
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:
250 Broadway, 29th Floor, New York, N.Y. 10007.

Volume 98, Nos. 45-47

November 28, 2013

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

Commissioners

Jeffrey Mulligan, *Executive Director*

Becca Kelly, *Counsel*

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

TELEPHONE - (212) 386-0009
FAX - (646) 500-6271

CONTENTS

DOCKET	921
CALENDAR of December 10, 2013	
Morning	922
Afternoon	923

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, November 19, 2013**

Morning Calendar924

Affecting Calendar Numbers:

699-46-BZ	224-01 North Conduit Avenue, Queens
405-01-BZ	1275 36 th Street, aka 123 Clara Street, Brooklyn
19-05-BZ	151 West 28 th Street, Manhattan
219-07-BZ	11 West 36 th Street, Manhattan
774-55-BZ	2155-2159 Newbold Avenue, Bronx
519-57-BZ	2071 Victory Boulevard, Staten Island
17-02-BZ	445-455 Fifth Avenue, aka 453 Fifth Avenue, Brooklyn
248-03-BZ	1915 Third Avenue, Manhattan
68-13-A	330 Bruckner Boulevard, Bronx
71-13-A	261 Walton Avenue, Bronx
127-13-A	332 West 87 th Street, Manhattan
221-13-A	239-26 87 th Avenue, Queens
224-13-A	283 Carroll Street, Brooklyn
226-13-A	29 Kayla Court, Staten Island
237-13-A thru 242-13-A	11, 12, 15, 16, 19, 20 Nino Court, Staten Island
166-12-A	638 East 11 th Street, Manhattan
107-13-A	638 East 11 th Street, Manhattan
98-13-A	107 Haven Avenue, Staten Island
123-13-A	89 Bedford Street, Manhattan
156-13-A	450 West 31 st Street, Manhattan
282-12-BZ	1995 East 14 th Street, Brooklyn
121-13-BZ	1514 57 th Street, Brooklyn
235-13-BZ	132 West 31 st Street, Manhattan
78-11-BZ & 33-12-A thru 37-12-A	78-70 Winchester Boulevard, Queens
28-12-BZ	13-15 37 th Avenue, Queens
43-12-BZ	25 Great Jones Street, Manhattan
62-12-BZ	614/618 Morris Avenue, Bronx
77-12-BZ	91 Franklin Avenue, Brooklyn
254-12-BZ	850 Third Avenue, aka 509/519 Second Avenue, Brooklyn
279-12-BZ	27-24 College Point Boulevard, Queens
299-12-BZ	40-56 Tenth Avenue, Manhattan
55-13-BZ	1690 60 th Street, Brooklyn
90-13-BZ	166-05 Cryders Lane, Queens
92-13-BZ & 93-13-BZ	22 and 26 Lewiston Street, Staten Island
94-13-BZ	11-11 40 th Avenue, aka 38-78 12 th Street, Queens
95-13-BZ	3120 Corlear Avenue, Bronx
105-13-BZ	1932 East 24 th Street, Brooklyn
122-13-BZ	1080 East 8 th Street, Brooklyn
162-13-BZ	120-140 Avenue of the Americas, aka 72-80 Sullivan Street, Manhattan
206-13-BZ	605 West 42 nd Street, Manhattan
219-13-BZ	2 Cooper Square, Manhattan
292-13-BZ	2085 Ocean Parkway, Brooklyn

Correction946

Affecting Calendar Numbers:

133-13-BZ	1915 Bartow Avenue, Bronx
-----------	---------------------------

DOCKETS

New Case Filed Up to November 19, 2013

298-13-BZ

11-11 131st Street, 11th Avenue between 131st and 132nd Street, Block 4011, Lot(s) 24, Borough of **Queens, Community Board: 1**. Special Permit (§73-49) to permit voluntary accessory parking on the rear (western) portion on a to be created rooftop above the existing upper level parking area of an existing three story and cellar physical culture establishment(Spa Castle). M1-1 zoning district. M1-1 district.

299-13-BZ

4299 Hylan Boulevard, Between Thomycroft Avenue and Winchester Avenue, Block 5292, Lot(s) 37, 39, & 41, Borough of **Staten Island, Community Board: 3**. Special Permit (§73-126) to permit in a R3A zoning district, the partial legalization, reduction in size and merger of two existing adjacent ambulatory diagnostic treatment health care facilities (Use Group 4) R3-A district.

300-13-A

112,114 &120 Fulton Street, Three tax lots fronting on Fulton Street between Nassau and Dutch Streets in lower Manhattan., Block 78, Lot(s) 49,7501 &45, Borough of **Manhattan, Community Board: 1**. Proposed construction of a Mixed use development to be located partially within the bed of a mapped but unbuilt portion of Fulton Street in Manhattan contrary to General City law Section 35 .C5-5/C6-4 Zoning District C5-5/C6-4 district.

301-13-BZ

1502 Avenue N, Southeast Corner of East 15th Street and Avenue N., Block 6753, Lot(s) 1, Borough of **Brooklyn, Community Board: 14**. The application is filed pursuant to section 72-21 of the zoning Resolution as amended to vary sections 24-11,24-521,24-52,24-34(a),24-06 of the resolution. If approved the proposal would add (3) floors in a line enlargement upon the existing one story and basement use group 4 synagogue. It would allow for the creation of an accredited religious based educational institution of higher education(college and post graduate)(use group3)with (10) dormitory rooms and Variance (§72-21) to permit the enlargement of an existing synagogue(UG 4) and the creation religious based educational institution (UG 3) with dormitory rooms. R5B zoning district. R5b district.

302-13-BZ

140 West 23rd Street, S/S West 23rd Street between 6th and 7th avenues., Block 798, Lot(s) 7503, Borough of **Manhattan, Community Board: 4M**. Special Permit (§73-36) to allow physical culture establishment(PCE). C6-3X zoning district. C6-3X district.

303-13-BZ

506-510 Brook Avenue, East Side of Brook Avenue between 147th and 148th Street, Block 2274, Lot(s) 6,7&8,, Borough of **Bronx, Community Board: 1**. VARIANCE 72-21: proposed new mixed use building with thirty six(36) residential units and community facility space. R6 & C1-4 district.

304-13-A

517-519 West 19th Street,New York,NY, North Side of West 19th Street between 10th and 11th Avenues., Block 691, Lot(s) 22, Borough of **Manhattan, Community Board: 4M**. Appeal challenging DOB 's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required . C6-2 WCH special district . C6-2 district.

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

CALENDAR

DECEMBER 10, 2013, 10:00 A.M.

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

SPECIAL ORDER CALENDAR

68-94-BZ

APPLICANT – Troutman Sanders LLP, for Bay Plaza Community Center, LLC, owner; Bally's Total Fitness of Greater New York

SUBJECT – Application September 10, 2013 – Extension of Term of a previously granted Special Permit (73-36) for the continued operation of a Physical Culture Establishment (*Bally's Total Fitness*) which expires on November 1, 2014; Extension of Time to obtain a Certificate of Occupancy which expired on September 11, 2013; waiver of the Rules. C4-3/M1-1 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, bounded by Bay Plaza Blvd. Co-Op City Blvd, Bartow Avenue and the Hutchinson River Parkway, Block 5141, Lot 810, Borough of Bronx.

COMMUNITY BOARD #10BX

358-02-BZ

APPLICANT – Law Office of Fredrick A. Becker, 200 Park, LLP, for TSI Grand Central Incorporated d/b/a New York Sports Club, lessee.

SUBJECT – Application September 23, 2013 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of physical culture establishment, on portions of the first and second floors, in a multi-story commercial, retail and office building, which expired on June 3, 2013; Waiver of the Rules. C5-3 (MID) zoning district.

PREMISES AFFECTED – 200 Park Avenue, south side of East 45th Street, between Vanderbilt Avenue and Dewey Place, Block 1280, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

206-03-BZ

APPLICANT – Law Office of Fredrick A. Becker, Esq., for 980 Madison Owner LLC, owner; Exhale Enterprises, Inc., lessee.

SUBJECT – Application September 12, 2013 – Extension of Term for a previously granted Special Permit (73-36) for the continued operation of a Physical Culture Establishment (*Exhale Spa*) which expired on November 5, 2013. C5-1 (MP) zoning district.

PREMISES AFFECTED – 980 Madison Avenue, west side of Madison Avenue between East 76th Street and East 77th

Street, Block 1391, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #5M

25-08-BZ

APPLICANT – Eric Palatnik, P.C., for Torah Academy for Girls, owner.

SUBJECT – Application February 14, 2013 – Application is filed on behalf of the (Torah Academy for Girls). The Bais of Long Island, federally recognized, religious based, not-for-profit 501©(3) organization pursuant to ZR§72-01 to request an amendment to two (2) earlier issued variances pursuant to Z.R.§72-21.

