525 Durant Avenue, North side of Durant Avenue, 104-13 ft. west of intersection of Durant Avenue and Fielay Avenue, Block 5120, Lot(s) 64, Borough of **Staten Island, Community Board: 3**. Proposed construction of a building that does not front on a legally mapped street contrary to Article 3 of General City Law 36. R3X SRD district . R3X(SRD) district.  
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**288-13-A**

529 Durant Avenue, North side of Durant Avenue, 104-13 ft. West of intersection of Durant Avenue and Fieldway Avenue, Block , Lot(s) , Borough of , **Community Board: .** Proposed construction of a building that does not front on a legally mapped street contrary to Article 3 of General City Law 36. R3X SRD district . district.  
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**289-13-BZ**

473-541 6th Street, Block bounded by 7th Avenue, 6th Street, 8th Avenue and 5th Street., Block 1084, Lot(s) 25,26,28,39-44,46,48, Borough of **Brooklyn, Community Board: 6**. Variance (§72-21) to allow the development of a new ambulatory care facility on the campus of New York Methodist Hospital. R6, C1-3/R6, & R6B, zoning district. R6,C1-3/R6,R6B, district.  
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**290-13-BZ**

2244 Church Avenue, South side of Church Avenue between Flatbush Avenue and Bedford Avenue, Block 5103, Lot(s) 42, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-36) to allow for a physical culture establishment (PCE) located on the second-floor level of a four-story building. C4-4A zoning district. C4-4A district.  
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**291-13-BZ**

842 Lefferts Avenue, South side of Lefferts Avenue, approximately 262.ft. west of intersection of Utica Avenue and Lefferts Avenue, Block 1430, Lot(s) 22, Borough of **Brooklyn, Community Board: 9**. Special Permit (§73-36) to allow physical culture establishment(PCE) within a portions of an existing building. C8-2 zoning district. C8-2 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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NOVEMBER 19, 2013, 10:00 A.M.

APPEALS CALENDAR

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, November 19, 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

### 774-55-BZ

APPLICANT – Sahn Ward Coschignano & Baker, for FGP West Street, LLC, owner.

SUBJECT – Application July 31, 2013 – Extension of Term (§11-411) of a previously granted variance for the continued operation of a (UG8) parking lot, for more than five cars, for the employees and customers of an existing bank (*Citibank*) on the adjoining lot which expired on January 31, 2013; Waiver of the Rules. R5/C1-1 & R5/C2-2 zoning district.

PREMISES AFFECTED – 2155-2159 Newbold Avenue, north side of Newbold Avenue, between Olmstead Avenue and Castle Hill Avenue, Block 3814, Lot 59, Borough of Bronx.

**COMMUNITY BOARD #9BX**

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### 17-02-BZ

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

SUBJECT – Application August 7, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expired June 4, 2012; Waiver of the Rules. C4-3 zoning district.

PREMISES AFFECTED – 445-455 Fifth Avenue aka 453 Fifth Avenue, between 9th Street and 10th Street, Block 1011, Lot 5, 8, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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### 248-03-BZ

APPLICANT – Troutman Sanders LLP, for Ross and Ross, owners; Bally Total Fitness of Greater New York Inc., lessee.

SUBJECT – Application July 30, 2013 – Extension of Term of a previously approved variance to permit the continuance operation of the physical culture establishment (*Bally's Total Fitness*) at the site which is located in a C1-5(R8A) & R7A zoning districts and will expire on January 27, 2014.

PREMISES AFFECTED – 1915 Third Avenue, south east corner of East 106th Street and Third Avenue, Block 1655, Lot 45, Borough of Manhattan.

**COMMUNITY BOARD #11M**

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### 166-12-A

APPLICANT – NYC Department of Buildings, OWNER- Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application filed by the Department of Buildings seeking to revoke the Certificate of Occupancy that was issued in error. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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### 107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district regulations. R7B zoning district.

PREMISES AFFECTED – PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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### 156-13-A

APPLICANT – Bryan Cave LLP, for 450 West 31 Street Owners Corp, owner; OTR Media Group, Inc., lessee.

SUBJECT – Application May 17, 2013 – Appeal of DOB determination that the subject advertising sign is not entitled to non-conforming use status.

PREMISES AFFECTED – 450 West 31 Street, West 31 Street, between Tenth Avenue and Lincoln Tunnel Expressway, Block 728, Lot 60, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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# CALENDAR

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## ZONING CALENDAR

### 28-12-BZ

APPLICANT – Eric Palatnik, P.C., for Gusmar Enterprises, LLC, owner.

SUBJECT – Application November 19, 2013 – Special Permit (§73-49) to legalize the required accessory off street rooftop parking on the roof of an existing two-story office building contrary to §44-11. M1-1 zoning district.

PREMISES AFFECTED – 13-15 37th Avenue, 13th Street and 14th Street, bound by 37th Avenue to the southwest, Block 350, Lot 36, Borough of Queens.

### COMMUNITY BOARD #1Q

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### 92-13-BZ & 93-13-BZ

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

SUBJECT – Application March 21, 2013 – Variance (§72-21) to permit the construction of two semi-detached one-family dwellings contrary to required rear yards §23-47. R3-1(LDGMA) zoning district.

PREMISES AFFECTED – 22 and 26 Lewiston Street, west side of Lewiston Street, 530.86 feet north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

### COMMUNITY BOARD #2SI

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### 95-13-BZ

APPLICANT – Eric Palatnik, PC, for Lai Ho Chen, owner; Tech International Charter School, lessee.

SUBJECT – Application April 2, 2013 – Variance (§72-21) to permit the enlargement of an existing school (UG 3) at the second floor contrary to §24-162. R6/C1-3 and R6 zoning districts.

PREMISES AFFECTED – 3120 Corlear Avenue, Corlear Avenue and West 231st Street, Block 5708, Lot 64, Borough of Bronx.

### COMMUNITY BOARD #8BX

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### 206-13-BZ

APPLICANT – Fried Frank Harris Shriver and Jacobson LLP, for 605 West 42nd Owner LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment within an existing building, contrary to Section 32-31. C6-4 zoning district.

PREMISES AFFECTED – 605 West 42nd Street, eastern portion of the city block bounded by West 42nd St, West 43rd Street, 11th Avenue and 12th Avenue, Block 1090, Lot 29, 23, 7501, Borough of Manhattan.

### COMMUNITY BOARD #4M

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### 219-13-BZ

APPLICANT – Eric Palatnik, P.C., for 2 Cooper Square LLC, owner; Crunch LLC, lessee.

SUBJECT – Application July 19, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Crunch Fitness*) within a portions of an existing mixed use building contrary to §42-10. M1-5B zoning district.

PREMISES AFFECTED – 2 Cooper Square, northwest corner of intersection of Cooper Square and East 4th Street, Block 544, Lot 65, Borough of Manhattan.

### COMMUNITY BOARD #2M

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### 292-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 23, 2013 – This application is filed pursuant to §72-21 of the Zoning Resolution of the City of New York, as amended, to request a variance of floor area, open space ratio, front yard waivers, lot coverage, side yards, rear yard, height and setback, side and rear yard setbacks, planting, landscaping and parking regulations in order to permit the construction of a Use Group 4A house of worship Congregation Bet Yaakob. R5 (OP), R6A (OP) and R5 (OP Subdistrict) zoning districts.

PREMISES AFFECTED – 2085 Ocean Parkway, northeast corner of the intersection of Ocean Parkway and Avenue U, Block 7109, Lots 56 & 50 (Tentative Lot 56), Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 22, 2013  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**606-75-BZ**

APPLICANT – Sheldon Lobel, P.C., for Printing House Condominium, owners.

SUBJECT – Application July 3, 2013 – Amendment of a previously approved variance (§72-21) which allowed the residential conversion of a manufacturing building; amendment seeks to permit a reallocation of floor area between the maisonette and townhouse units, resulting in a reduction of total units and no net change in total floor area. M1-5 zoning district.

PREMISES AFFECTED – 421 Hudson Street, corner through lot with frontage on Hudson Street, Leroy Street and Clarkson Street, Block 601, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance permitting residential use within a manufacturing district; the amendment proposes the relocation of floor area from maisonette units to townhouse units, with no net change in floor area, and a reduction in the total number of dwelling units on the zoning lot; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, and then to decision on October 22, 2013; and

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

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

WHEREAS, certain members of the surrounding community testified in support of the application; and

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

WHEREAS, the subject site spans the full length of

Hudson Street between Leroy Street and St. Luke’s Place, within an M1-5 zoning district; and

WHEREAS, the site has approximately 200 feet of frontage along Hudson Street, 150 feet of frontage along Clarkson Street, 125 feet of frontage along Leroy Street, and a lot area of 27,584 sq. ft.; and

WHEREAS, the site is occupied by a ten-story mixed residential and commercial building (the “Main Building”) and five, two-story residential buildings (the “Townhouses”), with a total of 184 dwelling units; the ground floor and mezzanine of the Main Building contains eight residential units (the “Maisonettes”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 20, 1976 when, under the subject calendar number, the Board granted a use variance authorizing the conversion of an existing eight-story industrial building to a mixed commercial and residential building (Use Group 2) within an M1-5 zoning district; on that same day, under BSA Cal. No. 607-75-A, the Board granted an appeal pursuant to New York State Multiple Dwelling Law § 310 waiving compliance with certain provisions of the MDL governing rear yard, egress, living room depth from a window, and flue projections; and

WHEREAS, on April 5, 2011, under BSA Cal. No. 226-10-BZ, the Board granted a special permit pursuant to ZR § 73-36 to permit a physical culture establishment (“PCE”) on the first, ninth and tenth stories of the building; simultaneously, the Board granted an amendment to the subject variance to reflect the floor plan changes associated with the PCE; and

WHEREAS, subsequently, in 2011 and in 2012, the Board issued letters of substantial compliance authorizing various reconfigurations of the residential units, resulting in an overall reduction in the number of units from 184 to 154; and

WHEREAS, the applicant now seeks to amend the grant to decrease the floor area of the mezzanine levels within the Maisonettes by 1,345 sq. ft., increase the floor area of the Townhouses by 1,345 sq. ft. and to alter certain other dwelling units within the Main Building; the proposed relocation of floor area and Main Building alterations will result in a decrease in the number of Maisonette dwelling units from eight to three and a decrease in the number of Townhouse dwelling units from five to two; the alterations not related to the Maisonettes or the Townhouses will result in a decrease in the number of dwelling units from 141 to 138; and

WHEREAS, the applicant states that the amendment will increase the height of the Townhouses from 26’-1” to 29’-9” and will result in new landscaping, walkways and drainage; and

WHEREAS, the applicant asserts that the proposed reduction in the number of dwelling units at the site will decrease the scope of the use variance and will have no adverse effects on the surrounding community; and

WHEREAS, at hearing, the Board requested amended drawings clearly delineating the relocation of the floor area; and

WHEREAS, in response, the applicant submitted

# MINUTES

amended drawings; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, as adopted on July 20, 1976, to permit the relocation of floor area from the Maisonettes to the Townhouses and the reduction in the number of dwelling units at the site; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received October 8, 2013'- seventeen (17) sheets; and *on further condition*:

THAT there will be no increase in the floor area at the site;

THAT Multiple Dwelling Law compliance will be reviewed and approved by DOB;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application No. 121326145)

Adopted by the Board of Standards and Appeals, October 22, 2013.

## 139-92-BZ

APPLICANT – Samuel H. Valencia

SUBJECT – Application May 20, 2013 – Extension of term for a previously granted special permit (§73-244) for the continued operation of a UG12 eating and drinking establishment with dancing (*Deseos*) which expired on March 7, 2013; Waiver of the Rules. C2-2/R6 zoning district.

PREMISES AFFECTED – 52-15 Roosevelt Avenue, North side 125.53' east of 52<sup>nd</sup> Street, Block 1316, Lot 76, Borough of Queens.

## COMMUNITY BOARD #2Q

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

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, this is an application for a re-opening, and an extension of term of a previously granted special permit for an eating and drinking establishment without restrictions on entertainment (UG 12A), which expired on March 7, 2013;

and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in *The City Record*, with a continued hearing on September 24, 2013, and then to decision on October 22, 2013; and

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

WHEREAS, Community Board 2, Queens, recommends disapproval of this application, citing concerns about alleged criminal activity at the site; and

WHEREAS, the subject site is located on the north side of Roosevelt Avenue, between 52nd Street and 53rd Street, within a C2-2 (R6) zoning district; and

WHEREAS, the site is occupied by an eating and drinking establishment with entertainment, operated as *Deseos*; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 7, 1995, when, under the subject calendar number, the Board granted a special permit under ZR § 73-244 to permit the operation of an eating and drinking establishment with dancing (Use Group 12) on the first floor of an existing three-story building, for a term of three years; and

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

WHEREAS, most recently, on August 17, 2010, the Board granted an additional three-year term, which expired on March 7, 2013; and

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

WHEREAS, at hearing, the Board raised concerns about: (1) the lack of windows along the street frontage; (2) the excessive signage displayed near the establishment's entrance; and (3) whether the air conditioning unit in the rear yard was installed in accordance with the approved plans; and

WHEREAS, in response, the applicant stated that it removed the windows from the street frontage as a noise-attenuation measure; as such, it seeks to retain the frontage as previously approved; and

WHEREAS, as to the signage and the condition of the rear yard, the applicant submitted photographs showing the removal of the excessive signage and the installation of the air conditioning unit in accordance with the approved plans; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens*, and *amends* the resolution, as adopted on March 7, 1995, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for a period of three years from March 7, 2013, to expire on March 7, 2016, *on condition*:

THAT the term of this grant will expire on March 7,

# MINUTES

2016;

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

THAT the signage will be in accordance with the BSA-approved plans;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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. 400322469)

Adopted by the Board of Standards and Appeals, October 22, 2013.

