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76-13-BZ
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77-13-BZ
45 Great Jones Street, between Lafayette and Bowery Streets, on the south side of Great Jones Street., Block 530, Lot(s) 29, Borough of **Manhattan, Community Board: 1**. Applicant seeks a variance pursuant to Z.R.§72-21 to waive ZR§42-10 to permit floors 2 through an 8-story building to be used for residential purposes (Use Group 2) and waive

ZR§42-14(D)(2)(b), to permit 1,803 gsf of retail (Use Group 6) below the level of the second floor.

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

MARCH 12, 2013, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 12, 2013, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

APPEALS CALENDAR

310-12-A
APPLICANT – Mitchell A. Korbey, Esq./Herrick, Feinstein, for 141 East 88th Street LLC, owners.
SUBJECT – Application December 12, 2012 – Variance pursuant to the State Multiple Dwelling Law (MDL) section 310(2)(a) to permit the reclassification of a partially occupied Building, a rehabilitation and a small addition. C1-8X zoning district.
PREMISES AFFECTED – 141 East 88th Street, south-east corner of East 88th Street and Lexington Avenue, Block 1517, Lot 20, 50, Borough of Manhattan.
COMMUNITY BOARD #8M

15-13-A thru 49-13-A
APPLICANT – Eric Palatnik, P.C., for Block 7094 Associates, LLC, owners.
SUBJECT – Application January 25, 2013 – This is an appeal of the decisions of the Staten Island Borough Commissioner denying the issuance of building permits to construct thirty five (35) one and two-family dwellings, within an R3-1(SRD) zoning district, as the development is contrary to General City Law 36.
PREMISES AFFECTED –

16, 20, 24, 28, 32, 36, 40, 44, 48, 52, 56, 60, 64, 68, 78, 84, 90, 96, 102, 108, 75, 79, 85, 89, 93, 99, 105, 109, 115, 119 Berkshire Lane. Block 7094, Lot 70, 69, 68, 67, 66, 65, 62, 61, 60, 59, 54, 53, 52, 51, 43, 44, 45, 46, 47, 48, 41, 40, 39, 38, 37, 36, 35, 34, 33, 32.

19, 23, 27, 31, 35, Wiltshire Lane. Block 7094, Lot 57, 56, 55, 50, 49. Borough of Staten Island.

COMMUNITY BOARD #3SI

ZONING CALENDAR

312-12-BZ
APPLICANT – Jay A. Segal, Esq./Greenberg Traurig LLP, for 33 Beekman Owner LLC c/o Naftali Group, owners; Pace University, lessee.
SUBJECT – Application November 19, 2012 – Variance (§72-21) to increase the maximum permitted floor area to facilitate the construction of a new 34-story, 760-bed dormitory for Pace University in a C6-4 district in the Special Lower Manhattan District.
PREMISES AFFECTED – 29-37 Beekman Street aka 165-169 William Street, northeast corner of block bound by Beekman, William, Nassau and Ann Streets, Block 92, Lot 1,3,37,38, Borough of Manhattan.
COMMUNITY BOARD #1M

316-12-BZ
APPLICANT – Eric Palatnik, P.C. for Prince Plaza LLC, owner; L'Essence de Vie LLC d/b/a Orient Retreat, lessee.
SUBJECT – Application November 21, 2012 – Special Permit (§73-36) to allow proposed physical culture establishment (*Orient Retreat*). C4-2 zoning district.
PREMISES AFFECTED – 37-20 Prince Street, west side of Prince Street between 37th Avenue and 39th Avenue, Block 4972, Lot 43, Borough of Queens.
COMMUNITY BOARD #7Q

323-12-BZ
APPLICANT – Sheldon Lobel, P.C., for 25 Broadway Office Properties, LLC, owner; 25 Broadway Fitness Group LLC, lessees.
SUBJECT – Application December 7, 2012 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C5-5LM zoning district.
PREMISES AFFECTED – 25 Broadway, southwest corner of the intersection formed by Broadway and Morris Street, Block 13, Lot 27, Borough of Manhattan.
COMMUNITY BOARD #1M

324-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Taxiarnis Davanelos, Georgia Davanelos, Andy Mastoros, owners.
SUBJECT – Application December 7, 2012 – Special permit (§73-622) for the enlargement of an existing single family home contrary to ZR §23-141(b) for the maximum permitted floor area. R3-1 zoning district.
PREMISES AFFECTED – 45 76th Street, north side of 76th Street between Narrows Avenue and Colonial Road, Block 5937, Lot 69, Borough of Brooklyn.
COMMUNITY BOARD #10BK

Jeff Mulligan, Executive Director

REGULAR MEETING
TUESDAY MORNING, FEBRUARY 26, 2013
10:00 A.M.