PREMISES AFFECTED – 444 Beach 6th Street, Beach Street and Meehan Avenue, Block 15591, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

APPEALS CALENDAR

75-11-A & 119-11-A

APPLICANT – NYC Board of Standards and Appeals

SUBJECT – Application May 25, 2011 – To consider Dismissal for Lack of Prosecution.

PREMISES AFFECTED – 2230-2234 Kimball Street, Kimbal Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #18BK

348-12-A & 349-12-A

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

SUBJECT – Application December 28, 2012 – Appeal from decision of Borough Commissioner denying permission for proposed construction of two one-family dwellings within the bed of a legally mapped street. R2 zoning district.

PREMISES AFFECTED – 15 & 19 Starr Avenue, north side of Starr Avenue, 248.73 east of intersection of Bement Avenue and Starr Avenue, Block 298, Lot 67, Borough of Staten Island.

COMMUNITY BOARD #1SI

287-13-A & 288-13-A

APPLICANT – Rothkrug Rothkrug & Spec tor LLP, for BIRB Realty Inc., owner.

SUBJECT – Application October 15, 2013 – 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.

PREMISES AFFECTED – 525 & 529 Durant Avenue, north side of Durant Avenue, 104-13 ft. west of intersection of Durant Avenue and Finlay Avenue, Block 5120, Lot 64,

CALENDAR

Borough of Staten Island.

COMMUNITY BOARD #3SI

ZONING CALENDAR

6-12-BZ

APPLICANT – Syeda Laila, owner.

SUBJECT – Application January 13, 2013 – Variance (§72-21) to permit a new three family home, contrary to bulk regulations. R4 zoning district.

PREMISES AFFECTED – 39-06 52nd Street aka 51-24 39th Avenue, Block 128, Lot 39, 40, Borough of Queens.

COMMUNITY BOARD #2Q

311-12-BZ

APPLICANT – Eric Palatnik, P.C., for 964 Dean Acquisition Group LLC, owner.

SUBJECT – Application November 19, 2013 – Variance (§72-21) to permit the residential conversion of an existing factory building. M1-1 zoning district.

PREMISES AFFECTED – 964 Dean Street, south side of Dean Street between Classon and Franklin Avenues, Block 1142, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #8BK

65-13-BZ

APPLICANT – Eric Palatnik, Esq., for Israel Rosenberg, owner.

SUBJECT – Application February 12, 2013 – Variance (§72-21) to permit a residential development, contrary to use regulations, ZR§42-00. M1-1 zoning district.

PREMISES AFFECTED – 123 Franklin Avenue, between Park and Myrtle Avenues, Block 1899, Lot 108, Borough of Brooklyn.

COMMUNITY BOARD #3BK

130-13-BZ

APPLICANT – Rothkrug Rothdrug & Spector, for Venetian Management LLC, owner.

SUBJECT – Application May 7, 2013 – Re-Instatement (§11-411) of a previously approved variance which permitted a one-story storage garage for more than five motor vehicles with motor vehicle repair shop (UG 16B) limited to vehicles owned by tenants in an R6 zoning district which expired on February 14, 1981; Amendment (§11-413) to change the previously approved use to retail (UG 6); Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1590 Nostrand Avenue, southwest corner of Nostrand Avenue and Albemarle Road. Block 5131, Lot 1. Borough of Brooklyn.

COMMUNITY BOARD #17BK

153-13-BZ

APPLICANT – Eric Palatnik, PC, for Williamsburg Workshop, LLC, owner; Romi Ventures, LLC, lessee.

SUBJECT – Application May 10, 2013 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Soma Health Club*) contrary to §32-10. C4-3 zoning district.

PREMISES AFFECTED – 107 South 6th Street, between Berry Street and Bedford Avenue, Block 2456, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #1BK

212-13-BZ

APPLICANT – Eric Palatnik, P.C., for Andrey Novikov, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 151 Coleridge Street, Coleridge Street between Oriental Boulevard and Hampton Avenue, Block 4819, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #15BK

218-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 37 W Owner LLC; Ultrafit LLC, lessee.

SUBJECT – Application July 19, 2013 – Special Permit (§73-36) to allow the operation of a fitness center physical culture establishment (*Ultrafit*) on portions of the existing building pursuant §32-10. C6-3A zoning district.

PREMISES AFFECTED – 136 Church Street, southwest corner of the intersection formed by Warren and Church Streets in Tribeca, Block 133, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 19, 2013
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

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

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a prior grant to permit the conversion of automotive service bays to an accessory convenience store, the elimination of automobile repair use, and an increase in the number of gasoline pumps from three to eight; and

WHEREAS, a public hearing was held on this application on September 10, 2013, after due notice by publication in *The City Record*, with a continued hearing on October 22, 2013, and then to decision on November 19, 2013; and

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

WHEREAS, Community Board 13, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is a corner lot spanning the full length of 224th Street, between North Conduit Avenue and 143rd Avenue, within an R3X zoning district; and

WHEREAS, the site has 133.06 feet of frontage along North Conduit Avenue, 185.6 feet of frontage along 224th Street, 120 feet of frontage along 143rd Street, and a lot area of 18,864 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 28, 1947, when, under the subject calendar number, the Board granted a variance to permit the reconstruction, enlargement, and continued use of an existing gasoline service station, and the addition of an automobile sales showroom, a repair shop, an auto laundry, a lubritorium, and an office; and

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

WHEREAS, on November 13, 1968, the Board granted an amendment to allow for a total of 12 gasoline storage tanks and the relocation of pumps and pump islands at the site; and

WHEREAS, the applicant now seeks an amendment to permit the following: (1) the conversion of automotive service bays to an accessory convenience store; (2) the elimination of the automobile repair use; and (3) an increase in the number of pumps from three to eight; and

WHEREAS, pursuant to ZR § 11-412, the Board may amend the grant; and

WHEREAS, the applicant represents that the proposed convenience store complies with Department of Buildings' Technical Policy and Procedure Notice No. 10/1999, in that the selling floor of the convenience store will be located on the same lot as the gasoline station and have less than 2,500 sq. ft. of floor area; and

WHEREAS, the Board notes that, initially, the applicant also sought to construct a drive-thru for the convenience store; however, in response to concerns raised by the Board, that portion of the proposal was abandoned; and

WHEREAS, in addition, at hearing, the Board expressed concerns over: (1) the site's towing-related operations, which are not authorized under any of the Board's grants; and (2) the signage calculations provided; and

WHEREAS, in response, the applicant acknowledged that towing-related operations were not permitted; the also applicant submitted: (1) an affidavit from the operator of the site, which attested to the recent cessation of towing-related operations; and (2) signage calculations by frontage, which reflects that the signage is in accordance with the C1 regulations; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 28, 1947, so that as amended the resolution reads: "to allow for the conversion of automotive service bays to an accessory convenience store, the elimination of automobile repair use, an increase in the number of gasoline pumps from three to eight, and other related site changes; *on condition* that all use and operations shall substantially conform to plans filed with this application marked 'Received November 1, 2013' – nine (9) sheets; and *on further condition*:

THAT all signage will comply with the C1 zoning

MINUTES

district regulations;

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

THAT a new certificate of occupancy will be obtained by May 19, 2015;

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

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

(DOB Application No. 420594315)

Adopted by the Board of Standards and Appeals, November 19, 2013.

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

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a five-story school and synagogue; and

WHEREAS, a public hearing was held on this application on October 22, 2013, after due notice by publication in *The City Record*, and then to decision on November 19, 2013; and

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

WHEREAS, the site is located on the southeast corner of the intersection of Clara Street and 36th Street, within a C2-3 (R5) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 12, 2002 when, under the subject calendar number, the Board granted a variance to permit the construction of a five-story school building and synagogue (Use Groups 3 and 4); and

WHEREAS, substantial construction was to be completed by November 12, 2006, in accordance with ZR § 72-23; however, as of that date, substantial construction had not been completed due to financial hardship and an inability to obtain financing; and

WHEREAS, accordingly, by resolution dated February 9, 2010, the Board granted an extension of time to complete construction, to expire on February 9, 2014; and

WHEREAS, the applicant represents that although substantial construction has not been completed, it has made the following progress on the project: demolition of the existing building, acquisition of the new building permit from the Department of Buildings, and ordering of steel trusses for the building; and

WHEREAS, accordingly, the applicant states that work will not be substantially complete by February 9, 2014; and

WHEREAS, as such, the applicant requests an extension of time to complete construction; and

WHEREAS, at hearing, the Board expressed concern about open DOB violations and the excessive debris and poor maintenance of the site; and

WHEREAS, in response, the applicant stated that it has removed the conditions that gave rise to the DOB violations, but has not yet certified correction of such violations; therefore, the the outstanding violations reflect an administrative duty, rather than a safety problem; and

WHEREAS, as to the maintenance of the site, the applicant submitted photographs showing that the site had been cleaned up; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated November 12, 2002, so that as amended the resolution reads: “to grant an extension of time to complete construction for a term of four years, to expire on November 19, 2017; *on condition*:

THAT substantial construction will be completed by November 19, 2017;

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

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

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

(DOB Application No. 301234251)

Adopted by the Board of Standards and Appeals, November 19, 2013.