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## 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

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a re-opening and an extension of term of a previously granted special permit for an eating and drinking establishment without restrictions on entertainment (Use Group 12A), which expired on May 19, 2013; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in *The City Record*, with a continued hearing on October 8, 2013, and then to decision on October 22, 2013; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

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

WHEREAS, the subject site is located on the northwest corner of the intersection of Roosevelt Avenue and Forley Street, with 40 feet of frontage along Roosevelt Avenue and 50 feet of frontage along Forley Street; and

WHEREAS, the site is occupied by an eating and drinking establishment with entertainment, operated as Flamingo; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 19, 1999, when, under the subject calendar number, the Board granted a special permit under ZR § 73-244 to permit the legalization of an existing eating and drinking establishment with entertainment and dancing; and

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

WHEREAS, most recently, on July 27, 2010, the Board authorized an amendment to permit minor changes to the first floor layout and the installation of employee lockers in the cellar and granted an additional three-year term, which expired on May 19, 2013; and

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

WHEREAS, at hearing, the Board questioned whether any changes were being made to the layout of the establishment; and

WHEREAS, in response, the applicant submitted an amended statement clarifying that no changes were being made to the layout of the establishment; and

WHEREAS, based upon the above, the Board finds the requested extension and amendment 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 May 19, 1999, and as subsequently extended and amended, so that as amended the resolution shall read: “to extend the term for a period of three years from May 19, 2013, to expire on May 19, 2016, *on condition*:

THAT the term of this grant will expire on May 19, 2016;

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

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and will be listed on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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. 420828297)

Adopted by the Board of Standards and Appeals, October 22, 2013.

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# MINUTES

## 699-46-BZ

APPLICANT – Eric Palatnik, P.C., for Gurcharan Singh, owner.

SUBJECT – Application September 17, 2012 – Amendment (§11-412) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with accessory use. The amendment seeks to convert existing service bays to a convenience store, increase the number of pump islands, and permit a drive-thru to the proposed convenience store. R3X zoning district.

PREMISES AFFECTED – 224-01 North Conduit Avenue, between 224th Street and 225th Street, Block 13088, Lot 44, Borough of Queens.

### COMMUNITY BOARD #13Q

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 19, 2013, at 10 A.M., for decision, hearing closed.

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## 327-88-BZ

APPLICANT – Eric Palatnik, P.C., for George Hui, owner.

SUBJECT – Application October 4, 2012 – Amendment to a previously granted variance (§72-21) to legalize the addition of a 2,317 square foot mezzanine in a UG 6 eating and drinking establishment (*Jade Asian Restaurant*). C4-3 zoning district.

PREMISES AFFECTED – 136-36 39th Avenue aka 136-29 & 136-35A Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 14, Borough of Queens.

### COMMUNITY BOARD #7Q

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

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## 405-01-BZ

APPLICANT – Eric Palatnik, P.C., for United Talmudcial Academy, owner.

SUBJECT – Application September 18, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of a five-story school and synagogue, which expires on February 14, 2014. R5/C2-3 zoning district.

PREMISES AFFECTED – 1275 36th Street, aka 123 Clara Street, between Clara Street and Louisa Street, Block 5310, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

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 19, 2013, at 10 A.M., for decision, hearing closed.

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## 19-05-BZ

APPLICANT – Slater & Beckerman, P.C., for Groff Studios Corp., owner.

SUBJECT – Application August 26, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the change in use of portions of an existing nine-story, mixed-use building to residential use, which expires November 10, 2013. M1-6 zoning district.

PREMISES AFFECTED – 151 West 28th Street, north side of West 28th Street, 101' east of Seventh Avenue, Block 804, Lot 8, 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 November 19, 2013, at 10 A.M., for decision, hearing closed.

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## 219-07-BZ

APPLICANT – James Chin & Associates, LLC, for External Sino Dev. Condo, LLC, owner; Shunai (Kathy) Jin, lessee.

SUBJECT – Application June 1, 2012 – Extension of Term of a previously granted Special Permit (§73-36) to permit the continued operation of a physical culture establishment (*Cosmos Spa*), which expired on June 3, 2010. M1-6 zoning district.

PREMISES AFFECTED – 11 West 36th Street, 2nd Floor, north side of West 36th Street between 5th and 6th Avenues, Block 838, Lot 35, Borough of Manhattan.

### COMMUNITY BOARD #5M

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

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## APPEALS CALENDAR

### 87-13-A

APPLICANT – Bryan Cave LLP, for 176 Canal Corp., owner .OTR Media Group; lessee

SUBJECT – Application March 6, 2013 – Appeal challenging Department of Buildings' determination that the existing sign is not entitled to non-conforming use status. C6-1G zoning district.

PREMISES AFFECTED – 174 Canal Street, Canal Street between Elizabeth and Mott Streets, Block 201, Lot 13, Borough of Manhattan.

### COMMUNITY BOARD #3M

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

# MINUTES

## 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 a final determination, issued by the Manhattan Borough Commissioner of the Department of Buildings (“DOB”) on February 5, 2013 (the “Final Determination”), which states, in pertinent part:

By letter dated September 10, 2012, the Department notified you of its intent to revoke the approval and permit issued for work at [174 Canal Street, Manhattan] in connection with [Application No. 104849185]. As of this date, the Department has not received sufficient information to demonstrate that the approval and permit should not be revoked.

Therefore, pursuant to Section(s) 28-104.2.10 and 28-105.10 of the Administrative Code of the City of New York, the approval and permit are hereby revoked; and

WHEREAS, a public hearing was held on this appeal on July 16, 2013 after due notice by publication in *The City Record*, with a continued hearing on September 24, 2013, and then to decision on October 22, 2013; and

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

WHEREAS, the subject site is located on the south side of Canal Street, between Mott Street and Elizabeth Street, within a C6-1G zoning district; and

WHEREAS, the site is occupied by a six-story mixed residential and commercial building (the “Building”), and, on the east façade of the Building, an advertising sign with a height of 30 feet, a width of 26 feet, and a surface area of 780 sq. ft. (the “Sign”); and

WHEREAS, this appeal is brought on behalf of OTR Media Group, Inc., the lessee of the Sign (the “Appellant” or “OTR”); and

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

## PROCEDURAL HISTORY

WHEREAS, on March 31, 2008, the Appellant filed a permit application for the Sign with DOB under Job. No. 104849185 (the “Permit”); by its terms, the Permit authorized the painting of a 780 sq. ft. (30 feet by 26 feet) advertising wall sign on the east wall of the Building; and

WHEREAS, on April 18, 2008, DOB issued the Permit; and

WHEREAS, by letter dated September 12, 2012, DOB notified the Appellant of its intent to revoke the Permit based on, among other things, its determination that the Sign was not permitted to be repainted because the Permit application did not contain sufficient evidence that the sign was established as a non-conforming use and not discontinued under ZR § 52-61;

and

WHEREAS, following a series of meetings between DOB and the Appellant in which the Appellant attempted to establish the Sign’s legal use under the Zoning Resolution, on February 5, 2013, DOB issued its Final Determination revoking the Permit; and

## RELEVANT ZONING RESOLUTION PROVISIONS

### ZR § 12-10 (*Definitions*)

#### Sign, advertising

An “advertising sign” is a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#.

#### Non-conforming, or non-conformity

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

\* \* \*

### ZR § 52-11 (*Continuation of Non-Conforming Uses*)

#### General Provisions

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

\* \* \*

### ZR § 52-61 (*Discontinuance*)

#### General Provisions

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

## THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within a C6-1G zoning district and that the Sign is not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming signs are permitted to remain, the Appellant must meet the Zoning Resolution’s criteria for a “non-conforming use” as defined at ZR § 12-10; and

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

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WHEREAS, additionally, the Appellant must comply with ZR § 52-61 (*Discontinuance, General Provisions*) which states that: “[i]f, for a continuous period of two years, either the *non-conforming use of land with minor improvements* is discontinued, or the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such land . . . shall thereafter be used only for a conforming use”; and

WHEREAS, through the hearing process, DOB and the Appellant came to agree that because the site was located in a Business District (under the 1916 Zoning Resolution) beginning in 1947, the Appellant was required to demonstrate that the Sign existed prior to 1947; and

WHEREAS, the parties also agree that the Appellant must demonstrate that the Sign has existed without any two-year period of discontinuance since its establishment, and that DOB’s Technical Policy and Procedure Notice No. 14/1988 (the “TPPN”) provides guidelines for DOB’s review of whether a non-conforming use has been continuous; and

WHEREAS, the TPPN provides, in pertinent part, that: [T]he following shall be a guideline, in order of preference, for the acceptable documentation in support of [an] existing use for legalization or proof of continual non-conforming use:

- a) Records of documentation from any City Agency. Such records may include, but not be limited to, tax records, multiple dwelling registration cards, I cards from HPD and cabaret licenses.
- b) Records, bills, documentation from public utilities indicating name and address of business and time period bills cover.
- c) Any other documentation or bills indicating the use of the building, such as telephone ads, commercial trash hauler invoices, liquor licenses, etc.
- d) Only after satisfactory explanation or proof that the documentation pursuant to (a), (b) or (c) does not exist, affidavits regarding the use of a building will be accepted to support either an application for legalization or as proof concerning whether or not a prior non-conforming use was continual per ZR 52-61. However, where such affidavits are submitted, they may be accepted only after the Borough Superintendent has reviewed them with close scrutiny; and

WHEREAS, further, the parties agree that, in the context of non-conforming signs, photographic evidence is given substantial weight; and

## LAWFUL ESTABLISHMENT

WHEREAS, the Appellant states that the Sign was established as an advertising sign prior to 1947 in 1932, and submits a 1932 photograph (the “1932 Photograph”) in support of that statement; and

WHEREAS, the Appellant notes that while the 1932 Photograph is blurry, the evidence in the record in its totality

supports the conclusion that an advertising sign would have been established at the site and maintained through 1947; and

WHEREAS, in addition, the Appellant states that DOB has previously accepted blurry photographs as establishing a non-conforming advertising sign; specifically, the Appellant states that two roof signs at 55 Washington Street, Brooklyn were accepted as established based in part on two photographs as blurry as the 1932 Photograph; and

WHEREAS, as to the Sign’s initial existence as an advertising sign, the Appellant states that an advertising sign would have been permitted as-of-right in 1932, because the site was within an Unrestricted District, which contained no restrictions on signs; and

WHEREAS, further, the Appellant contends that, based on the opinion of its media consultant, the wall of the Building—which is visible to pedestrian and vehicle traffic on Canal Street approaching Bowery and the entrance to the Manhattan Bridge—was historically and remains an ideal location for advertising, and was, based on the record, used for advertising for decades; and

WHEREAS, the Appellant states that the Sign is likely to have existed as an advertising sign after its establishment for the same reasons it was likely to have been established as an advertising sign in the first place—its highly visible location on a busy Lower Manhattan street would have made it attractive to advertisers and much more lucrative to the Building’s owner than a business sign; and

WHEREAS, likewise, the Appellant contends that the Sign, once established, is not only *likely* to have existed, but also is, pursuant to the presumption of continuity, presumed to have existed through 1947; and

WHEREAS, in particular, the Appellant states that it is proper to apply the evidentiary principle of the “presumption of continuity” as set forth in *Prince-Richardson on Evidence* § 3-101 (1995) and *Wilkins v. Earle*, 44 NY 172 (1870), to find that the Sign was not discontinued because DOB has not presented evidence of discontinuance; in particular, the Appellant asserts that under that principle, once an object, condition, or tendency is factually established, it may be presumed to continue for as long as is usual with such conditions; further, the Appellant explains that the presumption of continuity “reflects a common sense appraisal of the probative value of circumstantial evidence,” *Foltis v. City of New York*, 287 NY 108, 115 (1941), and should be applied in the instant matter to find that the evidence supports a finding that the Sign continued even if the items of evidence of its existence do not cover the entire period in question; and

WHEREAS, accordingly, the Appellant contends that the record demonstrates that the Sign was established prior to 1947 as a non-conforming advertising sign under the 1916 Zoning Resolution; and

WHEREAS, DOB asserts that the 1932 Photograph is insufficient evidence of the Sign’s establishment as a non-conforming advertising sign prior to 1947; and

WHEREAS, specifically, DOB states that the photograph is so unclear that it is impossible to even determine whether the building depicted is the Building, let

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alone whether a painted sign is depicted or whether such sign has a message that can be identified as advertising; and

WHEREAS, as to determination that the roof signs at 55 Washington Street were established, DOB states that the 55 Washington Street photographs it relied upon were: (1) significantly clearer than the 1932 Photograph; and (2) supported by other evidence, including another more recent photograph, as well as records of DOB inspections in 1978, 1979 and 1980, which documented the existence of the signs; as such, DOB asserts that its rejection of the 1932 photograph in this case is distinguishable from its acceptance of photographs in connection with its determination regarding 55 Washington Street, Brooklyn; and

WHEREAS, moreover, DOB states that even assuming the 1932 Photograph is accepted as demonstrating that the Sign existed as of 1932, there is no evidence of the Sign's existence as of 1947, when the Sign needed to have been in place in order to become established as a non-conforming use; and

WHEREAS, accordingly, DOB asserts that the Appellant has failed to demonstrate that the Sign was established as a non-conforming use; and