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

SPECIAL ORDER CALENDAR

20-08-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich LLC, owners.
SUBJECT – Application January 3, 2013 – Extension of Time to Complete Construction of approved Special Permit (§75-53) for the vertical enlargement to an existing warehouse (UG17) which expired on January 13, 2013. C6-2A zoning district.
PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street between Greenwich Street and Collister Street, Block 214, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #1M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted special permit to permit the vertical enlargement of an existing warehouse building, which expired on January 13, 2013; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in *The City Record*, with a continued hearing on February 5, 2013 and then to decision on February 26, 2013; and

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

WHEREAS, the subject site is located on the northwest corner of Beach Street and Collister Street in a C6-2A zoning district within the Special Tribeca Mixed Use District and the Tribeca West Historic District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 6, 2003, when, under BSA Cal. No. 359-02-BZ, the Board granted a variance authorizing the ground floor and cellar of the building to be occupied by a Use Group 3 pre-school; and

WHEREAS, the variance was subsequently amended on two occasions to allow the pre-school use on the second and third floors; and

WHEREAS, on January 13, 2009, under the subject calendar number, the Board granted a special permit under ZR § 73-53 to allow the proposed enlargement of the Use Group 16 warehouse (which was erroneously identified as Use Group 17 in the original application); and

WHEREAS, substantial construction was to be completed by January 13, 2013, in accordance with ZR § 73-70; and

WHEREAS, the applicant notes that since the 2009 approval, the area around the site has been rezoned from an M1-5 zoning district to a C6-2A zoning district; and

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

WHEREAS, the applicant represents that the owner is now prepared to proceed with construction; 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 January 13, 2009, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on January 13, 2017; *on condition*:

THAT construction will be completed by January 13, 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) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."
(DOB Application No. 104415571)

Adopted by the Board of Standards and Appeals, February 26, 2013.

135-46-BZ
APPLICANT – Eric Palatnik, P.C., for Arielle A. Jewels, Inc., owner.
SUBJECT – Application March 30, 2012 – Extension of Term (§11-411) of approved variance which permitted an automotive service station (UG 16B) with accessory uses, which expired on January 29, 2012, and an amendment (§11-413) to convert the use to auto laundry (UG 16B) hand car wash; waiver for the Rules. R4 zoning district.
PREMISES AFFECTED – 3802 Avenue U, southeast corner of East 38th Street, between Ryder Avenue and East 38th Street, Block 8555, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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

410-68-BZ

APPLICANT – Eric Palatnik, P.C., for Alessandro Bartellino, owner.

SUBJECT – Application May 22, 2012 – Extension of Term (§11-411) of approved variance which permitted the operation of (UG16B) automotive service station (*Citgo*) with accessory uses, which expired on November 26, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on January 11, 2008; Waiver of the Rules. R3-2 zoning district.

AFFECTED PREMISES – 85-05 Astoria Boulevard, east corner of 85th Street. Block 1097, Lot 1. Borough of Queens.

COMMUNITY BOARD #3Q

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

103-91-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP for 248-18 Sunrise LLC, owner.

SUBJECT – Application October 18, 2012 – Extension of term of approved variance permitting an auto laundry use (UG 16B); Amendment to permit changes to the layout and extend hours of operation. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 248-18 Sunrise Highway, south side of Sunrise Highway, 103' east of the intersection of Hook Creek Boulevard, Block 13623, Lot 19, Borough of Queens.

COMMUNITY BOARD #13Q

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

239-02-BZ

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Babbo Realty LLC, owner.

SUBJECT – Application November 9, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a Use Group 6A eating and drinking establishment (*Babbo*) located at the cellar level, ground floor, and second floor of the subject premises, which expired on December 17, 2012. R7-2 zoning district.