MINUTES

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

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, within an M1-6 zoning district, the change in use of portions of an existing nine-story, mixed-use building to residential use (Use Group 2), which expired on November 10, 2013; and

WHEREAS, a public hearing was held on this application on January 22, 2013, after due notice by publication in *The City Record*, and then to decision on November 19, 2013; and

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

WHEREAS, the subject site is located on the north side of West 28th Street, between Sixth Avenue and Seventh Avenue, within an M1-6 zoning district; and

WHEREAS, the site is currently occupied by a nine-story mixed-use commercial/ residential building, with a total floor area of 39,950 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 24, 1981 when, under BSA Cal. No. 768-81-ALC, the Board granted an application pursuant to ZR § 15-021 to permit the conversion of 24,776 sq. ft. of commercial floor area on the second through ninth floors of the subject building to residential floor area, with the exception of half-floor units on the second, third, fifth and seventh floors; and

WHEREAS, on October 18, 2005, under the subject calendar number, the Board granted a variance to permit the conversion of four units constituting 8,750 sq. ft. of floor area on the second, third, fifth and seventh floors from commercial use to residential use; and

WHEREAS, substantial construction was to be completed by October 18, 2009, in accordance with ZR § 72-23; however, as of that date, substantial construction was not complete; and

WHEREAS, accordingly, on November 10, 2009, the

Board granted an extension of time to complete construction for a term of four years, to expire on November 10, 2013; and

WHEREAS, the applicant represents that work has proceeded as follows: (1) work has been completed and a temporary certificate of occupancy has been obtained for Units 5W and 7W; and (2) work has been performed on Unit 2W, but the Department of Buildings (“DOB”) has not yet inspected and signed off the work; and

WHEREAS, accordingly, the applicant states that additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant notes that completion of the project has been slowed by delays in purchasing the units, obtaining co-op approval of the construction documents for the renovation of the units, and acquiring DOB permits for the work; in addition, it has not even completed the purchase of Unit 3W, which is necessary prior to the conversion authorized by the subject variance; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 18, 2005, so that as amended the resolution reads: “to grant an extension of the time to complete construction for a term of four years, to expire on November 10, 2017; *on condition*:

THAT substantial construction will be completed by November 10, 2017;

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

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

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

(DOB Application No. 103993270)

Adopted by the Board of Standards and Appeals, November 19, 2013.

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

MINUTES

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, November 19, 2013.

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 the employees and customers of an existing bank (*Citibank*), which expire d on January 31, 2013; Waiver of the Rules. R5/C1-2 & 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

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 December 17, 2013, at 10 A.M., for decision, hearing closed.

519-57-BZ

APPLICANT – Eric Palatnik, P.C., for BP Amoco Corporation, owner.

SUBJECT – Application June 19, 2013 – Extension of term (§11-411) of an approved variance which permitted the operation and maintenance of a gasoline service station (Use Group 16B) and accessory uses, which expired on June 19, 2013. R3-1/C2-1 zoning district.

PREMISES AFFECTED – 2071 Victory Boulevard, northwest corner of Bradley Avenue and Victory Boulevard, Block 462, Lot 35, Borough of Staten Island.

COMMUNITY BOARD #1SI

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

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

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 December 17, 2013, at 10 A.M., for decision, hearing closed.

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 a physical culture establishment (*Bally's Total Fitness*) which will expire on January 27, 2014. C1-5(R8A) & R7A zoning districts.

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

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

APPEALS CALENDAR

71-13-A

APPLICANT – Goldman Harris LLC, for Tuck-It-Away Associates-Deegan, LLC, owners; OTR Media Group, Inc., lessee.

SUBJECT – Application February 13, 2013 – Appeal of Department of Buildings’ determination that the subject advertising sign is not entitled to non-conforming use status. M1-4 /R6A (MX-13) zoning districts.

PREMISES AFFECTED – 261 Walton Avenue, through-block lot on block bounded by Gerard and Walton Avenues and East 138th and 140th Streets, Block 2344, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, November 19, 2013.

MINUTES

221-13-A

APPLICANT – Law Office of Jay Goldstein, PLLC, for Naseem Ali, owner.

SUBJECT – Application July 22, 2013 – Appeal seeking a determination that the owner has a common law vested right to continue construction under the prior R3A zoning district. R2A zoning district.

PREMISES AFFECTED – 239-26 87th Avenue, south side of 87th Avenue between 241st Street and 239th Street, Block 7966, Lot 54, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

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

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in *The City Record*, and then to decision on November 19, 2013; and

WHEREAS, the subject site is located on the south side of 87th Avenue, between 239th Street and 241st Street, within an R2A zoning district; and

WHEREAS, the site has 40 feet of frontage along 87th Avenue, and a total lot area of 4,696 sq. ft.; and

WHEREAS, the site is proposed to be developed with a two-story residential building with 2,812.38 sq. ft. of floor area (0.6 FAR) and two dwelling units (the “Building”); and

WHEREAS, the applicant represents that the Building complies with the parameters of the former R3A zoning district; and

WHEREAS, on April 23, 2013, Alteration Permit No. 420577753-01-AL (hereinafter, the “Alteration Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, however, on June 24, 2013 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Bellerose, Floral Park, and Glen Oaks Rezoning, which rezoned the site from R3A to R2A; and

WHEREAS, the Building, which is a two-family residence with 2,812.38 sq. ft. of floor area (0.6 FAR), does not comply with the current zoning, which allows only single-family residences with a maximum FAR of 0.5; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits but had not completed construction; and

WHEREAS, accordingly, the applicant now seeks recognition of vested right to complete construction pursuant to the common law doctrine of vested rights; and

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the

Enactment Date and that the work was performed pursuant to such lawful permit; and

WHEREAS, by letter dated August 20, 2013, DOB stated that the Alteration Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

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

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

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

WHEREAS, as to substantial construction, the applicant states that it performed the following prior to the Enactment Date: (1) demolition of the existing garage at the site; (2) partial demolition of the existing two-family building at the site, including roof, attic, and interior partitions; (3) capping of electrical and plumbing; (4) bracing of the existing walls at the cellar and first and second stories; (5) bracing and installation of subflooring for the existing second story; (6) 40 percent of the framing for the enlargement; and (7) three percent of the excavation (the applicant notes that because the majority of the project is developing the first story, the limited amount of excavation work is not reflective of the progress of construction); and

WHEREAS, in support of this statement, the applicant has submitted the following: a breakdown of the construction costs by line item; copies of cancelled checks; construction permits; invoices; and photographs of the site; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before and after the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 et seq., soft costs and irrevocable financial commitments can be considered in an application under the common law and

MINUTES

accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant represents that the total expenditure paid for the development is \$62,542.85 (including \$37,708.64 in hard costs), or 25 percent, out of the \$250,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

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

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

WHEREAS, the applicant notes that the R2A use regulations are significantly more restrictive than the R3A regulations; specifically, whereas a two-family residence is permitted in an R3A zoning district, only a single-family residence is permitted in an R2A zoning district; and

WHEREAS, in addition, the applicant states that the bulk regulations for an R2A are more restrictive; whereas 0.6 FAR is permitted in an R3A zoning district, only 0.5 FAR is permitted in an R2A zoning district; and

WHEREAS, accordingly, the applicant states that, in order to comply with the R3A regulations, it would have to revert to the prior one-family residence at the site; and

WHEREAS, the applicant represents that the changes to the Building required under the R2A district regulations would significantly decrease the market value of the Building and the site, and result in a loss of all expenditures made to date (since the Building would have to be restored to its pre-construction size and occupancy), which would result in a serious economic loss to the applicant; and

WHEREAS, the Board agrees that complying with the R2A district regulations would result in a serious economic loss for the applicant; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made both before and after the Enactment Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building has accrued to the owner of the premises.

Therefore it is Resolved, that this application made pursuant to the common law doctrine of vested rights requesting a reinstatement of Permit No. 420577753-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction and

obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, November 19, 2013.

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

ACTION OF THE BOARD – Adoption of the Resolution to grant the application in part and deny in part.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the First Deputy Commissioner, dated June 28, 2013, acting on Department of Buildings Application No. 320378088 reads, in pertinent part:

The request to confirm that an automatic sprinkler system is not required throughout the existing building when changing the occupancy group class from R-2 to R-3 is hereby denied.

Where the above referenced Alteration Type I application was reviewed under the 1968 Building Code, the use of the 1968 Building Code or a prior Code for the alteration of existing buildings is permitted subject to the conditions listed under AC 28-101.4.3. Item 2 of AC 28-101.4.3 requires that “the installation, alteration and additions to fire protection systems regulated by Chapter 9 of the New York city building code, including a change of occupancy group that would require such systems, shall be governed by applicable provisions of such chapter and related referenced standards.” The subject building with a proposed reduction in the total number of dwelling units from 3 to 2 dwelling units, because of the change in the occupancy of the building from R-2 to R-3, requires compliance with the fire protection systems regulated by Chapter 9, including the sprinkler systems. In accordance with BC 903.2.7, “an automatic sprinkler system shall be installed in Group R fire areas.” Since the exceptions under BC 903.2.7 do not apply for the subject building, an automatic sprinkler system is

MINUTES

required to be installed throughout the building. In addition the Building Code requirement for the sprinkler system is regardless of any sprinkler system exemptions permitted under the New York City Fire Code.