## CONTINUITY OF THE SIGN

WHEREAS, the Appellant asserts that it has submitted sufficient evidence under the TPPN to demonstrate the continuity of the Sign from 1932 to the present; and

WHEREAS, the Appellant submitted the following evidence of the Sign's continuity: (1) 1959 video showing Wing Furniture Co. advertising sign on the Building and Wing Furniture Co. located across the street at 185 Canal Street; (2) 1959 address book listings for individuals and Eisenfeld clothing store at 174 Canal Street and Wing Furniture Co. at 185 Canal Street; (3) 1960 Yellow Pages with Wing Furniture Co. at 185 Canal Street; (4) 1968 photograph showing a cookbook; (5) 1968 address book listings for individuals and Keen Wah Merchandise Co. at the Building; (6) 1975 Yellow Pages Olins Rent-a-Car with no listing for the Building as a location; (7) 1976 photograph showing Olins Rent-a-Car advertising sign; (8) 1976 address book listings for individuals, a restaurant, and a hosiery store at the Building; (9) 1977 lease with three-year term; (10) a 1980(s) Department of Finance photograph showing the pagoda and Chemical Bank; (11) 1980 address book listings for individuals and hardware company; (12) 1985 photograph showing the pagoda and Chemical Bank; (13) 1993 photograph showing Bank Central Asia; (14) 1993 address book listings for individuals and bakery; (15) 1999 photograph showing Golden Bowl with 800 number, located at 220 Moore Street, Brooklyn; (16) 1999 lease with five-year term; (17) 1999 letter from president of Wonton Food, Inc. expressing interest in the Sign and undated credit application/reference for Wonton Food, Inc.; (18) 2004 photograph showing Malaysia Airlines; (19) 2007 photograph showing Eason's Moving On Stage 3 at Mohegan Sun; (20) 2007 contract between OTR and Mohegan Sun; (21) 2008 photograph showing Coors Light Beer; (22) 2008 media contract between OTR and Coors Brewing Company; (23)

2009 photograph showing Americare, a health care organization located at 171 Kings Highway, Brooklyn; (24) 2010 photograph showing AT&T; (25) 2010 media contract between OTR and AT&T Mobility; (26) 2011 photograph showing *Jumping the Broom* (motion picture); and (27) 2012 photograph showing *The Watch* (motion picture); and

WHEREAS, as for any gaps in evidence, the Appellant contends that because DOB has not submitted evidence of discontinuance, the presumption of continuity dictates that the Sign is presumed to continue to exist; and

WHEREAS, moreover, according to the Appellant's media consultant, the advertising sign industry had irregular recordkeeping practices and where there was paperwork memorializing a deal to display advertising, an advertising sign is "virtually certain" to have existed; and

WHEREAS, therefore, the Appellant states that it has satisfied its burden of demonstrating that the Sign existed from 1947 to the present without any two-year period of discontinuance; and

WHEREAS, DOB states that there are numerous gaps in the Appellant's continuity evidence, as well as evidence that the Sign was removed from the wall in 2003 and in 2007; as such, DOB contends that the Appellant has failed to demonstrate in accordance with the TPPN that the Sign was used for advertising from 1947 to the present without any period(s) of discontinuance for two or more years; and

WHEREAS, as to the gaps, DOB states that the Appellant provides no evidence of the Sign's existence from 1947 to 1959 (a 12-year gap), 1968 to 1976 (an eight-year gap), 1985 to 1993 (an eight-year gap), 1993 to 1999 (a six-year gap), and 1999 to 2004 (a five-year gap); and

WHEREAS, as to the removals of the Sign, DOB submitted "Pictometry" (an online aerial oblique imaging and mapping service) photographs dated April 13, 2003, April 25, 2003, May 31, 2003, June 3, 2003, and May 14, 2007 showing the east wall of the Building without the Sign; and

WHEREAS, accordingly, DOB states that the Appellant has failed to demonstrate that the Sign existed from 1947 to the present without any two-year period of discontinuance; as such, DOB asserts that even if the Sign use was established, such use was discontinued and must terminate pursuant to ZR § 52-61; and

## CONCLUSION

WHEREAS, the Board agrees with DOB that the Appellant has not submitted sufficient evidence of the Sign's establishment prior to 1947; and

WHEREAS, specifically, the Board rejects that the 1932 Photograph demonstrates that the Sign existed as early as 1932; on the contrary, the Board agrees with DOB that the 1932 Photograph does not show an advertising sign on the wall of the Building; and

WHEREAS, the Board finds that, at most, the 1932 Photograph shows that the east wall of the Building is a different color than the front façade of the Building, and nothing about the color of the wall "directs attention to attention to a business, profession, commodity, service or entertainment"; as such, the 1932 Photograph does not depict

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an “advertising sign” as that term is defined under ZR § 12-10; and

WHEREAS, likewise, the Board agrees with DOB that the Appellant has not demonstrated that the Sign existed prior to 1947, when the site was zoned as a Business District; and

WHEREAS, accordingly, the Board finds that the Sign was not established as a non-conforming use; and

WHEREAS, because the Board finds that the Sign was never established as non-conforming, it is unnecessary to determine whether the presumption of continuity impels the Board to find, based on the Appellant’s evidence, that the Sign was not discontinued; and

WHEREAS, in conclusion, the Board finds that DOB properly revoked the Permit for the Sign; and

Therefore it is Resolved, that this appeal, challenging a Final Determination issued on February 5, 2013, is denied.

Adopted by the Board of Standards and Appeals, October 22, 2013.

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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

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 a final determination, issued by the First Deputy Commissioner of the Department of Buildings (“DOB”) on April 9, 2013 (the “Final Determination”) acting on DOB Application No. 121398246, which states, in pertinent part that:

The request to accept the existing non-illuminated advertising sign at the premises, currently located in a C2-8 zoning district, as lawfully non-conforming is hereby denied . . .

If an advertising sign can be viewed from a specific point on the arterial highway in any direction, 360 degrees (i.e., whether it is the driver of a car who is facing forward, or a passenger in the back seat of a car facing to the side or the rear, or a passenger in the back seat of a convertible facing the side or rear, etc.), the advertising sign is considered within view (hereinafter, the “360 Degrees Standard”); and

WHEREAS, a public hearing was held on this appeal on August 20, 2013 after due notice by publication in *The City*

*Record*, with a continued hearing on October 8, 2013, and then to decision on October 22, 2013; and

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

WHEREAS, the subject site is located on the northeast corner of the intersection of Tenth Avenue and West 40th Street, within a C2-8 zoning district within the Special Hudson Yard District; and

WHEREAS, the site is occupied by an eight-story community facility building and one-story community facility building; a 3,300 sq. ft. non-illuminated advertising sign (the “Sign”) is located the south wall of the eight-story building; and

WHEREAS, this appeal is brought on behalf of OTR Media Group, Inc., the lessee of the Sign (the “Appellant” or “OTR”); and

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

### PROCEDURAL HISTORY

WHEREAS, on October 4, 2012, the Appellant filed a permit application with DOB under Job. No. 121398246 to construct the Sign on the south wall of the eight-story building at the site (the “Permit”); the Permit application indicated that the Sign was an existing, non-conforming use; and

WHEREAS, on October 4, 2012, DOB disapproved the Permit application, finding insufficient evidence of the Sign’s non-conforming use status; and

WHEREAS, on December 18, 2012, the Appellant submitted a determination request asserting that the Sign was protected pursuant to ZR § 42-58, because a painted sign existed at the site as of December 13, 2000, and, at the time, the site was within a Manufacturing district and not within view of an arterial highway or its approaches, as set forth in Appendix H of the Zoning Resolution; and

WHEREAS, following a series of discussions between DOB and the Appellant in which the Appellant attempted to establish the Sign’s legal use under the Zoning Resolution, on April 9, 2013, DOB issued its Final Determination denying the Permit; and

WHEREAS, DOB’s Final Determination, the full text of which is available under ZRD1 Control No. 26253, articulates three grounds for its denial of the Permit: (1) the Sign’s proximity within 200 feet and within view of the portion of Dyer Avenue between West 39th Street and West 42nd Street, which, at that point, is considered an “approach” to the Lincoln Tunnel, contrary to ZR § 42-55; (2) the Sign’s surface area, which is in excess of that permitted under ZR § 42-55 due to the Sign’s proximity within view of an approach to the Lincoln Tunnel; and (3) even if the Sign is not subject to the arterial highway restrictions, the Sign cannot achieve non-conforming status pursuant to ZR § 42-58, because that section only applies where a sign has been constructed pursuant to a permit prior to December 13, 2000, and the Sign prior to that date was a painted sign, which did not require a permit; and

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WHEREAS, on May 9, 2013, the Appellant filed the instant appeal, which challenges the first and second grounds of the Final Determination<sup>1</sup>; and

WHEREAS, through the hearing process, the Appellant and DOB came to agree that the Sign existed prior to the establishment of the traffic patterns on Dyer Avenue that, on occasion, render the Sign within 200 feet and within view of an approach to the Lincoln Tunnel<sup>2</sup>; and

WHEREAS, therefore, the only dispute remaining is whether, beyond 200 feet, the Sign is within view of an approach to the Lincoln Tunnel because it may be seen at some angles by drivers or passengers; and

## RELEVANT ZONING RESOLUTION PROVISIONS

### ZR § 12-10 *Definitions*

Non-conforming, or non-conformity

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

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### ZR § 42-55

Additional Regulations for Signs Near Certain Parks and

Designated Arterial Highways

M1 M2 M3

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

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

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

(1) no permitted #sign# shall exceed 500 square feet of #surface area#; and

(2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed.

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

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

(1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or

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

## THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that the Sign is not "within view" of an approach to the Lincoln Tunnel; as such, it is not subject to the arterial highway restrictions set forth in ZR § 42-55; and

WHEREAS, the Appellant contends that a motorist traveling along the approach to the Lincoln Tunnel must turn around to view the Sign, and, thus, the Sign is not "within view" of the Lincoln Tunnel; and

WHEREAS, the Appellant states that DOB's interpretation of "within view" (as set forth in the Final Determination) is contrary to principles of statutory construction, does not, given the facts of this case, further the purposes of the arterial highway restrictions, and is inconsistent with comparable provisions of federal and state law; and

WHEREAS, the Appellant asserts that the 360 Degrees Standard—which considers objects behind a viewer to be "within view" of the viewer—offends common senses and is therefore contrary to the settled principles of statutory construction that legislation is presumed to be based in common sense and laws must be construed in the light of common sense, citing McKinney's Statutes § 143, People v. Ahern, 196 NY 221, 227 (1909) and People ex rel. Hallock v. Hennessy, 205 NY 301, 306 (1912); and

<sup>1</sup> On appeal, the parties do not address the applicability of ZR § 42-58.

<sup>2</sup> Initially, DOB took the position that because an "approach" is, per 1 RCNY 49-01, "that portion of the roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network," and buses could either exit Dyer Avenue and enter the ramp into the Port Authority Bus Terminal or make a U-turn onto West 40th Street, Dyer Avenue was an "approach" whenever it was being used to connect to West 40th Street. Through the hearing process, it was revealed that the Port Authority controls the portion of Dyer Avenue in question and did not allow U-turns onto West 40th Street until 2003. Accordingly, DOB concedes that Dyer Avenue became an "approach" after the Sign was first painted in 2000.

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WHEREAS, the Appellant contends that the 360 Degrees Standard when applied to the facts of this case does not further the purposes of the arterial highway restrictions (reducing driver distraction and beautifying public spaces) because a driver or passenger must turn completely around in order to even catch a glimpse of the Sign; and

WHEREAS, the Appellant also states that the 360 Degrees Standard is inconsistent with comparable provisions of federal and state law, which reflect a common sense application of the “within view” concept and indicate that a sign is objectionable only if it is capable of being seen in the ordinary course of traveling along a highway; and

WHEREAS, in particular, the Appellant states that the Highway Beautification Act (23 USC § 131(b)) uses the phrase “visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way” when describing its analog of “within view” and the law’s implementing rules as set forth in 23 CFR 750.102(s) define “visible” as “capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity,” and New York State’s scheme uses the phrase “visible from the main traveled way” in New York State Highway Law § 88(2) and that statute’s rule (17 NYCRR § 150.1(vv)) defines “visible” identically to the federal rule; and

WHEREAS, finally, the Appellant asserts that the 360 Degrees Standard should be rejected in favor of a standard that excludes from “within view” a sign that only becomes visible when the traveler along the arterial highway has passed the plane of the sign, is traveling away from the sign, and must turn around in order to view the sign (the “Bypass Standard”); and

WHEREAS, the Appellant asserts that the Bypass Standard is an objective standard that comports with common sense, furthers the objectives of the underlying federal law, is consistent with similar state and federal regulations regarding arterial signs, and can be easily implemented by DOB; and

WHEREAS, as such, the Bypass Standard should be applied in the instant case to support a finding that the Sign: (1) is not within view of an approach to the Lincoln Tunnel; (2) is not subject to the arterial sign restrictions; and (3) therefore became a legal non-conforming advertising sign (as to height and surface area) when the site was rezoned from M1-5 to C2-8 on January 19, 2005; and

WHEREAS, finally, the Appellant states that it has submitted sufficient evidence to demonstrate that the Sign has existed without any two-year period of discontinuance since becoming a non-conforming use in 2005; therefore the Sign is permitted to remain pursuant to ZR § 52-11; and

WHEREAS, accordingly, the Appellant states that DOB’s refusal to approve the Permit application must be reversed; and