PREMISES AFFECTED – 110 Waverly Place, south side of Waverly Place, between Sixth Avenue and Washington Square West/MacDougal Street, Block 552, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for continued hearing.

374-04-BZ

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., owner.

SUBJECT – Application December 5, 2012 – Extension of Time to complete construction of a previously-granted Variance (§72-21) for the development of a seven-story residential building with ground floor commercial space, which expired on October 18, 2009; Amendment to approved plans; and waiver of the Rules. C6-2A zoning district/SLMD.

PREMISES AFFECTED – 246 Front Street, fronting on Front and Water Streets, 126' north of intersection of Peck Slip and Front Street, Block 107, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

197-08-BZ

APPLICANT – Stuart Klein, Esq., for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application April 27, 2012 – Amendment to an approved variance (§72-21) to permit a four-story and penthouse residential building, contrary to floor area and open space (§23-141), units (§23-22), front yard (§23-45), side yard (§23-462), and height (§23-631). Amendment seeks to reduce the number of units and parking and increase the size of the rooftop mechanical equipment. R4 zoning district.

PREMISES AFFECTED – 341-349 Troy Avenue, aka 1515 Carroll Street, north east corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Laid over to April 23, 2013, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

108-12-A & 109-12-A

APPLICANT – Davidoff Malito & Hutcher LLP, for Lamar Advertising of Penn LLC.

OWNER OF PREMISES – Kehley Holding Corp.

SUBJECT – Application April 18, 2012 – Appeal challenging Department of Buildings' determination that signs are not entitled to non-conforming use status as accessory business or non-commercial signs, pursuant to Z.R.§§42-58 and 52-61.

PREMISES AFFECTED – 46-12 Third Avenue, between 46th and 47th Streets, Block 185, Lot 25, Borough of

Brooklyn.
COMMUNITY BOARD #7BK
ACTION OF THE BOARD – Appeal Denied.
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez ……...5
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to two Notice of Sign Registration Rejection letters from the Brooklyn Borough Commissioner of the Department of Buildings ("DOB"), dated April 4, 2012, denying registration for signs at the subject site (the "Final Determination"), which read, in pertinent part:

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

WHEREAS a public hearing was held on this application on December 4, 2012, after due notice by publication in *The City Record*, and then to decision on February 26, 2013; and

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

WHEREAS, the subject appeal concerns two signs located on the west side of Third Avenue between 46th Street and 47th Street, within an M1-2D zoning district (the "Signs"); and

WHEREAS, this appeal concerns a site under the control of Lamar Advertising, an outdoor advertising company that is subject to registration requirements under Local Law 31 of 2005; and

WHEREAS, the Board notes that under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs as a means for DOB to enforce the sign laws where signs had been erected and were being maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of all signs, sign structures and sign locations (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60.96 m) from and within view of a public park with an area of one-half acre (5,000 m) or more; and

WHEREAS, pursuant to the requirements of Article 502 and Rule 49 with respect to signs within 900 feet of arterial highways, the Appellant submitted an inventory of outdoor signs under its control and completed a Sign Registration Application for each sign and an OAC3 Outdoor Advertising Company Sign Profile; and

WHEREAS, DOB, by letters, dated April 4, 2012 issued the determination related to the Signs within Lamar's inventory, two of which form the basis of the appeal; and

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

BACKGROUND

WHEREAS, the Appellant has submitted a permit dated September 1, 1998 for each of the two subject signs, which reflects the following conditions of the sign and its location: (1) non-illuminated accessory business sign on ground structure, (2) with text reading: Yale Equipment, (3) with a surface area of 1,200 sq. ft., and (4) within 200 feet of an arterial highway; and

WHEREAS, the Appellant concedes that despite obtaining a permit for an accessory business sign, it maintained advertising signs at the site prior to and continuously from before December 13, 2000; and

WHEREAS, per ZR § 21-B (superseded by ZR §§ 42-53 and 42-55), advertising signs were not permitted within 200 feet of an arterial highway since 1940; and

WHEREAS, on February 27, 2001, the Zoning Resolution was amended and Local Law 14 was enacted to regulate the large number of illegal signs; and