Furthermore, the request to propose a fire escape and hard-wired interconnected smoke and carbon monoxide detectors and alarms in lieu of the required automatic sprinkler system does not provide an equally safe or safer alternative; and

WHEREAS, this is an appeal, pursuant to New York City Charter § 666(6), of DOB's requirement to install a sprinkler system in connection with the building's conversion, and, in the alternate, if the Board agrees with DOB that there is such a requirement, a request pursuant to New York City Charter § 666(7), to vary the requirement; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, with a continued hearing on October 22, 2013, and then to decision on November 19, 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, the site is occupied by a four-story brick townhouse, which was built occupied as a two-family home, later converted to a three-family home, and recently converted back to a two-family home under the subject alteration application; and

Application History

WHEREAS, due to the age of the building, the applicant was able to file its alteration application under the 1968 Building Code to renovate and convert the building from a three-family home to a two-family home; and

WHEREAS, under 1968 Building Code classifications, a three-family home is J-2 and a two-family home is J-3 (neither of which require sprinklers under the 1968 Building Code) and under 2008 Building Code classifications a three-family home is R-2 and a two-family home is R-3 (both of which require sprinklers under the 2008 Building Code with limited exceptions); and

WHEREAS, on October 31, 2011, DOB issued objections to the alteration application, which included a requirement for "Carbon monoxide and smoke detector" but did not include a requirement for sprinklers; and

WHEREAS, on January 26, 2012, DOB approved and permitted the application; and

WHEREAS, the applicant asserts that DOB verbally identified a sprinkler requirement but concluded that it could be waived; and

WHEREAS, in February 2012, the conversion work was completed; and

WHEREAS, on February 23, 2012, DOB denied a request to waive the sprinkler requirements for the change of occupancy group, stating that compliance with the 2008 Building Code is required for the change in occupancy; and

WHEREAS, in connection with the conversion, the property owner installed hard-wired interconnected smoke and carbon monoxide detectors and alarms, which are required under the 1968 Code for J-3 occupancies, and the building has a rear yard fire escape, which provides an additional means of egress; and

WHEREAS, the applicant notes that by approval dated April 15, 2012, the Fire Department stated that the 2008 Building Code should not be interpreted to require sprinklers in buildings being converted to one- or two-family homes under the 1968 Building Code, and approved a waiver of the sprinkler requirement, noting the inclusion of the proposed fire safety measures; and

WHEREAS, in June and August 2012, DOB denied the applicant's request to approve the construction without a sprinkler; and

Relevant Statutory Provisions

Building Code § 28-101.4.3 *Optional use of the 1968 building code for alteration of existing buildings*

At the option of the owner, and subject to appropriate approval, a permit may be issued after the effective date of this code authorizing work on existing buildings constructed in accordance with the 1968 building code or with the building laws in effect prior to the effective date of the 1968 building code to be performed in accordance with the requirements and standards set forth in the 1968 building code, subject to the following conditions: .

..

2. The installation, alteration and additions to fire protection systems regulated by Chapter 9 of the [2008] New York city building code, including a change of occupancy group that would require such systems, shall be governed by applicable provisions of such chapter and related referenced standards. With respect to existing buildings, references to occupancy classifications in Chapter 9 of the New York city building code shall be deemed to refer to the equivalent occupancy classification of the 1968 building code; and

The Applicant's Interpretation of Building Code § 28-101.4.3

WHEREAS, the applicant makes the following three primary points in support of its position that sprinklers are not required: (1) the 1968 Building Code does not require sprinklers for two-family homes; (2) the plain reading of Section 28-101.4.3 reflects that the 2008 Building Code is not triggered because the conversion from a three- to a two-family dwelling is not a change of occupancy that would require a sprinkler; and (3) the standards and specifications of the 2008 Building Code only apply to the portion of the fire protection system that is installed as a result of the change in occupancy group; and

WHEREAS, the applicant asserts that the change in occupancy group must be analyzed under the occupancy classifications of the 1968 Building Code to determine whether there is a change in occupancy group that would

MINUTES

require the installation of fire protection systems; and

WHEREAS, the applicant notes that the occupancy group is changing from J-2 (multi-family) to J-3 (one- and two-family) and that under the 1968 Building Code (Table 17-2), J-3 occupancies do not require sprinklers, nor does the change of occupancy to J-3 trigger any requirement for fire protection systems under the 1968 Building Code, other than smoke detectors; and

WHEREAS, the applicant states that since J-3 occupancy does not require a sprinkler under the 1968 Building Code, there is no “change of occupancy group” that “would require such systems” pursuant to Section 28-101.4.3 and therefore the fire protection standards of the 2008 Building Code do not apply to a change in occupancy group from J-2 (multi-family) to J-3 (one- and two-family); and

WHEREAS, the applicant asserts that DOB’s interpretation of Section 28-101.4.3 would require the installation of sprinklers for any change of occupancy group rather than only a change that would require it; and

WHEREAS, the applicant states that the requirement to install a sprinkler system does not apply in this case because it is triggered only when the 1968 Code would require the installation of a fire protection system; and

WHEREAS, the applicant asserts that the basic premise of Section 28-101.4.3 is that existing buildings may be altered under the 1968 Building Code instead of the 2008 Building Code, subject to a list of exceptions; and

WHEREAS, the applicant suggests that the interpretation of Section 28-101.4.3 with or without the phrase: “including a change of occupancy group that would require such systems” the provision should read the same way and that is that “the installation, alteration and additions to fire protection systems regulated by Chapter 9 of the New York city building code . . . shall be governed by applicable provisions of such chapter and related referenced standards;” and

WHEREAS, accordingly, the applicant asserts that the provision states that if an owner is installing a fire protection system or altering or adding to an existing one then that work is governed by the 2008 Building Code; and

WHEREAS, the applicant states that the second paragraph of Section 28-101.4.3 – specifically the phrase “including a change of occupancy group that would require such systems” - must mean that if an owner is installing a fire protection system in an existing building because a change in occupancy group would require it under the 1968 Building Code, then the installation must adhere to the requirements of the 2008 Building Code, not the 1968 Building Code; and

WHEREAS, the applicant asserts that the phrase referring to a change in occupancy group cannot be read independently to impose a requirement to install a fire protection system, because it begins with the word “including”; and

WHEREAS, the applicant asserts that of all the sections in Chapter 9 of the 2008 Building Code that cover fire safety systems, only the sprinkler requirements are specifically identified as applying to new buildings as opposed to the other

sections that apply to all buildings, existing and new; and

WHEREAS, the applicant asserts that an owner must look to the 2008 Building Code simply to determine the particular requirements of the fire protection system being installed, but not to determine whether or not the installation itself is required; and

WHEREAS, the applicant asserts that nothing in Section 28-101.4.3 contains an independent requirement to install a sprinkler system when there is a change of occupancy group and nothing in 28-101.4.3 says to look to the 2008 Building Code to determine when a change of occupancy group would impose the requirement; and

DOB’s Interpretation of Building Code § 28-101.4.3

WHEREAS, DOB asserts that Section 28-101.3.4 requires a new sprinkler system be installed for the following primary reasons: (1) the sprinkler requirement for a change in occupancy group is not within the scope of exemption from the 2008 Building Code; and (2) 2008 Building Code regulations are the sole subject of subparagraph 2; and

WHEREAS, DOB states that Section 28-101.4.3 allows construction on existing buildings to follow the 1968 Building Code, except that changes of occupancy groups requiring a fire protection system under Chapter 9 of the 2008 Building Code must follow the 2008 code’s fire protection requirements; and

WHEREAS, DOB asserts that Section 28-101.4.3 then clarifies that occupancy groups mentioned in Chapter 9 of the 2008 Building Code using the 2008 Building Code terminology apply to the equivalent occupancy groups listed under the former 1968 Building Code classifications in existing buildings as follows: “[w]ith respect to existing buildings, references to occupancy classifications in Chapter 9 of the New York city building code shall be deemed to refer to the equivalent occupancy classification of the 1968 building code;” and

WHEREAS, DOB states that the applicant’s argument that Section 28-101.4.3(2)’s clarification of terminology between the 1968 and 2008 codes means that pre-existing buildings should be analyzed using the 1968 occupancy classifications and applicable 1968 regulations is unreasonable as the second sentence of Section 28-101.4.3(2) would negate the effect of the first sentence, which specifically applies the 2008 Building Code fire protection systems requirements to changes in occupancy even when the rest of the job is allowed to comply with the 1968 Building Code; and