## DOB’S POSITION

WHEREAS, DOB asserts that the Sign is “within view” of an approach to the Lincoln Tunnel; thus, the painting of the Sign in 2000 was contrary to the arterial sign restrictions; and

WHEREAS, DOB states that in 2000 when the Sign was

painted in violation of ZR § 42-531, which regulated signs “within view” of an arterial highway and provided that [b]eyond 200 feet from such arterial highway or public park, an advertising sign shall be located at a distance of at least as many linear feet therefrom as there are square feet of surface area on the fact of such sign; and

WHEREAS, DOB states that, as noted above, it interprets “within view” using the 360 Degree Standard; and

WHEREAS, DOB contends that the 360 Degree Standard is the only reasonable interpretation of “within view”; and

WHEREAS, DOB states that other measurements of “within view,” including the Appellant’s Bypass Standard, would be unworkable, necessarily involve some measure of subjectivity in determining the angle of the viewer’s sightline, and would result in inconsistent determinations regarding whether a sign was within view; and

WHEREAS, DOB responds to the Appellant’s arguments regarding the Federal Beautification Act and New York State Highway Law, which DOB characterizes as applying only where a sign may be viewed by “a driver of a car looking straight ahead,” by asserting that there is nothing in the legislative history of the arterial highway restrictions of the Zoning Resolution that suggest they were intended to replicate the federal and state requirements; and

WHEREAS, further, DOB notes that neither the Department of City Planning, nor the City Council has signified an intent to adopt a “within view” standard similar to the state or federal regulation despite opportunities to do so in connection with the various sign regulation amendments over the years; and

WHEREAS, DOB also states that the 360 Degrees Standard is both long-standing and endorsed by the Department of City Planning; and

WHEREAS, DOB asserts that applying the 360 Degrees Standard, the Sign is approximately 520 linear feet from and within view of the Lincoln Tunnel; as such, DOB asserts that when the 3,300 sq.-ft. Sign was painted in 2000, it exceeded its permitted surface area by 2,780 sq. ft.; and

WHEREAS, accordingly, DOB states that the Sign was never lawfully established and could not have become a non-conforming use in 2005, when the site was rezoned from M1-5 to C2-8; and

## CONCLUSION

WHEREAS, the Board agrees with DOB that the proper standard in interpreting the meaning of the term “within view” is the 360 Degrees Standard; as such, the Board finds that the Sign was never lawfully established; and

WHEREAS, the Board rejects the Appellant’s contention that the 360 Degrees Standard is an interpretation of “within view” that is unreasonable; on the contrary, the Board finds that the standard is the only objective measurement of whether a sign is within view of a motorist

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1 ZR § 42-53 was modified and renumbered as ZR § 42-55 as a result of the February 27, 2001 text amendment.

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traveling along an arterial highway; and

WHEREAS, the Board agrees with DOB that other measures of “within view” including the Bypass Standard, would be difficult, if not impossible to apply, and would necessarily involve subjective decision-making by DOB; and

WHEREAS, the Board is not persuaded that the arterial highway restrictions on signs in the Zoning Resolution are intended to replicate the similar provisions of state and federal legislation; as DOB noted, the Board finds that there is nothing in the Zoning Resolution to support such a contention; and

WHEREAS, the Board also finds that the standard furthers the intent of the arterial highway restrictions on signs; and

WHEREAS, in particular, the Board notes that the policy objectives of restrictions on signs near arterial highways include reducing driver distraction and beautifying public spaces, and the Board finds that the 360 Degrees Standard furthers both objectives; indeed, the Board observes that glancing in the rear or side view mirror at a particularly large sign could be more distracting and therefore more dangerous than glancing at a sign while looking straight ahead; and

WHEREAS, the Board also notes that the 360 Degrees Standard is consistent with the Board’s decisions in BSA Cal. Nos. 88-12-A and 89-12-A (462 11th Avenue, Manhattan); in those cases, the appellant argued, among other things, that if a sign was only within view of a motorist on an arterial highway for a “fleeting moment,” the sign was not “within view” of the arterial highway; the Board rejected this argument, noting that the plain meaning of within view is a more objective and less-nuanced concept; the Board also noted that the goal of the statute was to regulate signs within view of arterial highways and that enforcement would be best-served by applying an objective standard, rather than a subjective standard; likewise, the Board favors DOB’s objective, 360 Degrees Standard over the Appellant’s subjective, Bypass Standard in the instant matter; and

WHEREAS, thus, applying the 360 Degrees Standard, the Board finds that when the Sign was first painted in 2000, it far exceeded the allowable surface area for a sign approximately 520 feet from and within view of an approach to the Lincoln Tunnel; and

WHEREAS, the Board notes that even if it determined that the Sign was not within view of an approach to the Lincoln Tunnel, the Sign became subject to surface area and height limitations generally applicable within Manufacturing districts pursuant to a February 27, 2001 text amendment; as such, the Sign would have become non-conforming as to height and surface area as of that date, and the rezoning of the site to C2-8 on January 19, 2005 would have merely increased the degree of non-conformity of the Sign; and

WHEREAS, accordingly, the Board finds that the Sign was never established as a non-conforming use and DOB properly refused to issue the Permit; and

*Therefore it is Resolved*, that this appeal, challenging a Final Determination issued on April 9, 2013, is denied.

Adopted by the Board of Standards and Appeals,  
October 22, 2013.

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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**

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION -

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated June 7, 2013, acting on Department of Buildings Application Nos. 520140464, 520140419, 520140400, 520140393, 520140384, 520140375, 520140366, 520140357, 520140428, 520140437, 520140446, 520140455, read in pertinent part:

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

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

WHEREAS, this application seeks a waiver to construct twelve (12) two- and three-story detached homes accessed by a proposed private street, Savona Court, contrary to General City Law § 36; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in the *City Record*, and then to decision on October 22, 2013; and

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

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

WHEREAS, the subject site is located within an R3-X zoning district within the Special South Richmond District (“SSRD”) not fronting upon a mapped street; and

WHEREAS, the site is bounded by Station Avenue on the north side, a residential development accessed by a private street (Savo Loop) on the west side, a residential development accessed by a private street (Carly Court) on the

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east side, and the Staten Island Rapid Transit on the south side; and

WHEREAS, in addition, the applicant states that there are approximately 15 feet of Freshwater Wetlands Buffer located along the south side of the site, along the rear lot lines of lots 320, 321, and 322; and

WHEREAS, the applicant filed an application with the New York State Department of Environmental Conservation indicating that no construction is proposed within the buffer area; as such, the applicant states that that agency will issue a letter of no objection; and

WHEREAS, the applicant states that although there is a drainage easement located along the west side of the site, no present or future use is planned for this easement, and it is in the process of removing the easement by agreement with the New York State Department of Transportation; and

WHEREAS, by letter dated September 5, 2013, the Fire Department recommended approval of the application subject to the following conditions: (1) that the proposed residences fully conform to the New York City Building Code and are fully sprinklered; (2) that there shall be no parking anytime on Savona Court; and (3) that the applicant must stipulate that the Homeowners' Association will be considered in violation of a Fire Commissioner's Order for any private vehicles parked along the proposed private road; and

WHEREAS, in response to the Fire Department's September 5, 2013 letter, the applicant asserted that the conditions were inappropriate because Savona Court would be a minimum of 38 feet in width and include a turn around, in accordance with the New York City Fire Code; and

WHEREAS, by letter dated October 2, 2013, the Fire Department submitted a revised recommendation, superseding its prior conditions with the following conditions: (1) Savona Court must be 38 feet in width curb to curb; (2) there shall be a turnaround with a minimum diameter of 70 feet; and (3) a hydrant shall be installed along the perimeter of the cul-de-sac (in addition to the private hydrant indicated approximately 155 feet south of Station Avenue); and

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

*Therefore it is Resolved*, that the decisions of the Staten Island Borough Commissioner, dated June 7, 2013 acting on Department of Buildings Application Nos. 520140464, 520140419, 520140400, 520140393, 520140384, 520140375, 520140366, 520140357, 520140428, 520140437, 520140446, 520140455, are modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawing filed with the application marked "Received October 18, 2013"- (1) sheet; and *on further condition*:

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

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

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

THAT the required approvals from the City Planning Commission, the New York State Department of Environmental Conservation, and the New York State Department of Transportation will be obtained prior to the issuance of work permits by the Department of Buildings; 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 22, 2013.

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**58-13-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Sylvaton Holdings LLC, owners.

SUBJECT – Application February 5, 2013 – Proposed construction of a twelve-family residential building located partially within the bed of a mapped but unbuilt street contrary to General City Law Section 35. R4/M3-1 zoning district.

PREMISES AFFECTED – 4 Wiman Place, west side of Wiman Place, south of Sylvaton Terrace and north of Church Lane, Block 2827, Lot 205, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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

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**110-13-A**

APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.

SUBJECT – Application April 24, 2013 – Appeal challenging Department of Buildings' interpretation of the Building Code regarding required walkway around a below-grade pool. R6B zoning district.

PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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

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**131-13-A & 132-13-A**

APPLICANT – Sheldon Lobel, P.C., for Rick Russo, owner.

SUBJECT – Application May 10, 2013 – Proposed construction of a residence not fronting on a legally mapped street, contrary to General City Law Section 36. R2 & R1 (SHPD) zoning districts.

PREMISES AFFECTED – 43 & 47 Cecilia Court, Cecilia Court off of Howard Lane, Block 615, Lot 210, Borough of

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Staten Island.

## COMMUNITY BOARD #1SI

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

### 224-13-A

APPLICANT – Slater and Beckerman, P.C., for Michael Pressman, owner.

SUBJECT – Application July 25, 2013 – Appeal challenging the determination by the Department of Buildings that an automatic sprinkler system is required in connection with the conversion of a three family dwelling (J-2 occupancy) to a two-family (J-3 occupancy). R6B zoning district.

PREMISES AFFECTED – 283 Carroll Street, north side of Carroll Street between Smith Street and Hoyt Street, Block 443, Lot 61, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

**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 19, 2013, at 10 A.M., for decision, hearing closed.

### 226-13-A

APPLICANT – Rothrug Rothkrug & Spector LLP, for High Rock Development LLC, owner.

SUBJECT – Application July 26, 2013 – Proposed construction of a one-family dwelling that does not front on a legally mapped street, contrary to Section 36 Article 3 of the General City Law. R3-2 /R2 NA-1 zoning District.

PREMISES AFFECTED – 29 Kayla Court, west side of Kayla Court, 154.4’ west and 105.12’ south of intersection of Summit Avenue and Kayla Court, Block 951, Lot 23, Borough of Staten Island

## COMMUNITY BOARD #2SI

**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 19, 2013, at 10 A.M., for decision, hearing closed.

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

### 35-11-BZ

## CEQR #11-BSA-075Q

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

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

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

## COMMUNITY BOARD #13Q

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 27, 2011, acting on Department of Buildings Application No. 420283730 reads, in pertinent part:

Proposed floor area and lot coverage contrary to ZR 24-111.

Proposed lot coverage is contrary to ZR 24-11.

Proposed front yard contrary to ZR 24-34.

Proposed side yard contrary to ZR 24-35.

Proposed rear yard contrary to ZR 24-36.

Proposed parking is contrary to ZR 25-31; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R2A zoning district, the legalization and enlargement of an existing building occupied by a synagogue and accessory uses (Use Group 4) which does not comply with the underlying zoning district regulations for floor area, lot coverage, front yard, side yard, rear yard, and parking, contrary to ZR §§ 24-111, 24-11, 24-34, 24-35, 24-36 and 25-31; and

WHEREAS, a public hearing was held on this application on September 27, 2011, after due notice by publication in *The City Record*, with continued hearings on December 13, 2011, February 28, 2012, April 24, 2012, May 15, 2012, July 23, 2013, and September 17, 2013, and then to decision on October 22, 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 13, Queens, recommends disapproval of the application and requests that any grant be conditioned on the hours of operation be limited, that garbage removal is not adequately addressed, that visitor conduct be monitored, and that a term be imposed so that oversight can continue; and

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WHEREAS, City Council Member Leroy Comrie and New York State Assembly Member Barbara Clark provided testimony citing concerns about traffic and parking, garbage disposal, the use of the overnight accommodations on any days other than the Sabbath and holidays, the use of the outdoor space, the need for a landscape buffer, the poor condition of the site, the conduct of visitors within the community, and the insufficiency of certain aspects of the EAS; and

WHEREAS, the Cambria Heights Civic Association identified the following primary concerns with the operation of the site: improper disposal of garbage, bus traffic and pollution due to idling, safety concerns related to traffic and parking, the incompatibility of transient sleeping accommodations, and the apparent lack of consideration for neighbors; and

WHEREAS, certain members of the community provided testimony in opposition to the operation of the facility and cited the same concerns as the civic association, Community Board, and elected officials; and

WHEREAS, this application is brought on behalf of Congregation Ohel Chabad Lubavitch (the "Congregation"), a non-profit religious entity; and

WHEREAS, the subject site is located on the south side of Francis Lewis Boulevard, between 225<sup>th</sup> Street and 228<sup>th</sup> Street, within an R2A zoning district; and

WHEREAS, the site is located adjacent to Montefiore Cemetery where the spiritual leader of the Lubavitch, Rebbe Menachem M. Schneerson, was buried in 1994; the gravesite is approximately 50 feet from the eastern side of the site; the prior Rebbe, Yosef J. Schneerson is also buried there; and

WHEREAS, due to the large number of followers who seek to be in the Rebbe's presence, the cemetery provided a gate adjacent to the site to provide access to the gravesite so that followers did not have to enter through the cemetery's main gate; and