WHEREAS, DOB notes that there is an inherent conflict in the applicant’s interpretation, [combined with Applicant’s lack of reasons to adopt such interpretation; and

WHEREAS, DOB asserts that the applicant’s grammatical analysis of Section 28-101.4.3’s “participial clause” (i.e., the portion that reads “including a change of occupancy group that would require such systems”) does not add to the interpretive dispute at issue because whether this phrase is (in applicant’s words) a “specific example within the overall meaning of the sentence” or if it “independently [] impose[s] a requirement to install a fire protection system,”

MINUTES

this section means that changes of occupancy groups requiring fire protection systems are “governed by applicable provisions of [2008 Code Chapter 9] and related referenced standards;” and

WHEREAS, DOB states that the issue remains whether the language “changes of occupancy groups requiring fire protection systems” refers to systems required under the 2008 or 1968 codes and the context of the section clearly points to the 2008 Building Code; and

WHEREAS, DOB states that under Section 28-101.4.3, existing buildings may be altered under the 1968 Building Code instead of the 2008 Building Code but for some exceptions where the 2008 Building Code must apply; and

WHEREAS, DOB states that the first sentence of sub-paragraph 2 addresses work on fire protection systems governed by 2008 Building Code Chapter 9, and it specifies that such work must comply with “such chapter and related referenced standards;” and

WHEREAS, DOB states that since the specific legal references at the beginning and end of the sentence are about Chapter 9 of the 2008 Code, the reference in the middle of this sentence to a “change in occupancy group that would require such [fire protection] systems” must refer to Chapter 9 as well; and

WHEREAS, DOB states that without any indication that this phrase refers to the 1968 Building Code, it would be impossible to infer such meaning from this language; while the applicant claims one can infer its proffered interpretation from this text because the 1968 Building Code governs the work in that building, the paragraph under consideration specifically dictates the exception to the 1968 Building Code’s application in favor of the 2008 Building Code and, thus, applicant’s interpretation is untenable; and

WHEREAS, additionally, DOB states that the fact that the applicant was granted a waiver of the sprinkler requirement of Fire Code 503.8.2 (a statute requiring sprinklers due to restricted fire apparatus access) has no bearing on the proper interpretation of Section 28-101.4.3 as it is a different statute with different purposes; and

WHEREAS, further, DOB does not find it relevant that applicant’s allegations that a Fire Department representative does not interpret the 2008 Building Code to require a sprinkler in this case nor is such a position binding interpretation upon DOB or the Board; and

WHEREAS, as to the applicant’s request that the Board vary the sprinkler requirement, DOB notes that it has found that the proposed “fire escape and hard-wired interconnected smoke and carbon monoxide detectors and alarms in lieu of the required automatic sprinkler system does not provide an equally safe or safer alternative;” and

The Board’s Conclusion

WHEREAS, the Board agrees with DOB that Section 28-101.4.3 reflects a requirement for sprinklers pursuant to the 2008 Building Code when there is a change in occupancy group, including from a three- to two-family home; and

WHEREAS, the Board concurs with DOB’s interpretation and notes specifically that Section 28-101.4.3(2)

addresses the circumstances when the allowance to follow the 1968 Building Code does not apply and it is strained to read that a portion of the provision then actually addresses the 1968 Code rather than the applicable 2008 Building Code, which is otherwise the subject of the sub-paragraph; and

WHEREAS, the Board finds that there is meaning to the entire provision and that, under the applicant’s interpretation, the language “refer to the equivalent occupancy classification of the 1968 building code” would be redundant but under DOB’s interpretation that language provides instruction about how to translate the 2008 Building Code occupancy classifications; and

WHEREAS, the Board also notes that the provision’s language “shall be governed by such applicable provisions of such chapter and related reference standards” immediately following “including a change of occupancy group that would require such systems” must be read with it to recognize that reference standards and the other “provisions” of the 2008 Building Code’s Chapter 9 apply in situations where there is a change of occupancy group, as here; and

WHEREAS, the Board is not persuaded by the applicant’s argument that only the 2008 Building Code’s technical standards are applied to sprinkler systems and that the substantive requirements arise from the 1968 Building Code; and

WHEREAS, accordingly, the Board upholds DOB’s requirement for sprinklers in the subject building; and
The Applicant’s Request to Vary the Building Code

WHEREAS, the applicant requests that in the alternate, if the Board supports DOB’s interpretation, then a waiver of a sprinkler requirement in Section 28-101.4.3 pursuant to the Board’s authority under City Charter § 666(7) is appropriate; and

WHEREAS, the applicant represents that the building otherwise complies with all relevant regulations; and

WHEREAS, the Board notes that it has authority to hear appeals of final determinations of the Department of Buildings, as set forth in Charter § 666(6) and that the basis for the subject application is a final determination from the Department of Buildings, with an objection that cites to the Building Code; and

WHEREAS, the subject application seeks a modification of the 2008 Building Code provision, pursuant to the Board’s authority under Charter § 666(7); and

WHEREAS, if all other requirements of Charter § 666 are met, including the subject matter and source of the final determination, the Board may grant a modification pursuant to Charter § 666(7), if it finds that (1) there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law; (2) the spirit of the law shall be observed; (3) public safety shall be secured; (4) substantial justice is done; and (5) if the Housing Maintenance Code is varied it shall be limited to the extent permitted by the code and only in the manner provided for in it; and

WHEREAS, as to the practical difficulties and hardship, the applicant represents that all of the conversion work has been completed pursuant to DOB approvals and installing a

MINUTES

sprinkler system now and new service line from the water main, after all the walls, ceiling, and floor have been finished will cost approximately \$124,780 to install the sprinkler and make associated repairs and interior finishing work; the applicant provided a construction professional's estimate, which enumerates the necessary work and reflects that figure; and

WHEREAS, the applicant represents that the work includes 25 sprinkler heads throughout the building; and

WHEREAS, the applicant represents that the supplemental costs represent close to 50 percent of the \$298,800 in costs to renovate the building; and

WHEREAS, additionally, the applicant represents that there are significant costs associated with connecting to the water service line leading to the building from the street and increasing the diameter of the pipe from the service line in order to accommodate the water supply a sprinkler requires; and

WHEREAS, the applicant submitted documentation to support its claims about the hardship associated with installing the sprinklers in the building which was recently renovated; and

WHEREAS, the Board agrees that due to the supplemental work and expense the applicant has established that there are practical difficulties in installing sprinklers now after all of the renovation work has been completed pursuant to DOB's approval that did not include a sprinkler requirement; and

WHEREAS, as to the spirit of the law, the applicant represents that neither the Building Code nor the Fire Code intend for a sprinkler requirement to apply retroactively to existing one- and two-family buildings which are being converted to their original occupancy classification; and

WHEREAS, rather, the applicant states that the intent of Section 28-101.4.3 is to require compliance with the 2008 standards for sprinklers for existing buildings only when the 1968 Building Code requires their installation; and

WHEREAS, the Board recognizes a broader intent of Section 28-101.4.3 to include increasing fire safety for buildings that undergo significant renovations with occupancy changes; however, it notes that the applicant has actually reduced the density of the building from three to two units and that the smoke detectors, alarms, and fire escape provide a level of fire safety that satisfies the Fire Department; and

WHEREAS, accordingly, the Board finds that the proposed waiver does not conflict with the spirit of the law; and

WHEREAS, as to public safety, the applicant states that hardwired interconnected smoke detectors and alarms, and fire escape provide an equally safe alternative under the Fire Code, as evidenced by the Fire Department's waiver of the sprinkler requirement; and

WHEREAS, additionally, the applicant notes that its renovation of the building includes the following significant improvements to the infrastructure which contribute to safer conditions: the installation of new electrical systems; gas main, and meter bars along with all risers and branch piping;

fireproof 5/8-inch sheetrock in the vast majority of the ceilings and walls; and fire blanket insulation in the vast majority of ceilings and walls; and

WHEREAS, the applicant asserts that the 2008 Building Code requires the Buildings' commissioner to "act in consultation with the fire commissioner on matters relating to fire safety," so the opinion of the Fire Department that the site is adequately fire protected should carry a great deal of weight in determining whether the current protection is an equally safe alternative; and

WHEREAS, the applicant adds that there is a fire station less than two minutes travel time from the building; and

WHEREAS, the Board notes the existing condition prior to the conversion was a three-family building without a sprinkler system; and

WHEREAS, the Board agrees that the proposal includes sufficient improved measures and will not compromise public safety; and

WHEREAS, as to substantial justice, the applicant asserts that the reduction in density from three to two units should not trigger a requirement to install an expensive sprinkler system; and

WHEREAS, further, the applicant represents that all construction was performed pursuant to DOB approvals and DOB verbally waived a sprinkler requirement with the project architect; and

WHEREAS, the applicant states that it is unjust for DOB to require a sprinkler system now as a prerequisite to a Certificate of Occupancy after all the conversion work has been completed when there were verbal assurances that the sprinkler would not be required and no such requirement was listed as an objection on the application or on the plans; and

WHEREAS, the Board concurs that substantial justice is maintained if the sprinkler requirement is waived; and

WHEREAS, the Board notes that the applicant does not seek a variance of the Housing Maintenance Code and, thus, that finding is not relevant to the subject application; and

WHEREAS, additionally, the Board notes that, according to the applicant, the proposal will be in full compliance with all other provisions of the Administrative Code and the Building Code, as well as the Zoning Resolution; and

WHEREAS, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under Charter § 666(7) and varies Building Code § 28-101.3.4; and

WHEREAS, in reaching this determination, the Board notes that its finding is based on the unique facts related to the physical conditions of the building and the sequence of DOB's approvals as presented in the instant application, and that this decision does not have general applicability to any pending or future Board application.