WHEREAS, the Congregation operates the site as a synagogue with a traditional sanctuary and as a facility to accommodate those visiting the gravesite; and

WHEREAS, the Congregation purchased the five homes adjacent to the grave site entry, which it has connected through a series of tents that are used as letter-writing, mediation, prayer, study, light refreshment, and restroom areas; and

WHEREAS, the site has a total width of 252'-1/8", a depth ranging from 79'-9 13/16" to 79'-2 3/16", and a lot area of 20,133.77 sq. ft.; and

WHEREAS, the site is currently occupied by five one-and-one-half-story buildings constructed for residential use, several mobile trailers, and a tented area at the rear of the site; the existing buildings have a total legal floor area of 4,539.55 sq. ft. (0.23 FAR), but an actual floor area of 10,258.5 sq. ft. (0.51 FAR), including the temporary structures; and

WHEREAS, the applicant initially proposed to merge and enlarge the buildings to add a continuous cellar and first story and a second story for a total floor area of 24,150.63 sq. ft. (1.2 FAR) (the maximum permitted floor area is 10,066.89

(0.5 FAR)); a lot coverage of 79.6 percent (a maximum lot coverage of 55 percent is permitted); side yards of 9'-9 5/8" and 1'-0" (two side yards with widths of 24.12' are required); a rear yard with a depth of 0'-10-9/16" (a rear yard with a depth of 30'-0" is required); and no parking (48 spaces are required); and

WHEREAS, the existing buildings have a pre-existing front yard with a depth of 10'-0" that will be maintained (a front yard with a minimum depth of 15'-0" is required); and

WHEREAS, at the Board's direction, the applicant revised the application to reduce the degree of required waiver; first, the applicant reduced the proposal to 21,681.78 sq. ft. of floor area (1.07 FAR) and then to 20,294.34 sq. ft. (1.01 FAR) with just a small cellar for the storage of garbage and an accessory kitchen; and

WHEREAS, the applicant ultimately proposed to maintain both existing side yards – the western 9'-9 5/8" and the eastern 10'-1 1/16" – which are non-complying for community facility use and which results in a further reduction in floor area to 19,719 sq. ft. (0.98 FAR) and 73.79 percent lot coverage; and

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

WHEREAS, the applicant asserts that the following are the Congregation's programmatic needs: (1) to meaningfully and comfortably accommodate visitors to the gravesite for prayer and meditation; (2) to accommodate prayer space including separate spaces for men and women as required by religious doctrine; (3) to provide sleeping accommodations for visitors to the site; and (4) to preserve the modest scale of the five existing homes as a show of reverence for the spiritual leader; and

WHEREAS, the applicant notes that an improved facility will also serve the purpose of providing (1) a safe building in compliance with Code and fire safety measures, (2) an aesthetically improved building without temporary trailers and tents, and (3) sufficient space to bring visitors off the street; and

WHEREAS, the applicant asserts that every day several hundred people visit the site at all hours of the day and night, noting that the site is ten minutes from JFK airport and is a pilgrimage site for those arriving by plane and bus to pray and meditate; and

WHEREAS, the applicant represents that the most significant number of visits occur on the Anniversary of the Rebbe's Passing and of the Anniversary of the Previous Rebbe's Passing, the Rebbe's Birthday, the High Holy Day period, and the annual conferences of the men and women emissaries of the Chabad; and

WHEREAS, the applicant asserts that the proposed building is designed to accommodate the current amount of visitors to the site and will not create more traffic; and

WHEREAS, the applicant asserts that the existing conditions are compromised in that they require the use of two trailers and a temporary tent structure to accommodate the rabbi's office, video-viewing room, libraries, restrooms,

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conference/study/meeting rooms, administrative office, letter-writing and reflection areas, bedrooms and lounges; and

WHEREAS, the applicant states that the as-of-right design with the required yards and lot coverage would significantly diminish the amount of programming that could be accommodated;

WHEREAS, specifically, the lot coverage and rear yard restrictions would eliminate the entire one-story enlargement at the rear which has a depth of approximately 30 feet and is entirely within the required rear yard; and

WHEREAS, the one-story enlargement allows for several large spaces for multiple uses and essentially all of the Congregation's program would be lost without the new space, currently in the form of tents that do not provide comfortable or safe facilities to the many visitors to the site; and

WHEREAS, the applicant notes that the complying rear yard and lot coverage conditions would not allow it to meet its programmatic needs to improve the existing conditions and promote a more attractive, modern, and safe worship and visitation space; and

WHEREAS, as to the side yard request, the applicant states that the required 24-foot side yards would necessitate the demolition of approximately one-half of the two outer homes which is both impractical and contrary to the programmatic need to maintain the modest homes as a sign of humbleness; and

WHEREAS, the maintenance of the non-complying side yards allows the Congregation to re-purpose the existing homes while preserving the original spiritual center of the pilgrimage site; and

WHEREAS, as to the parking requirement, the applicant states that the constraints of the site do not allow for accommodation of any of the required parking and that the inclusion of parking would require the demolition of the five original homes, again, contrary to the programmatic need to preserve them; and

WHEREAS, the applicant represents that an important part of its program is to provide transient accommodations for followers and that new floor area on the second floor is primarily dedicated to serving that need; and

WHEREAS, the applicant initially sought to allow sleeping accommodations on a daily basis regardless of whether travel was permitted; and

WHEREAS, the Board raised concerns that transient sleeping accommodations were not customary and are beyond the scope of a religious institution's programmatic needs and did not see any basis for allowing the site to include unrestricted transient sleeping accommodations which is a use not permitted in or compatible with the surrounding low density residential zoning district comprising primarily single-family homes; and

WHEREAS, in response, the applicant stated that the transient use was akin to a Shabbos House, which accommodates worshipers on the Sabbath, holidays, and event days; and

WHEREAS, the applicant asserted that the religious purpose and importance of a Shabbos house is supported by

case law and cites to Bikur Cholim v. Village of Suffern, 664 F.Supp.2d 267 (2009), in which the Village of Suffern denied a variance for a Shabbos house near a hospital, which allowed patients' family members to stay overnight when arriving or departing on the Sabbath when travel is not permitted; and

WHEREAS, the applicant also cited to the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) for the principle that the government is prohibited from imposing or implementing a land use regulation "in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution" unless the government demonstrates that the imposition is in furtherance of a compelling government interest and is the least restrictive means of furthering that compelling government interest; and

WHEREAS, the applicant asserted that a plan without sleeping accommodations would not meet its programmatic needs and would substantially burden its religious exercise; and

WHEREAS, the Board reviewed the case law and the information related to the Shabbos House in Albany and concluded that such facilities provide sleeping accommodations on days when religious doctrine prohibits travel and worshipers must either remain because they cannot travel or must arrive early for the next day; the use of the Shabbos house in Bikur Cholim was limited to "Fridays and approximately 10 Jewish Holidays when travel is not permitted;" and

WHEREAS, the Board did not see any support for the initial claim that the Congregation requires sleeping accommodations on a daily basis or on any day other than those when religious doctrine prohibits travel, including every holiday and event day and that such a model was not in keeping with Shabbos houses in the traditional sense and was not warranted; and

WHEREAS, accordingly, the applicant agreed to limit the use of sleeping accommodations at the site to the following 65 days per year when religious doctrine prohibits travel: 52 Sabbath days, Rosh Hashanah (2 days), Yom Kippur (1 day), Shavuot (2 days), the first two and last two days of Passover (4 days), and the first two and last two days of Sukkot (4 days); and

WHEREAS, the Board finds that requiring the Congregation to follow the traditional Shabbos house model is consistent with RLUIPA and notes that in the Bikur Cholim case, the Village of Suffern denied the variance for a Shabbos house outright and that the court stated that when the Village reconsidered the variance application on remand, it could impose conditions for the use; and

WHEREAS, accordingly, the Board finds it appropriate and consistent with legal authority to impose conditions as to occupancy and number of days the sleeping accommodations may be used; and

WHEREAS, the applicant states that the yard and floor area waivers will enable the Congregation to provide new Code-compliant prayer and synagogue space and improved circulation space, new educational and administrative space,

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and improved common facilities such as bathrooms and kitchen space; and

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

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

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Congregation create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

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

WHEREAS, the applicant has revised its plans to reduce the bulk by (1) maintaining both existing side yards; (2) removing a lounge area on the second floor; (3) removing a set of egress stairs that are no longer necessary; and (4) removing an office; and

WHEREAS, the noted changes have reduced the FAR to 0.98, which the applicant asserts is consistent with the FAR that could be obtained for a community facility by the Department of City Planning special permit pursuant to ZR § 74-901; and

WHEREAS, as to the yards, the applicant notes that (1) the non-complying front yard condition is existing and will be maintained and is consistent with the neighborhood character; (2) both side yards will be maintained at their existing widths; and (3) the non-complying rear yard abuts cemetery property; and

WHEREAS, additionally, the applicant notes that the encroachments into the rear yard is one story; and

WHEREAS, the applicant states that the proposed height of two stories and 28'-3 5/6" is compatible with the surrounding context and the majority of the excess bulk will be in the rear yard, which is adjacent to the cemetery and creates minimal visual impact; and

WHEREAS, the applicant notes that the second floor enlargements will set back the required 15'-0" at the front; and

WHEREAS, the applicant notes that on the western side of the site, including the neighbor's driveway, there is a space of approximately 20 feet between the proposed building and

the adjacent home and that it will provide a landscape buffer along the shared lot line; and

WHEREAS, during the course of the public hearing process and in consideration of the commissioners' own observations on site visits and the community's concerns, the Board directed the applicant to create an operational plan to describe the use of the site and to improve the conditions for the neighbors; and

WHEREAS, specifically, the Board directed the applicant to address concerns about (1) frequent parking of buses in front of nearby homes; (2) excessive bus idling and disruptive loading and unloading; (3) cars blocking nearby driveways and blocking traffic; (4) incompatibility of a 24-hour operation with adjacent residential use; (5) the incompatibility of high volume and continuous transient use; (6) poor maintenance of the site including improper garbage storage and disposal as well as littering nearby property; (7) insufficient support and resources on busy event days ("Event Days"); and (8) lack of consideration for neighbors' property and quiet; and

WHEREAS, in consideration of the potentially incompatible nature of the facility at certain times and the community's interests, the Board suggested and analyzed the following mitigation measures: (1) alternate locations for bus parking; (2) limiting bus idling time; (3) monitoring and direction to prohibit inappropriate car parking; (4) requiring reduced hours of operation; (5) eliminating or reducing the transient use and limiting the days to when religious doctrine prohibits travel; (6) installing refrigerated garbage storage; (7) requiring an operational plan for general use and extra measures for Event Days; and (8) requiring facility management to assume a greater role in controlling visitation to the site; and

WHEREAS, to address the concerns about bus parking, the applicant contacted the Department of Transportation and requested that it install a No Parking Any Time sign on the south side of Francis Lewis Boulevard that applies to an area starting in front of the building and continuing east for a total length of 150 feet, which will accommodate at least three large buses; and

WHEREAS, additionally, DOT, by letter dated April 26, 2013, stated that it will replace the Attention Drivers 3 Minute Idling Law Enforced: \$2,000 Fine signs with ones that specify a one minute idling limit; and

WHEREAS, the applicant states that it has communicated with cemetery officials who have informed them that they are not interested in selling the parking lot on Springfield Boulevard or in reserving it for visitors to the site; and

WHEREAS, the applicant states that to encourage the use of buses and reduce individual vehicular trips, the Congregation will provide charter buses from Crown Heights to the site and it will encourage visitors to park in the cemetery parking lot by providing a shuttle service from the cemetery parking lot to the site; and

WHEREAS, the applicant performed a parking study which reflects that there were 258 available parking spaces

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during the weekday and 211 available on Sunday and that the patron studies show a peak visitor accumulation of 73 people on weekdays and 122 on Sunday; and

WHEREAS, accordingly, the applicant asserts that there is sufficient on-street parking to accommodate demand on non-Event Days; and

WHEREAS, the Board asked the applicant if it was possible to direct more visitors to the main entrance of the cemetery; and

WHEREAS, the applicant explained that the main entrance on Springfield Boulevard is 3,000 feet from the grave site and the cemetery does not have lights and the roadways are narrow which makes access untenable after dark; further, the cemetery gates are open 8:30 a.m. to 4:30 p.m. Monday to Friday and Sunday, which does not satisfy the visitors' needs; and

WHEREAS, as to the hours of operation, the applicant states that it receives approximately 300 visitors on a typical day between the hours of 7:00 a.m. and 10:00 p.m., with visitation significantly reduced on Saturday, when there are religious restrictions on travel; and

WHEREAS, however, the applicant requests that it be able to maintain its 24 hours of operation because followers seek to be in the Rebbe's presence at all hours; and

WHEREAS, the applicant asserts that prohibiting 24-hour access to the site would interfere with participation in a religious ceremony and would be a substantial burden to visitors; the applicant submitted a letter from the Union of Orthodox Rabbis setting forth the importance of uninhibited access; and

WHEREAS, the applicant states that regardless of the hours of operation, visitors will enter the site beyond those hours; and

WHEREAS, the applicant proposed locking a folding partition wall between the hours of 12:00 a.m. and 6:00 a.m. to discourage people from visiting overnight and would limit access to the minimum spaces that can be provided when visiting the site; and

WHEREAS, the applicant proposed to post the following hours of operation on the website: limited access from 12:00 a.m. to 6:00 a.m. Monday to Saturday and from 2:00 a.m. to 6:00 a.m. on Sunday; and

WHEREAS, the Board carefully considered the position of the Congregation, which says that 24-hour access is necessary, and of the community, seeking a schedule which would allow for a cessation of activity for a portion of each day; and

WHEREAS, the Board concludes that a restriction on the hours of operation from 6:00 a.m. to 10:00 p.m., daily, for the entire site – interior and exterior - is warranted and that access to the entire site will be restricted during that time; and

WHEREAS, the Board notes that (1) the applicant states that visitors typically visit the site between the hours of 7:00 a.m. and 10:00 p.m. and, thus, few visitors would be constrained by the hours; (2) due to the intensity of use and volume of visitors into the area, it is reasonable to allow the

neighbors a portion of the day during late and early hours when there will not be any activity; and (3) access to the site will be permitted for 16 hours per day, every day; and

WHEREAS, the Board is not persuaded by the applicant's assertions that a reduction of the hours of operation is an infringement on its religious exercise when the facility has unrestricted access every day of the year except in the late and early hours of the day when the applicant notes few people actually visit the site; and

WHEREAS, at public hearing, the Board asked the applicant to identify up to four days during the year when it anticipates the most visitors and stated that 24-hour operation on those days would be appropriate; and

WHEREAS, in response, the applicant stated that the Anniversary of the Rebbe's Passing, the Anniversary of the Previous Rebbe's Passing, the Rebbe's Birthday, and the Eve of Rosh Hashanah are four days when 24-hour operation is necessary; and

WHEREAS, the Board notes that it has restricted hours of use for certain operations, including the use of outdoor space, on numerous religious use applications; and

WHEREAS, the Board notes that it is standard for religious institutions and shrines to have hours of closure in which case, worshippers plan their trips to arrive at first opening and to leave by closing time; and

WHEREAS, the Board finds that the Congregation's operation is not diminished and the compelling benefit to the community is realized; and

WHEREAS, additionally, the Board finds that the hours of use of the second-floor terrace should be restricted in order to be more compatible with nearby residential use; and

WHEREAS, as to sleeping accommodations, during the hearing process, the Board expressed its concerns about the incompatibility of high volume and consistent use of the site for transient sleeping accommodations; and

WHEREAS, as noted above, the applicant agreed to limit the overnight accommodations to the 65 days per year when religious doctrine prohibits travel; and

WHEREAS, additionally, in response to the Board's concerns about the scale of the transient accommodations, the applicant reduced the number of beds proposed from 52 to 34; and

WHEREAS, the applicant states that the other homes in the area that the community has identified as offering sleeping accommodations are not affiliated with the Congregation; and

WHEREAS, as to garbage storage, the applicant proposes a refrigerated room to store trash until pickups, to assign staff to monitor and maintain the area surrounding the site, and to post signs regarding litter; and

WHEREAS, as to the building mechanicals, the applicant has agreed to move its condensers to the roof (air handlers were already located inside the building) a minimum distance of approximately 150 feet from the closest residential neighbor and specify that they will include sound isolation/vibration dampers and sound attenuation panels; and

WHEREAS, as to visitor conduct, the applicant proposes to place signs near each entrance door reminding

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visitors not to block driveways or park illegally and signs near each exit reminding visitors to keep noise to a minimum and be respectful of neighbors; and

WHEREAS, the applicant states that it will maintain a section on its website directing visitors (1) not to block driveways, (2) to dispose of all garbage in the receptacles in or around the site and not on the neighbors' properties or sidewalks, (3) to walk on sidewalks only and not on lawns, and (4) to avoid congregating in front of neighbors' homes and keep noise to a minimum; and will also include information about hours of operation; and

WHEREAS, as to Event Days, the applicant identified the busiest days, as the following: the Eve of Rosh Hashanah, the Day of the Rebbe's Recovery, the Anniversary of the Previous Rebbe's Passing, the Anniversary of the Rebbe's Wife's Passing, the Rebbe's Birthday, and the Anniversary of the Rebbe's Passing, and other busy days identified as the Birthday of Founders of Chassidic and Chabad Movements, Rosh Hashanah, the Anniversary of the Rebbe's Mother's Passing, Eve of Yom Kippur, Yom Kippur, Sukkot, the Rebbe's Wedding Anniversary, Chassidic New Year, Festival of Liberation of the Rebbe's Books, Passover, Lag B'Omer, Shavuot, Liberation of the Previous Rebbe, and the Anniversary of the Rebbe's Father's Passing; and

WHEREAS, the applicant states that on Event Days, it will notify the Community Board and the neighbors by letter that they are anticipating an increased number of visitors; and

WHEREAS, the applicant will also communicate with the MTA to alert them to Event Days when use of its public busses will be increased; and

WHEREAS, the applicant said that it will contact the Department of Sanitation to request that additional trash bins be placed in the area and that there will be a requirement for additional pick ups; and

WHEREAS, the applicant states that it will request additional police presence on Event Days and it will hire three private security personnel for those days; and

WHEREAS, as to the community's suggestion that there be a term imposed to enable the Board to more closely monitor the approval, the applicant states that such action would severely limit its ability to raise funds necessary to construct the building and could ultimately make it financially infeasible; and

WHEREAS, the Board considered the community's suggestion for a term and in light of the history of illegal use of the site and several site conditions that the Congregation has agreed to modify, the Board finds that a term of ten years from the date of the grant is appropriate to allow for oversight of the site conditions and a time to re-evaluate if they have been effective; and

WHEREAS, accordingly, the Board finds that this action, with a series of operational improvement measures, will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Congregation could occur on the existing lot; and

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

WHEREAS, as noted above, the Congregation originally proposed to enlarge the building to an FAR of 1.2 and to excavate a full cellar; and

WHEREAS, at the direction of the Board, the applicant revised its plans to reduce the size of the building to 1.01 FAR and eliminate the cellar space and, ultimately, re-designed the plan to maintain both side yards, which reduced the FAR to 0.98; and

WHEREAS, at the direction of the Board, the applicant analyzed a lesser variance scenario which completely excluded sleeping accommodations and resulted in an FAR of 0.8; and

WHEREAS, the applicant represents that such a scenario would not satisfy its programmatic needs of accommodating those who are at the site on days when religious doctrine prohibits travel; and

WHEREAS, instead, the Board notes that the applicant reduced its sleeping accommodations from 52 to 34-person occupancy; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 11BSA075Q, dated April 17, 2012; and

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

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

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

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

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Appeals issues a negative declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R2A zoning district, the legalization and enlargement of an existing building occupied by a synagogue and accessory uses (Use Group 4) which does not comply with the underlying zoning district regulations for floor area, lot coverage, front yard, side yard, rear yard, and parking, contrary to ZR §§ 24-111, 24-11, 24-34, 24-35, 24-36 and 25-31; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 16, 2013" – ten (10) sheets, and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum floor area of 19,719 sq. ft. (0.98 FAR); a maximum lot coverage of 73.79 percent; a maximum front wall height of 20'-8 ¾"; a front yard with a minimum depth of 10'-0"; side yards with minimum widths of 10'-1 1/6" and 9'-9 5/8", as illustrated on the BSA-approved plans;

THAT this grant will be limited to a term of ten years, to expire on October 22, 2023;

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

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

THAT no commercial catering will take place onsite;

THAT use of the sleeping accommodations at the site will be limited to the following 65 days when religious doctrine prohibits travel: 52 Sabbath days, Rosh Hashanah (2 days), Yom Kippur (1 day), Shavuot (2 days), the first two and last two days of Passover (4 days), and the first two and last two days of Sukkot (4 days);

THAT the sleeping accommodations will be limited to a maximum occupancy of 34 people;

THAT the size and conditions of the sleeping conditions will be as reviewed and approved by DOB;

THAT the hours of operation of the entire site will be posted on the Ohel's website and be limited to 6:00 a.m. to 10:00 p.m., daily, except for the Rabbi's quarters, and the use of the sleeping accommodations on the 65 noted days when religious doctrine prohibits travel;

THAT the use of the site is extended to 24 hours per day on the following four days, annually: the Anniversary of the Rebbe's Passing, the Anniversary of the Previous Rebbe's Passing, the Rebbe's Birthday, and the Eve of Rosh Hashanah;

THAT bus and automobile engines are not permitted to idle for longer than one minute as indicated on signage;

THAT bus drop off and pick up will be restricted to the DOT designated no parking area, reflected on the BSA-approved plans and marked by DOT signage;

THAT signs will be posted noting the restriction on

blocking neighborhood driveways;

THAT dedicated Ohel staff will monitor and direct traffic and ensure compliance with conditions related to drop off and pick up, idling, and blocking driveways;

THAT the use of the second floor outdoor area will be limited to 7:00 a.m. to 7:00 p.m., daily, except during Sukkot;

THAT no amplification of any kind or permanent structures will be located on the second floor outdoor space;

THAT all garbage awaiting pickup will be stored in the refrigerated room reflected on the BSA-approved plans;

THAT additional private garbage pickup will be provided to accommodate overflow on all days including Event Days;

THAT dedicated Ohel staff will monitor the surrounding area to ensure compliance with all conditions and remove debris daily, with additional staff assigned following the Sabbath and during Event Days;

THAT all lighting will be directed away from adjacent residential uses;

THAT signs will be posted at the site noting the restriction on entering neighbors' property, loitering, littering, and creating noise;

THAT mechanical and HVAC system components will be placed within the building except as required to be on the roof;

THAT the components of HVAC systems placed on the roof will include sound isolation/vibration dampers and sound attenuation panels and it and all other mechanicals outside of the building will be located within 100 feet of the eastern lot line;

THAT the building will be fully-sprinklered, as reflected on the BSA-approved plans;

THAT the western side yard will be well-maintained and landscaped, as reflected on the BSA-approved plans;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, October 22, 2013.

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**199-12-BZ**

**CEQR #12-BSA-147K**

APPLICANT – Sheldon Lobel, P.C., for Delta Holdings,

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LLC, owner.

SUBJECT – Application June 25, 2012 – Variance (§72-21) to construct a self-storage facility, contrary to maximum permitted floor area regulations. C8-1 and R6 zoning districts.

PREMISES AFFECTED – 1517 Bushwick Avenue, east side of Bushwick Avenue with frontage along Furman Avenue and Aberdeen Street, Block 3467, Lot 5, Borough of Brooklyn.

## COMMUNITY BOARD #4BK

**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 December 27, 2012, acting on Department of Buildings Application No. 310076333, reads in pertinent part:

Proposed floor area contrary to maximum permitted under ZR 33-122 . . .

Proposed commercial use in residential zone not permitted as per 22-00.

Proposed height and setback contrary to allowable under ZR 33-431; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C8-1 zoning district and partially within an R6 zoning district, the proposed development of a self-storage facility (Use Group 16), which is non-complying as to floor area, height, and setback, and non-conforming as to the portion of the use within the R6 zoning district; and

WHEREAS, a public hearing was held on this application on February 12, 2013 after due notice by publication in the *City Record*, with continued hearings on April 23, 2013, May 14, 2013, July 23, 2013, and September 10, 2013, and then to decision on October 22, 2013; and

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

WHEREAS, Community Board 1, Brooklyn, waived its right to a hearing and did not take a position on the application; and

WHEREAS, the site is located on the east side of Bushwick Avenue, with frontage on Furman Avenue and Aberdeen Street; and

WHEREAS, the primary frontage is along Bushwick Avenue (200 feet), with side frontage on Furman Avenue (227 feet) and Aberdeen Street (100 feet); and

WHEREAS, the site comprises three tax lots that, although historically used together, were recently merged into Lot 5 and is irregularly shaped with a lot area of 29,272 sq. ft.; and

WHEREAS, the lot area within the R6 zoning district at the northwest corner is 3,343 sq. ft. and the remaining 25,929 sq. ft. of lot area is within the C8-1 zoning district; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed building which will accommodate a self-storage facility and accessory uses has the following bulk parameters: three stories, a height of 33'-8" (a maximum height of 30'-0" is permitted), a floor area of 68,556 sq. ft. (2.64 FAR) (a maximum floor area of 25,929.56 sq. ft. (1.0 FAR) is permitted), 15 parking spaces, and four loading berths; and

WHEREAS, in addition to the non-complying floor area and height without the required setback, the applicant proposes to locate a portion of the Use Group 16 use within the residential zoning district, thus the applicant seeks a variance; 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 district regulations: (1) the irregular shape; (2) the split zoning district condition; (3) the presence of an LIRR tunnel easement below the site; (4) the presence of an MTA subway tunnel below the adjacent playground; and (5) sensitive soil conditions; and

WHEREAS, the applicant asserts that the site's irregular shape which includes one large triangular portion leads to significant design inefficiencies when compared to a regularly-shaped lot; and

WHEREAS, further, the applicant states that the presence of the zoning district boundary line between the C8-1 and R6 zoning districts is profound as the permitted uses in the two zoning districts are distinct; and

WHEREAS, the applicant notes that the split zoning district condition cannot be cured by ZR § 77-11 because of the distance of the lot lines from the district boundary line; and

WHEREAS, additionally, the applicant states that the zoning district change does not allow for the capture of the available floor area on the residential portion of the site for its use with the commercial portion of the site; and

WHEREAS, as to the LIRR tunnel easement, the applicant states that the easement is largely coincident along a significant portion of the site on the southerly diagonal lot extending south from Furman Avenue; and

WHEREAS, the applicant asserts that the tunnel easement burdens more than 50 percent of the site and prohibits the construction of below grade space, which would be customary for a storage facility that does not require access to natural light; and