Therefore it is Resolved, that the appeal of the decision of the First Deputy Commissioner, dated June 28, 2013, is denied but the request for waiver is granted, limited to the decision noted above, on condition that construction will be maintained in conformance with the plans approved by DOB

MINUTES

dated January 24, 2012 – seven (7) sheets; 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);

THAT all conditions, including the hardwired interconnected smoke detectors and alarms, be maintained in accordance with the January 24, 2012 DOB plans; and

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

Adopted by the Board of Standards and Appeals, November 19, 2013.

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

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 24, 2013, acting on Department of Buildings Application Nos. 520053058, reads in pertinent part:

The street giving access to proposed buildings 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 the General City Law; and

WHEREAS, this is an application to allow the construction of a single-family home not fronting a legally mapped street contrary to General City Law (“GCL”) § 36; and

WHEREAS, Lot 23 is part of a larger lot that was previously subdivided into five independent lots, two of which were the subject of previous GCL § 35 waivers from the Board under BSA Cal. Nos. 332-05-A and 333-05-A.; and

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

November 19, 2013; and

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

WHEREAS, the subject site is located at the west side of Kayla Court, 154.4 feet west and 105.12 feet south of the intersection of Summit Avenue and Kayla Court, partially within an R3-2 and partially within an R2 zoning district within the Special Natural Area District, Lower Density Growth Management Area District; and

WHEREAS, the applicant notes that the proposed development was the subject of a Department of City Planning certification, which: (1) indicated that no authorization or special permit was required for the Special Natural Area District pursuant to ZR § 105-41; and (2) authorized the subdivision of the property into five zoning lots pursuant to ZR § 105-90; and

WHEREAS, the applicant states that the proposed building will front on Kayla Court, a private street with sidewalks, planting strips, and a roadway width of 34 feet, which was created in connection with the above-mentioned subdivision; the applicant notes that Kayla Court will be accessed via a 30-foot curb cut from Summit Avenue, and that a Homeowners’ Association was created for the maintenance of Kayla Court; and

WHEREAS, the applicant also states that the site plan includes a new fire hydrant located at the southerly terminus of Kayla Court, in front of the proposed building; and

WHEREAS, finally, the applicant represents that the proposed building will be fully-sprinklered; and

WHEREAS, by letter dated November 11, 2013, the Fire Department indicated that it has no objections and no further requirements regarding the application; and

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

Therefore it is Resolved, that the decision of the Staten Island Borough Commissioner, dated June 24, 2013, acting on Department of Buildings Application No. 520053058, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received November 12, 2013”- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

THAT the building will be fully-sprinklered;

THAT a Homeowners’ Association will be created to maintain the street; and

THAT the approved plans will be considered approved

MINUTES

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

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

Adopted by the Board of Standards and Appeals November 19, 2013.

237-13-A thru 242-13-A

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

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

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

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 2, 2013, acting on Department of Buildings Application Nos. 520143602, 520143559, 520143586, 520143540, 520143577, and 520143531, reads in pertinent part:

The proposed two-family dwelling which does not front on a legally mapped street is contrary to Article 3, Section 36 of the General City Law; and

WHEREAS, this is an application to allow the construction of six one- and two-family homes not fronting a legally mapped street contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in *The City Record*, with a continued hearing on October 29, 2013, and then to decision November 19, 2013; and

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

WHEREAS, the subject site is located on Nino Court east of Bedell Avenue, 128.75 feet south of the intersection of Bedell Avenue and Hylan Boulevard, within an R3X (SRD) zoning district within the Special South Richmond District; and

WHEREAS, the applicant states that the proposed

development comprises eight one- and two-family homes, six of which do not front on a mapped street and thus are the subject of the applications before the Board; and

WHEREAS, the applicant states that the proposed dwellings will front on Nino Court, a proposed private road with a roadway width of 34 feet and seven feet of sidewalk and landscaped areas on each side of the roadway; and

WHEREAS, the applicant states that Nino Court will be a two-way road running from the east side of Bedell Avenue, a final mapped street, to the eastern border of proposed Lots 26 and 34; and

WHEREAS, the applicant represents that Nino Court will be maintained pursuant to a Homeowners’ Association agreement; and

WHEREAS, by letter dated September 3, 2013, the Fire Department approved the site plan 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 no parking be permitted on the private street, as indicated on signs throughout the development that read “No Parking – Fire Lane”; and (3) 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, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions; and

Therefore it is Resolved, that the decision of the Staten Island Borough Commissioner, dated August 2, 2013, acting on Department of Buildings Application Nos. 520143602, 520143559, 520143586, 520143540, 520143577, and 520143531, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received September 24, 2013”- (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

THAT the homes will be fully sprinklered;

THAT signs stating “No Parking-Fire Lane” will be posted along the street throughout the development;

THAT a Homeowners’ Association will be created to maintain the street; and

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

MINUTES

plan(s)/configuration(s) not related to the relief granted
Adopted by the Board of Standards and Appeals
November 19, 2013.

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 to
revoke the Certificate of Occupancy. 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

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

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. R7B
zoning district.

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

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

68-13-A

APPLICANT – Bryan Cave LLP, for ESS PRISA LLC,
owner; OTR 330 Bruckner LLC, lessee.

SUBJECT – Application February 13, 2013 – Appeal
challenging Department of Buildings’ determination that the
existing sign is not entitled to non-conforming use status.
M3-1 zoning district.

PREMISES AFFECTED – 330 Bruckner Boulevard,
Bruckner Boulevard between E. 141 and E. 149 Streets,
Block 2599, Lot 165, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to January
14, 2014, at 10 A.M., for deferred decision.

98-13-A

APPLICANT – Eric Palatnik, P.C., for Scott Berman,
owner.

SUBJECT – Application April 8, 2013 – Proposed two-
story two family residential development which is within the
unbuilt portion of the mapped street on the corner of Haven

Avenue and Hull Street, contrary to General City Law 35.
R3-1 zoning district.

PREMISES AFFECTED – 107 Haven Avenue, Corner of
Hull Avenue and Haven Avenue, Block 3671, Lot 15,
Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January
28, 2014, at 10 A.M., for continued hearing.

123-13-A

APPLICANT – Bryan Cave, for Speakeasy 86 LLC c/o
Newcastle Realty Services, owner; TSI West 41 LLC dba
New York Sports Club, lessee.

SUBJECT – Application April 29, 2013 – Appeal
challenging the determination of the Department of
Buildings’ to revoke a permit on the basis that (1) a lawful
commercial use was not established and (2) even assuming
lawful establishment, the commercial use discontinued in
2007. R6 zoning district.

PREMISES AFFECTED – 86 Bedford Street, northeastern
side of Bedford Street between Barrow and Grove Streets,
Block 588, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #2M

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

127-13-A

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for
Brusco Group, Inc., owner.

SUBJECT – Application May 1, 2013 – Appeal under
Section 310 of the Multiple Dwelling Law to vary MDL
Sections 171-2(a) and 2(f) to allow for a vertical
enlargement of a residential building. R8 zoning district.

PREMISES AFFECTED – 332 West 87th Street, south side
of West 87th Street between West end Avenue and
Riverside Drive, Block 1247, Lot 48 Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to December
17, 2013, at 10 A.M., for deferred decision.

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. C6-4/HY zoning district.

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

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to December
17, 2013, at 10 A.M., for continued hearing.