WHEREAS, as to the MTA subway tunnel easement, the applicant notes that the easement is below the adjacent Rudd Playground, which is just southwest of the large Trinity Cemetery and Cemetery of the Evergreens; the subway tunnel is above the site's level of grade and close enough to the property line as to be within MTA's zone of

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influence; and

WHEREAS, the applicant represents that the additional required construction measures attributed to the proximity of the two tunnels include (1) minimizing vibration, auger installed shoring on three street frontages; (2) foundation knuckle and cantilever design; (3) specialized foundation design at MTA and LIRR's direction; (4) various premium soft costs and timing delays; and (5) specialized structural mat foundation for at-grade construction; and

WHEREAS, the applicant asserts that the premium costs include \$160,000 associated with the retaining wall regardless of whether a cellar is included, \$525,000 of costs associated with the sectional wall construction and underpinning with a cellar, or \$200,000 of costs associated with such construction even without a cellar; and

WHEREAS, additionally, the applicant represents that due to the LIRR tunnel, with or without a cellar, the specialized structural mat concrete slab will cost \$900,000 compared to \$180,000 on a site without the LIRR tunnel; and

WHEREAS, the applicant notes that the subway tunnel is approximately ten feet above the level of grade of the site at a horizontal distance of 17 feet and it is this condition that creates the grade differential between the site and the elevated Rudd Playground; and

WHEREAS, the applicant notes that the sensitive soil conditions include the requirement for a retaining wall adjacent to the playground and a significant amount of urban fill at the site; and

WHEREAS, the applicant notes that the retaining wall is necessary to support the elevated playground, which has two levels and is 12 feet and greater above the level of grade at the site; and

WHEREAS, the applicant notes that the two transportation easements, including the presence of the tunnel, and the change in grade which requires a retaining wall, contribute to the premium construction costs and the inability to feasibly construct below grade; and

WHEREAS, the applicant asserts that a typical site in a C8-1 zoning district can accommodate a self-storage facility on a 30,000 sq. ft. lot by fully utilizing cellar and sub-cellar levels to accommodate the necessary amount of space to make the project viable; and

WHEREAS, as noted, below grade space is ideal for self-storage facilities which do not require windows; and

WHEREAS, the applicant asserts that if it were able to construct below grade, it could accommodate all the necessary floor area that now must be above grade and, similarly, the below grade space would eliminate the requirement for the height/setback waivers which are attributed to the need to construct floors with uniform floorplates; and

WHEREAS, the applicant asserts that the proposed 2.64 FAR allows for the recapture of below grade space as well as for additional revenue to offset the significant premium construction costs; and

WHEREAS, as to the inclusion of the Use Group 16

use on the portion of the site within the R6 zoning district, the applicant asserts that the entire lot has historically been used together for commercial use and that due to its triangular shape, the residential portion cannot feasibly accommodate construction for any use; and

WHEREAS, accordingly, the applicant proposes to allow loading for the facility on the residential portion of the lot, which abuts the dead end of Furman Avenue and is not adjacent to any residential use; and

WHEREAS, the applicant asserts that to include the loading within the C8-1 portion of the site would not be feasible due to the lot's shape and the location on the heavily-trafficked Bushwick Avenue, which would not be compatible with vehicle loading and unloading; and

WHEREAS, as to uniqueness, the applicant represents that the site is the only one in the vicinity that is burdened by the combination of the noted conditions; and

WHEREAS, the Board observes that the applicant has established each of the bases of hardship and uniqueness and has justified the requested waivers; and

WHEREAS, accordingly, the Board finds that the unique conditions mentioned above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in strict compliance with applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study that analyzed (1) an as of right self-storage facility with special costs; (2) an as-of-right self-storage without special costs; (3) an alternate variance self-storage facility; and (4) the proposal; and

WHEREAS, the applicant concluded that neither the two noted as of right scenarios nor the alternate variance scenario would realize a reasonable return due to the site's constraints; and

WHEREAS, specifically, the applicant has identified significant premium costs related to the site's unique features that render a complying development infeasible; and

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

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

WHEREAS, the applicant notes that the self-storage use is permitted as of right within the C8-1 zoning district and only the loading area within the R6 portion of the site is non-conforming; and

WHEREAS, as to the portion of the site within the residential zoning district, the applicant notes that this is a historic condition and that that portion of the site has been used in conjunction with the remainder of the site for commercial use historically; and

WHEREAS, the applicant notes that there are not any residential uses adjacent to the site and that the residential

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portion of the site is adjacent to the dead end at Furman Avenue, thus, it is not in proximity to any conforming uses; and

WHEREAS, the applicant notes that the use across Furman Avenue is also not residential in character; and

WHEREAS, the applicant characterizes the site as being located in a small C8-1 enclave which includes a gas service station, a stand-alone auto repair, and a four-story mixed-use residential building with ground floor retail all across Bushwick Avenue; and

WHEREAS, the applicant performed a traffic analysis and concluded that the inclusion of the loading on Furman Avenue adjacent to the dead end was preferable to including it along the Bushwick Avenue or Aberdeen Street where it would interfere with traffic; and

WHEREAS, the applicant asserts that the building's height at three stories is compatible with the surrounding area which includes many three- and four-story buildings along Bushwick Avenue and Aberdeen Street and notes that the adjacent R6 zoning district allows for 3.0 FAR for Quality Housing developments and 4.8 FAR for community facilities; and

WHEREAS, at hearing, the Board directed the applicant to analyze the effect of the building's massing on the adjacent playground, namely as to shadows; and

WHEREAS, in response, the applicant performed a shadow analysis which reflects that there would not be any shadow impact on the playground even on the day of longest shadow in the year; and

WHEREAS, the applicant asserts that there is not any impact due to the two changes in grade at the playground attributed to the MTA subway tunnel's location above the grade level of the subject site; and

WHEREAS, however, at the Board's direction, the applicant revised its plans to include a setback to a depth of five feet at the third floor to pull back away from the playground at the rear of the site and the applicant also replaced its parapet wall with a fence so as to further reduce the perception of bulk; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but instead results from the above-mentioned unique physical conditions; and

WHEREAS, as noted, at the direction of the Board, the applicant revised the plans to include a setback at the rear of the site, which provided a minimal reduction in the floor area and reduced the height at the rear of the building; and

WHEREAS, the applicant states that it examined several complying scenarios as well as the lesser variance alternative and found that none provide a reasonable return; and

WHEREAS, the applicant represents that without the

requested waivers, premium construction costs could not be overcome; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA147K, dated June 22, 2012; and

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

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

WHEREAS, DEP reviewed and accepted the June 2013 Remedial Action Work Plan and site-specific Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration, with the conditions stipulated below and prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings under ZR § 72-21, to permit, on a site partially within a C8-1 zoning district and partially within an R6 zoning district, the proposed development of a self-storage facility (Use Group 16), which is non-complying as to floor area, height, and setback, and non-conforming as to a portion of the use within the R6 zoning district, contrary to ZR §§ 33-122, 33-431, and 22-00; *on condition* that all work shall substantially conform to drawings as they apply to the objections above

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noted, filed with this application marked “Received October 16, 2013”– ten (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the buildig: a maximum floor area of 68,556.32 sq. ft. (2.64 FAR) and a maximum total height of 33’-8”, as illustrated on the BSA-approved plans;

THAT the interior layout and all exiting requirements will be as reviewed and approved by the Department of Buildings;

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

THAT DOB will not issue a Certificate of Occupancy until the applicant has provided them with DEP’s approval of the Remedial Closure Report;

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

THAT substantial construction be completed in accordance with ZR § 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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 22, 2013.

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## 100-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zipporah Farkas and Zev Farkas, owners.

SUBJECT – Application April 10, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1352 East 24th Street, west side of East 24th Street between Avenue M and Avenue N, Block 7659, Lot 69, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

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

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 8, 2013, acting on Department of Buildings Application No. 320572233, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted;

2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required;
3. Proposed plans are contrary to ZR 23-461 in that the proposed side yards are less than the minimum required;
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30 feet; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, and then to decision on October 22, 2013; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 24th Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the site has a total lot area of 4,000 sq. ft. and is occupied by a single-family home with a floor area of 2,504.3 sq. ft. (0.63 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from of 2,504.3 sq. ft. (0.63 FAR) to 4,016 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to reduce the open space from 71 percent to 54 percent; the minimum required open space is 150 percent; and

WHEREAS, the applicant also seeks to maintain the width of one of the existing side yards (3’-5”) and decrease the width of the other existing side yard from 12’-11” to 8’-0” (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each); and

WHEREAS, in addition, the applicant seeks to decrease its rear yard depth from 33’-10” to 20’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood and will not impair the future use or development of the surrounding area; and

WHEREAS, in particular, the applicant represents that the proposed 1.0 FAR is consistent with the bulk in the surrounding area and notes that there is one home on the block directly east of the subject block (Block 7660), three homes

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on the block that is two blocks directly east of the subject block (Block 7661), and one home on the same block as the premises (Block 7659) with an FAR of 1.0 or greater; and

WHEREAS, accordingly, the Board agrees with the applicant that the proposed bulk is compatible with the character of the neighborhood; 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, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 23, 2013"- (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,016 sq. ft. (1.0 FAR), a minimum open space of 54 percent, a minimum rear yard depth of 20'-0", and side yards with minimum widths of 3'-5" and 8'-0", 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 will be considered approved only for the portions related to the specific relief granted;

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

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

Adopted by the Board of Standards and Appeals, October 22, 2013.

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## 133-13-BZ

### CEQR #13-BSA-173X

APPLICANT – Sheldon Lobel, PC, for Evangelical Church Letting Christ Be known, Inc., owner.

SUBJECT – Application May 10, 2013 – Variance (§72-21) to permit the construction of a new two-story community facility (UG 4A house of worship) (*Evangelical Church*) building is contrary to parking (§25-31), rear yard (§24-

33(b) & §24-36), side yard (§24-35(a)) and front yard requirements (§25-34) zoning requirements. R4 zoning district.

PREMISES AFFECTED – 1915 Bartow Avenue, northwest corner of Bartow Avenue and Grace Avenue, Block 4799, Lot 16, 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, the decision of the Bronx Borough Commissioner, dated April 30, 2013, acting on Department of Buildings ("DOB") Application No. 220201412, reads in pertinent part:

ZR Section 24-33(b) – the proposed building within the rear yard is contrary to the cited section in that it exceeds the height limitation for permitted obstructions;

ZR Section 24-35(a) – the proposed side yard is contrary to the cited section in that ten percent of the aggregate street walls is required (15 feet) [however] per the proposed plan, eight feet is indicated;

ZR Section 24-36 – the proposed rear yard does not comply with the minimum 30 feet required [because] the interior lot portion of the site is not eligible for the shallow lot provision, per ZR Section 24-37(a);

ZR Section 24-34 – proposed front yard is contrary to the stated section in that [a depth of] 15 feet [is required but] only ten feet [is provided]; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the construction of a two-story house of worship (Use Group 4A) that does not comply with the zoning regulations for rear yard, side yard, front yard, and permitted obstructions in rear yard, contrary to ZR §§ 24-33, 24-34, 24-35, and 24-36; 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 22, 2013; and

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

WHEREAS, this application is brought on behalf of Evangelical Church Letting Christ Be Known (the "Church"), a not-for-profit institution; and

WHEREAS, Community Board 12, Bronx, recommends disapproval of this application, citing concerns about traffic and parking; and

WHEREAS, Councilmember Andy King testified in opposition to the proposal, citing concerns about traffic; and

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WHEREAS, certain members of the surrounding community testified in opposition to the application, citing concerns about traffic and the requested yard waivers' impacts on adjacent properties; and

WHEREAS, certain members of the surrounding community testified in support of the application; and

WHEREAS, the subject site is an irregular corner lot located on the northwest corner of the intersection of Grace Avenue and Bartow Avenue, within an R4 zoning district; and

WHEREAS, the site has approximately 100 feet of frontage along Bartow Avenue, approximately 322 feet of frontage along Grace Avenue, and a lot area of approximately 22,989 sq. ft.; and

WHEREAS, the applicant notes that the site has been vacant since at least 1983; and

WHEREAS, the applicant proposes to construct a two-story house of worship (Use Group 4A) with 12,388 sq. ft. of floor area (0.54 FAR) to accommodate the programmatic needs of the Church, which has been in existence for approximately 16 years; and

WHEREAS, the applicant represents that the proposed building will create the following non-compliances on the zoning lot: (1) the building will obstruct the rear yard for two stories and a height of 31'-0" (the maximum permitted height of this community facility building within the rear yard in this district is one story and 23'-0", per ZR § 24-33(b)); (2) a rear yard with a depth of 8'-8" (a rear yard with a minimum depth of 30'-0" is required for the interior lot portion of the site, per ZR § 24-36); (3) two side yards with depths of 24'-2" and 10'-0" (the requirement, which is based on the width of the street wall, is two side yards with minimum depths of 15'-0", per ZR § 24-35(a)); and (4) a front yard depth of 10'-0" (a front yard depth of 15'-0" is required, per ZR § 24-34); and

WHEREAS, the applicant represents that, since its founding, the Church has leased space at 2111 Starling Avenue, Bronx, a two-story building with approximately 3,976 sq. ft. of floor area; however, that building accommodates neither the Church's current membership of 350 members, nor its projected growth; and

WHEREAS, the applicant states that the proposed building will include the following: (1) in the cellar, a community room, electrical and mechanical rooms, a cafeteria and serving area, and men's and women's restrooms; (2) on the first story, a lobby, a temple, a restroom, dressing area, and a pastor's office; and (3) on the second story, two offices, a coat closet, storage, children's chapel, and men's and women's restrooms; and

WHEREAS, the applicant notes that the community room will be used primarily to provide light meals to congregants after worship services; however, no catered affairs (such as wedding receptions) will be held at the Church; the applicant also states that the Church anticipates a capacity of approximately 300 congregants in the temple on the first story and approximately 100 congregants in the chapel on the second story; and

WHEREAS, the applicant represents that the irregular shape of the site—in particular its jagged western boundary—

is a unique physical condition inherent to the zoning lot, which creates practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations, per ZR § 72-21(a); and

WHEREAS, the applicant states that the jaggedness of the western boundary gives rise to no fewer than 13 adjoining rear and side lot lines (none of which is parallel to either Grace Avenue or Bartow Avenue) which results in an as-of-right footprint of only 5,653 sq. ft.; in contrast, a standard, rectangular lot with the site's lot area (22,989 sq. ft.) would yield an as-of-right footprint of 12,500 sq. ft.; the applicant notes that the proposed footprint is approximately 6,194 sq. ft., less than half the size that would be accommodated on a rectangular lot; and

WHEREAS, the applicant notes that although the site is adjacent to a lot with a similarly jagged boundary line, the adjacent lot is significantly larger and therefore would provide greater flexibility in development; further, while there are other lots with jagged lot lines within a 400-foot radius of the site, only the site and the immediately adjacent lot are vacant; and

WHEREAS, the applicant states that the following are the programmatic needs of the Church, which necessitate the requested waivers: (1) the increasing size of the congregation; and (2) the Church's expansive mission, which, includes spiritual outreach and creating support groups for local youth; and

WHEREAS, as to the increasing size of the congregation, the applicant states that the Church has 350 regular members and anticipates that it will have approximately 385 regular members when construction at the site is completed; and

WHEREAS, the applicant represents that the Church's existing facility cannot accommodate the Church's current membership and that an as-of-right building would be similarly inadequate; in particular, based on the as-of-right plans submitted by the applicant, the floor area of the building would decrease from the proposed 12,388 sq. ft. (0.54 FAR) to 9,184 sq. ft. (0.39); further, in the as-of-right scenario, the capacity of the temple on the first story is decreased from 300 congregants to 214 congregants and the capacity of the chapel on the second story is decreased from 100 congregants to 54 congregants; and

WHEREAS, as to the expansive mission of the Church, the applicant represents that an as-of-right facility would not provide the worship, classroom or community outreach space it requires to fulfill its wide-ranging spiritual and pedagogical objectives; and

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

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or

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welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the irregular lot shape in combination with the programmatic needs of the Church create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Church is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that the variance, if granted, will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant represents that the neighborhood is characterized by its diversity: buildings range in height from one to five stories, and residential, commercial, and manufacturing uses are found within a 400-foot radius of the site; and

WHEREAS, the applicant notes that other nearby uses include a park, a large parking lot for a shopping center, gasoline stations, and the New England Thruway (Interstate 95); and

WHEREAS, the applicant notes that the proposed use is permitted as-of-right and that the proposal complies with the regulations regarding building height, setback, sky exposure plane, lot coverage, and parking; and

WHEREAS, the applicant also notes that at 0.54 FAR, the proposal is 27 percent of the maximum permitted floor area ratio for a community facility in the district (2.0 FAR); and

WHEREAS, as to the adjacent uses, the applicant notes that the site immediately to the west is vacant and significantly larger than the subject site; as such, it can be developed with as-of-right yards that will provide additional separation from the proposed building; further, the site immediately to the north is occupied by a three-story residential building, which will be, because of the odd shape of the side lot line, more than 35 feet from the proposed house of worship; therefore, the requested yard waivers will not impact the adjacent uses; and

WHEREAS, the applicant represents that, contrary to Community Board 12's assertions, the proposal will not adversely impact parking or traffic within the neighborhood; and

WHEREAS, specifically, the applicant states that although the Church expects the majority of congregants to walk or utilize public transportation, the proposal provides 22 off-street parking spaces, which is one more than the required 21 spaces; in addition, the applicant represents that there are a total of 18 on-street parking spaces available along Bartow Avenue and Grace Avenue; and

WHEREAS, as to traffic, the applicant states that it conducted a study of neighborhood traffic patterns and reconfigured the proposed entrances and site circulation in order to minimize congestion; the applicant also notes that services and worship activities will occur on weekday evenings and Sundays; as such, the Church's traffic will not conflict with school-related traffic; and

WHEREAS, finally, in response to Community Board 12's characterization of the proposal as inconsistent with recent down-zonings in the area, the applicant notes that the site has been zoned R4 since 1961; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Church could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, in accordance with ZR § 72-21(d); the applicant notes that the site was formed by the combination of historic tax lots 16, 20, 26, and 29, which were originally jagged and irregularly shaped; and

WHEREAS, in addition, the Board finds that the requested relief is the minimum necessary, per ZR § 72-21(e); and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA173X, dated May 9, 2013; and

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance

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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 § 72-21 and grants a variance, to permit, within an R4 zoning district, the construction of a two-story house of worship (Use Group 4A) that does not comply with the zoning regulations for rear yard, side yard, front yard, and permitted obstructions in rear yard, contrary to ZR §§ 24-33, 24-34, 24-35, and 24-36; *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”– Ten (10) sheets; and *on further condition*;

THAT the following shall be the bulk parameters of the building: a maximum of 12,388 sq. ft. of floor area (0.54 FAR), a maximum building height of 31’-0”, a rear yard depth of 8’-8”, two side yards with depths of 24’-2” and 10’-0”, and a front yard depth of 10’-0”, as indicated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, October 22, 2013.

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## 161-13-BZ

### CEQR #13-BSA-144M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Bennco Properties, LLC, owner; Soul Cycle West 19th street, lessee.

SUBJECT – Application May 28, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Soul Cycle*) within a portion of an existing building. C6-4A zoning district.

PREMISES AFFECTED – 8 West 19th Street, south side of W. 19th Street, 160’ west of intersection of W. 19th Street and 5th Avenue, Block 820, Lot 7503, Borough of Manhattan.

### COMMUNITY BOARD #5M

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

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 22, 2013, acting on Department of Buildings Application No. 101905921, reads in pertinent part:

The proposed PCE in C6-4A zoning district is contrary to ZR 32-10 and requires a special permit from the BSA; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-4A zoning district within the Ladies’ Mile Historic District, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first story of an existing 11-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 20, 2013, after due notice by publication in *The City Record*, and then to decision on October 22, 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 5, Manhattan, has no objection to this application; and

WHEREAS, the subject site is located on the north side of West 19th Street between Fifth Avenue and Sixth Avenue within a C6-4A zoning district within the Ladies’ Mile Historic District; and

WHEREAS, the site has approximately 50 feet of frontage along West 19th Street and 4,600 sq. ft. of lot area; and

WHEREAS, the site is occupied by an 11-story mixed residential and commercial building; and

WHEREAS, the proposed PCE would occupy approximately 1,706 sq. ft. of floor space in the cellar and 3,365 sq. ft. of floor area on the first story of the building; and

WHEREAS, the PCE will be operated as SoulCycle; and

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

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.; and

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

WHEREAS, at hearing, the Board raised concerns about: (1) the sufficiency of the sound attenuation measures; (2) the notification of the building’s residents of the application for the PCE; and (3) open notices of violation from the Environmental Control Board regarding the building; and

WHEREAS, in response, the applicant submitted an

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amended plan noting the proposed sound attenuation measures; the applicant also submitted a statement confirming that notices regarding the PCE application were posted near the residential entrances to the building and explaining that the open violations relate to construction of the proposed PCE and that such violations are resolved or will be resolved by the Board's grant of the special permit; and

WHEREAS, the Landmarks Preservation Commission has issued a Certificate of No Effect for the interior alterations, dated July 25, 2013, and a Certificate of No Effect for the exterior signage, dated September 17, 2013; and

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No.13BSA144M, dated May 24, 2013; and

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

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

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

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

findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C6-4A zoning district within the Ladies' Mile Historic District, the operation of a PCE in portions of the cellar and first story of an existing 11-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 13, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on October 22, 2023;

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

THAT the hours of operation of the PCE will be limited to Monday through Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 p.m.;

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, October 22, 2013.

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**54-12-BZ**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Llana Bangiyev, owner.

SUBJECT – Application March 9, 2012 – Variance (§72-21) to permit for the construction of a community facility and residential building, contrary to lot coverage (§23-141), lot area (§§23-32, 23-33), front yard (§§23-45, 24-34), side yard (§§23-46, 24-35) and side yard setback (§24-55) regulations. R5 zoning district.

PREMISES AFFECTED – 65-39 102nd Street, north side of 102nd Street, northeast corner of 66th Avenue, Block 2130, Lot 14, Borough of Queens.

**COMMUNITY BOARD #6Q**

**ACTION OF THE BOARD** – Laid over to December 10, 2013, at 10 A.M., for continued hearing.  
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## 254-12-BZ

APPLICANT – Patrick W. Jones, P.C., for Salmar Properties, LLC, owner.

SUBJECT – Application August 20, 2013 – Variance (§72-21) to permit Use Group 10A uses on the first and second floors of an existing eight-story building, contrary to use regulations (§42-00). M3-1 zoning district.

PREMISES AFFECTED – 850 Third Avenue aka 509/519 Second Avenue, bounded by Third Avenue, unmapped 30th Street, Second Avenue, and unmapped 31st Street, Block 671, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

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

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## 282-12-BZ

APPLICANT – Eric Palatnik, P.C., for Izhak Lati, owner.

SUBJECT – Application September 24, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to side yard requirements (§23-461), and a variance (§72-21), contrary to front yard requirements (§23-45). R5 zoning district.

PREMISES AFFECTED – 1995 East 14th Street, northeast corner of East 14th Street and Avenue T, Block 7293, Lot 48, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

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

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## 90-13-BZ

APPLICANT – Akerman Senterfitt, LLP, for Eleftherios Lagos, owner.

SUBJECT – Application March 18, 2013 – Variance (§72-21) to permit the construction of a single-family dwelling, contrary to open area requirements (§23-89). R1-2 zoning district.

PREMISES AFFECTED – 166-05 Cryders Lane, northeast corner of the intersection of Cryders Lane and 166th Street, Block 4611, Lot 1, Borough of Queens.

### COMMUNITY BOARD #7Q

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

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## 105-13-BZ

APPLICANT – Law Office of Fred A Becker, for Nicole Orfali and Chaby Orfali, owners.

SUBJECT – Application April 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single home,

contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461); perimeter wall height (§23-631) and less than the minimum rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1932 East 24th street, west side of East 24th street, between Avenue S and Avenue T, Block 7302, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

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## 120-13-BZ

APPLICANT – Eric Palatnik, P.C., for Okun Jacobson & Doris Kurlender, owner; McDonald's Corporation, lessee.

SUBJECT – Application April 25, 2013 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (*McDonald's*) with an accessory drive-through facility. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, north side of Forest Avenue, 100' west of intersection of Forest Avenue and Morningstar Road, Block 1180, Lots 6 and 49, Borough of Staten Island.

### COMMUNITY BOARD #1SI

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

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## 121-13-BZ

APPLICANT – Moshe M. Friedman, P.E., for Congregation Beth Aron Moshe, owner.

SUBJECT – Application April 25, 2013 – Variance (§72-21) to permit a UG 4 synagogue (*Congregation Beth Aron Moshe*), contrary to front yard (§24-34), side yards (§24-35) and rear yard (§24-36) requirements. R5 zoning district.

PREMISES AFFECTED – 1514 57th Street, 100' southeast corner 57th Street and the eastside of 15th Avenue, Block 05496, Lot 12, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

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 19, 2013, at 10 A.M., for decision, hearing closed.

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## 162-13-BZ

APPLICANT – Margery Perlmutter/Bryan Cave LLP, for Sullivan Condo LLC/Triangle Parcel LLP, owner.

SUBJECT – Application May 28, 2013 – Variance (§72-21) to permit the construction of a residential and commercial building with 31 dwelling units, ground floor retail, and 11 parking spaces, contrary to use regulations (§42-00). M1-5B zoning district.

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# MINUTES

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PREMISES AFFECTED – 120-140 Avenue of the Americas aka 72-80 Sullivan street, 100’ south of Spring street, Block 490, Lot 27, 35, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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

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**187-13-BZ**

APPLICANT – Sheldon Lobel, P.C., for 1030 Southern Boulevard LLC, owner; 1030 Southern Boulevard Fitness Group, LLC, lessee.

SUBJECT – Application June 21, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*), and Special Permit (§73-52) to extend commercial use into the portion of the lot located within a residential zoning district. C4-4/R7-1 zoning district.

PREMISES AFFECTED – 1024-1030 Southern Boulevard, east side of Southern Boulevard approximately 134’ north of the intersection formed by Aldus Street and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.

**COMMUNITY BOARD #2BX**

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

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**213-13-BZ**

APPLICANT – Rothrug Rothkrug & Spector LLP, for Ridgeway Abstracts LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3A zoning district.

PREMISES AFFECTED – 3858-60 Victory Boulevard, east corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot 22 & 24, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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

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**235-13-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 132 West 31st Street Building Investors11, LLP, owner; Blink West 31st Street, Inc. owner.

SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) within an existing commercial building. M1-6 zoning district.

PREMISES AFFECTED – 132 West 31st Street, south side of West 31st Street, 350’ east of 7th Avenue and West 31st Street, Block 806, Lot 58, 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 November 19, 2013, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*