MINUTES

ZONING CALENDAR

121-13-BZ

CEQR #13-BSA-130K

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

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 11, 2013, acting on Department of Buildings Application No. 320715534 reads, in pertinent part:

Proposed House of Worship (UG 4) in an R5 district is contrary to ZR 24-34 (front yard), ZR 24-36 (rear yard), and ZR 24-35 (side yard); and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an R5 zoning district, the conversion and enlargement of a three-story residential building to be occupied as a synagogue (Use Group 4), which does not comply with the zoning district regulations for front yard, side yards and rear yard, contrary to ZR §§ 24-34, 24-35, and 24-36; and

WHEREAS, a public hearing was held on this application on October 22, 2013, after due notice by publication in *The City Record*, and then to decision on November 19, 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 12, Brooklyn, recommends approval of the application; and

WHEREAS, Councilman David G. Greenfield recommends approval of the application; and

WHEREAS, this application is brought on behalf of Congregation Beth Aron Moshe (the “Congregation”); and

WHEREAS, the subject site is a rectangular lot with 28 feet of frontage along 57th Street, between 15th Avenue and 16th Avenue, within an R5 zoning district; and

WHEREAS, the subject site has a lot area of 2,804.7 sq. ft. and is currently occupied by a three-story, semi-detached residential building with 4,236 sq. ft. of floor area (1.51 FAR); and

WHEREAS, the applicant proposes to convert the

residential building to a synagogue, mikvah, and rabbi’s apartment, and construct a one-story rear enlargement with a complying floor area of 5,119 sq. ft. (1.83 FAR) (a maximum FAR of 2.0 is permitted), a complying lot coverage of 50 percent (a maximum lot coverage of 55 percent is permitted), and a complying front wall and building height of 29’-4” (a maximum height of 35’-0” is permitted with a 1:1 sky exposure plane); and

WHEREAS, in addition, the proposal includes the following non-compliances: maintaining the existing front yard depth of 2’-11½” (a minimum front yard of 10’-0” is required); maintaining a portion of the existing side yard at its existing 7’-10” width (two side yards are required, with a minimum width of 8’-0” each); and maintaining the existing rear yard depth of 27’-2½” (a minimum rear yard depth of 30’-0” is required; however, a one-story permitted obstruction is permitted for a community facility); and

WHEREAS, the proposal would allow for the following uses: (1) synagogue and mikvah at the cellar level; (2) synagogue at the basement level; and (3) a rabbi’s apartment at the first and second stories; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Congregation, which necessitate the requested variances: (1) to accommodate its membership, which currently consists of approximately 50 to 60 individuals on a daily basis and 98 individuals on the Sabbath and high holidays; (2) to provide adult religious education classes and lectures to the community on a regular basis; (3) to hold special events such as Kiddush for a Bar or Bat Mitzvah; (4) to provide the necessary sanctuary and worship space for the congregants; (5) to provide an apartment for the rabbi who maintains a close relationship to the congregants through holding religious services and pastoral counseling; and (6) to satisfy the religious requirement that members of the Congregation be within walking distance of the synagogue; and

WHEREAS, the applicant states that the synagogue will be used daily for morning and evening services, as well as the Sabbath and high holidays, with daily services beginning at 6:10 a.m. and ending at 10:00 p.m. and Sabbath and high holiday services beginning at 9:15 a.m. and ending at 10:00 p.m.; and

WHEREAS, the applicant states that the mikvah space in the cellar will accommodate up to 20 people and will be open daily from 4:30 a.m. to 10:30 p.m. and on Friday and holiday evenings from 4:30 p.m. to 7:00 p.m.; and

WHEREAS, the applicant states that the two-story rabbi’s apartment is necessary because of the rabbi’s close ties with the congregants and his programmatic requirements to provide daily religious services and pastoral counseling; and

WHEREAS, the applicant states that the non-complying yards are existing conditions, and that, absent the requested yard waivers, it would be unable to maintain and re-use the existing building or accommodate an appropriate worship area, necessary sanctuary space, proper separate entrances for men and women, and a functional apartment for the rabbi; and

WHEREAS, the applicant asserts that the enlargement is

MINUTES

necessary because the size of the existing building is inadequate for the current and projected needs of the Congregation, especially on high holidays, when the number of congregants that attend services increases; and

WHEREAS, the applicant states that, due to the narrowness of the site, an as-of-right enlargement, which requires two, eight-foot side yards, results in a building width in the enlarged portion of only 12 feet; and

WHEREAS, as to the requested front and rear yard waivers, the applicant notes that they are necessary not because of any proposed construction (a synagogue is a permitted obstruction within a rear yard up to a height of 23 feet and one story), but because of the existing conditions; and

WHEREAS, finally, the applicant states that it seeks to utilize as much of the existing building as possible, in order to minimize costs, and that the proposal accomplishes this; and

WHEREAS, the Board acknowledges that the Congregation, 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 N.Y.2d 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, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare, consistent with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by low- to medium density residential and community facility uses, and that, as such, the proposal is consistent with the use and bulk of the area; and

WHEREAS, the applicant states that immediately west of the site is a large, six-story multiple dwelling, which provides an open area adjacent to the proposed one-story enlargement, and immediately east of the site is a three-story, two-family dwelling that is already attached to the building at the subject site; thus, the impact of the proposed one-story enlargement on its immediate neighbors is minimal; and

WHEREAS, the applicant notes that the proposed FAR is less than the maximum permitted as-of-right for a community facility in the R5 district; and

WHEREAS, the applicant also states, as noted above,

that the existing non-complying front and rear yards will be not be altered and that the side yard waivers will visually affect only the rear of the site on the west side, where the one-story enlargement is proposed, and an open area of 7'-10" will continue to be provided for the majority of the lot; and

WHEREAS, finally, the applicant represents that the synagogue will be used by members of the surrounding community and that the application has received a letter of support from an adjoining neighbor; and

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

WHEREAS, the applicant states that, per ZR § 72-21(d), 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, the applicant states and the Board agrees that the requested waivers are the minimum necessary to afford relief to satisfy the Congregation's programmatic needs, in accordance with 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 Unlisted 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. 13BSA130K, dated April 18, 2013; 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, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site in an R5 zoning district, the conversion and enlargement of an existing three-story

MINUTES

building to be occupied by a synagogue, mikvah, and a rabbi's apartment, which does not comply with the zoning district regulations for front yard, side yards, and rear yard, contrary to ZR §§ 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 July 25, 2013" – Eleven (11) sheets; and *on further condition*:

THAT the building parameters will be: a floor area of 5,119 sq. ft. (1.83 FAR); a minimum front yard depth of 2'-11½"; a minimum rear yard depth of 27'-2½" above the first story; and three stories, as illustrated on the BSA-approved plans;

THAT the use will be limited to a synagogue with a mikvah (Use Group 4), and an accessory rabbi's apartment;

THAT no commercial catering will occur on the site;

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

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 are 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, November 19, 2013.

235-13-BZ

CEQR #14-BSA-020M

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

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 7, 2013, acting on Department of Buildings Application No. 120904174, reads in pertinent part:

Proposed use as a Physical Culture Establishment, as defined by ZR 12-10, is contrary to ZR 42-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-6 zoning district, the operation of a physical culture establishment ("PCE") in portions of the first and second floors of an existing 17-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 22, 2013, after due notice by publication in *The City Record*, and then to decision on November 19, 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 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a through lot spanning the north side of West 30th Street to the south side of West 31st Street, between Avenue of the Americas and Seventh Avenue, within an M1-6 zoning district; and

WHEREAS, the site has 90 feet of frontage along West 30th Street, 125 feet of frontage along West 31st Street and 23,050 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 17-story commercial building; and

WHEREAS, the PCE is proposed to occupy 22,114 sq. ft. of floor area on the first floor and second floor of the building; and

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

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

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, from 9:00 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, 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

MINUTES

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14BSA020M, dated August 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 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 an M1-6 zoning district, the operation of a PCE on portions of the first and second floors of an existing 17-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 8, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on November 19, 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 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 DOB 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, November 19, 2013.

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

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 21, 2012, acting on Department of Buildings Application No. 320444444, reads in pertinent part:

ZR 23-45 – proposed front yard is less than required minimum;

ZR 23-461 – proposed side yard is less than required minimum; and

WHEREAS, this is an application under ZR §§ 72-21 and 73-622, to permit, within an R5 zoning district, the enlargement of an existing, detached single-family home that does not provide the required front yard, contrary to ZR §§ 23-45 and 23-461; and

WHEREAS, a public hearing was held on this application June 11, 2013, after due notice by publication in *The City Record*, with continued hearings on August 13, 2013, September 24, 2013, and October 22, 2013, and then to decision on November 19, 2013; and

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

WHEREAS, Community Board 15, Brooklyn,

MINUTES

recommends approval of this application; and

WHEREAS, the subject site is a corner lot located on the northeast corner of the intersection of Avenue T and East 14th Street, within an R5 zoning district; and

WHEREAS, the site has 24 feet of frontage along East 14th Street, 100 feet of frontage along Avenue T, and 2,400 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a two-story, detached, single-family home with 1,490 sq. ft. of floor area (0.57 FAR), and an attic; and

WHEREAS, the applicant proposes to enlarge the existing first and second stories, and the attic of the building contrary to the side and front yard requirements, and increase the floor area from 1,490 sq. ft. of floor area (0.57 FAR) to 2,794 sq. ft. (1.16 FAR) (a maximum of 3,000 sq. ft. (1.25 FAR) is permitted); and

WHEREAS, in particular, the applicant proposes to maintain its existing, non-complying front yard with a depth of 3'-11" (a minimum front yard depth of ten feet is required), and its existing, non-complying side yard with a width of 3'-11" (a minimum side yard width of five feet is required) in the enlarged portion of the building; and

WHEREAS, the premises is within the boundaries of a designated area in which the special permit pursuant to ZR § 73-622 is available, and under that section, the applicant seeks approval of the proposed side yard; however, ZR § 73-622 is not available for a waiver of the front yard requirement; accordingly, the applicant seeks a variance pursuant to ZR § 72-21 for that portion of the proposal; and

WHEREAS, the applicant states that the following, when considered together, are unique physical conditions, which creates practical difficulties and unnecessary hardship in developing the site in compliance with underlying zoning regulations: (1) the obsolete size and underdevelopment of the existing home; and (2) the site's narrowness and location on a corner; and

WHEREAS, the applicant submitted a study of the 117 sites within a 400-foot radius of the site to support this statement; and

WHEREAS, the applicant represents that the size of the home at 1,490 sq. ft. is one of the smallest homes in the surrounding area; the applicant notes that the home has only two small bedrooms, which renders it obsolete as a modern, single-family home; and

WHEREAS, further, the applicant states that the site itself is significantly underdeveloped at 0.57 FAR where 1.25 FAR is permitted; and

WHEREAS, the applicant represents that despite such underdevelopment, the site's corner location and narrow width (24 feet) create a practical difficulty in enlarging the existing building in accordance with yard requirements of the R5 district; and

WHEREAS, specifically, the applicant states that an enlargement of the home with complying yards would result in the enlarged portion of the building having an outer dimension of only 9'-0" feet; the applicant states that a 9'-0" width would yield inefficient floorplates and room sizes not suited to

modern living; and

WHEREAS, as to uniqueness, the applicant states that the study indicates that of 117 sites studied, only 20 sites are occupied by homes with less than 1,500 sq. ft. of floor area; of these 20 sites, 18 sites are interior lots with two side yards and are eligible for a side yard waiver under ZR § 73-622; the subject site cannot obtain similar relief because it has two front yards rather than two side yards; and

WHEREAS, in addition, the applicant notes that the study shows that there is only one other site with a home of 1,500 sq. ft. or less that is on a corner lot; however, that site is distinguishable from the subject site because it has significantly less lot area 1,575 sq. ft. of lot area (35 percent less than the subject site's 2,400 sq. ft. of lot area); therefore, that home's smaller size is attributable less to its location on a narrow, corner lot and more to its significantly smaller lot size; and

WHEREAS, finally, the applicant also notes that three of the sites are occupied by attached or semi-detached homes, which are not required to provide two side yards; and

WHEREAS, therefore, only one other underdeveloped site is comparable to the subject site in terms of lot width, location on corner, and existing non-compliance exists in the study area; and

WHEREAS, in addition, the applicant explored the feasibility of an as-of-right enlargement of the home; such an enlargement would not yield any additional bedrooms, and would result in a modest increase in floor area from 1,490 sq. ft. (0.57 FAR) to 2,074 sq. ft. (0.69), which the applicant notes is well below the maximum permitted FAR of 1.25; thus, the applicant asserts that an as-of-right enlargement is impractical; and

WHEREAS, accordingly, the applicant asserts that the site's unique conditions create practical difficulties in developing in accordance with the front yard regulations; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

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

WHEREAS, the applicant represents that neither the proposed variance, nor the special permit will negatively affect the character of the neighborhood or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is characterized by low-density, detached or semi-detached, two- or three-story homes, with varying side yard depths; as such, the proposal is consistent with the use, bulk, and appearance of the neighborhood; and

WHEREAS, the applicant states that the proposal will maintain the existing non-complying front and side yards and will comply in all other respects with the R5 bulk regulations; and

WHEREAS, the applicant also states, as noted above,

MINUTES

that the site is within the boundaries of a designated area in which the special permit pursuant to ZR § 73-622 is available, and that several homes have utilized the special permit to enlarge; and

WHEREAS, in addition, the applicant asserts that three corner lots in the area have similar yard sizes, but are occupied by even larger homes than the proposal; and

WHEREAS, at hearing, the Board expressed concerns regarding: (1) the lack of landscaping at the site; and (2) the proposed wrap-around porch; and

WHEREAS, in response, the applicant submitted a plan indicating: (1) additional plantings along Avenue T and East 14th Street; and (2) that the porch would be subject to Department of Buildings approval; and

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

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

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

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

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 72-21 and 73-622; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings ZR §§ 72-21 and 73-622, to permit, within an R5 zoning district, the enlargement of an existing, detached single-family home that does not provide the required front yard, contrary to ZR §§ 23-45 and 23-461; *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 October 11, 2013"-nine (9) sheets; and *on further condition*:

THAT the parameters of the proposed building will be limited to: two stories and an attic, a maximum floor area of 2,794 sq. ft. (1.16 FAR), a front yard with minimum width of 3'-11", and side yards with minimum widths of 3'-11" and 20'-0", as per the BSA-approved plans;

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

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

THAT significant construction will proceed in accordance with ZR §§ 72-23 and 73-70; and

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

Adopted by the Board of Standards and Appeals,
November 19, 2013.

78-11-BZ & 33-12-A thru 37-12-A

APPLICANT – Sheldon Lobel, P.C., for Indian Cultural and Community Center, Incorporated, owner.

SUBJECT – Applications May 27, 2011 and February 9, 2012 – Variance (§72-21) to allow for the construction of two assisted living residential buildings, contrary to use regulations (§32-10).

Proposed construction of two mixed use buildings that do not have frontage on a legally mapped street, contrary to General City Law Section 36. C8-1 Zoning District.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street, Block 7880, Lots 550, 500 Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for adjourned hearing.

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 off street rooftop parking on 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

ACTION OF THE BOARD – Off-Calendar.

43-12-BZ

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

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for deferred decision.

MINUTES

62-12-BZ

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

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

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to February 11, 2014, at 10 A.M., for adjourned hearing.

77-12-BZ

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

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

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for adjourned hearing.

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, unmaped 30th Street, Second Avenue, and unmaped 31st Street, Block 671, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

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 December 17, 2013, at 10 A.M., for decision, hearing closed.

279-12-BZ

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

SUBJECT – Application September 20, 2012 – Variance (§72-21) to permit a bank (UG 6) in a residential zoning district, contrary to §22-00. R4/R5B zoning district. PREMISES AFFECTED – 27-24 College Point Boulevard, northwest corner of the intersection of College Point

Boulevard and 28th Avenue, Block 4292, Lot 12, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

299-12-BZ

APPLICANT – Goldman Harris LLC, for 544 Hudson Street, owner.

SUBJECT – Application October 18, 2012 – Variance (§72-21) to permit the construction of a 12-story commercial building, contrary to floor area (§43-12), height and setback (§43-43), and rear yard (§43-311/312) regulations. M1-5 zoning district.

PREMISES AFFECTED – 40-56 Tenth Avenue, east side of Tenth Avenue between West 13th and West 14th Streets, Block 646, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

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

55-13-BZ

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

SUBJECT – Application February 1, 2013 – Variance (§72-21) to permit the enlargement of an existing yeshiva and dormitory (*Yeshiva Novominsk*), contrary to floor area (§24-11), wall height and sky exposure plane (§24-521), and side yard setback (§24-551). R5 zoning district. PREMISES AFFECTED – 1690 60th Street, north side of 17th Avenue between 60th and 61st Street, Block 5517, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

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

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

THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin,

MINUTES

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

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

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 yard regulation (§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

ACTION OF THE BOARD – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

94-13-BZ

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

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

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

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to January 14, 2014, at 10 A.M., for deferred decision.

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

ACTION OF THE BOARD – Laid over to January 28, 2014, at 10 A.M., for continued hearing.

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

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

122-13-BZ

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

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

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

COMMUNITY BOARD #12BK

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

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.

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

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

MINUTES

206-13-BZ

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

Jeff Mulligan, Executive Director

SUBJECT – Application July 12, 2013 – Special Permit (§73-36) to allow a physical culture establishment within an existing building. C6-4 zoning district.

Adjourned: P.M.

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

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 December 17, 2013, at 10 A.M., for decision, hearing closed.

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

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 December 17, 2013, at 10 A.M., for decision, hearing closed.

292-13-BZ

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

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow the development of a Use Group 4A house of worship (*Congregation Bet Yaakob*), contrary to floor area, open space ratio, front, rear and side yards, lot coverage, height and setback, planting, landscaping and parking regulations. R5, R6A and R5/OP 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

ACTION OF THE BOARD – Laid over to December 17, 2013, at 10 A.M., for continued hearing.

MINUTES

*CORRECTION

This resolution adopted on October 22, 2013, under Calendar No. 133-13-BZ and printed in Volume 98, Bulletin Nos. 42-43, is hereby corrected to read as follows:

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 rear yard (§24-33(b) & §24-36), side yard (§24-35(a)) and front yard (§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 Montanez5
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

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

MINUTES

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 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,

MINUTES

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 proposed project would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources;

Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

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

***The resolution has been Amended. Corrected in Bulletin Nos. 45-47, Vol. 98, dated November 28, 2013.**