WHEREAS, as adopted on February 27, 2001, ZR § 42-55 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) (a)(1) limits the size of non-advertising signage, within 200 feet of an arterial to a surface area of 500 sq. ft. and (a)(2) prohibits any advertising signs within 200 feet of an arterial; and

WHEREAS, as adopted on February 27, 2001, ZR § 42-58 (Signs Erected Prior to December 13, 2000) allows certain signs installed by December 13, 2000 to be grandfathered as "non-conforming" signs to the extent of the non-conformance on that date; and

WHEREAS, pursuant to current zoning regulations, only signs not used for advertising (such as an accessory or non-commercial sign) would be permitted within 200 feet of an arterial and only up to a size of 500 sq. ft., unless the conditions set forth at ZR § 42-58 are met to allow for a larger sign; and

WHEREAS, in 2002, DOB began enforcing against the Signs; and

WHEREAS, thereafter, the Appellant and other OACs commenced the Clear Channel Outdoor, Inc. v. City of New York (608 F. Supp 2d 477 [SDNY 2009], aff'd 594 Fed 94) litigation, contesting the constitutionality of the City's signage regulations and enforcement as related to signs throughout the City, including the subject Signs; and

WHEREAS, during the course of the litigation, three letters were introduced, which will be discussed in more detail below: (1) an April 17, 2002 DOB letter (the "April 2002 Letter"), (2) an October 17, 2006 letter agreement between the parties (the "October 2006 Letter"), and (3) an April 6, 2009 letter agreement between the parties (the "April 2009 Letter") (together, "the Letters"); and

WHEREAS, the Appellant and DOB describe additional history, set forth below, in the context of their arguments; and

WHEREAS, on March 31, 2009 the District Court upheld the City's regulations and on February 3, 2010 the Second Circuit affirmed; and

WHEREAS, by letter dated August 17, 2011, the Appellant sought to register its outdoor advertising inventory, including the Signs; and

WHEREAS, by letters dated April 4, 2012, DOB issued the determinations which form the basis of the appeal, stating that it found the "documentation inadequate to support the registration and, as such, the sign is rejected from registration;" and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10

Non-conforming, or non-conformity

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

* * *

ZR § 42-58

Signs Erected Prior to December 13, 2000

M1 M2 M3

In all districts, as indicated, a #sign# erected prior to December 13, 2000, shall have #non-conforming use# status pursuant to Sections 52-82 (Non-Conforming Signs Other Than Advertising Signs) or 52-83 (Non-Conforming Advertising Signs) with respect to the extent of the degree of #non-conformity# of such #sign# as of such date with the provisions of Sections 42-52, 42-53 and 42-54, where such #sign# shall have been issued a permit by the Department of Buildings on or before such date. In all such districts, as indicated, a #sign# other than an #advertising sign# erected prior to December 13, 2000, shall also have #non-conforming use# status pursuant to Section 52-82 with respect to the degree of #non-conformity# of such #sign# as of such date with the provisions of Section 42-55, paragraphs (a)(1) and (b), where such #sign# shall have been issued a permit by the Department of Buildings on or before such date. Nothing herein shall be construed to confer #non-conforming use# status upon any #advertising sign# located within 200 feet of an arterial highway or of a #public park# with an area of one-half acre or more, and within view of such arterial highway or #public park#, or where such #advertising sign# is located at a distance from an arterial highway or #public park# with an area of one-half acre or more which is greater in linear feet than there are square feet of #surface area# on the face of such #sign#, contrary to the requirements of Section 42-55, paragraph (b). The #non-conforming use# status of signs subject to Section 42-55, paragraphs (c)(1), (c)(2) and (d), shall remain unaffected by this provision. . .

* * *

ZR § 52-61

General Provisions

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

THE APPELLANT'S POSITION

WHEREAS, the Appellant identifies the issue on appeal as whether the Letters tolled ZR § 52-61's two-year limit on discontinuance of the non-conforming accessory sign use and whether the right to maintain non-conforming accessory signs was lost as a result of a discontinuance of their use for more than two consecutive years after the adoption of ZR § 42-58 on February 27, 2001; and

WHEREAS, the Appellant states that DOB introduced another argument which is beyond the scope of a stipulation between the parties regarding the issue on appeal, but if it is considered, it should be rejected; the Appellant contends DOB is incorrect that there is a requirement that non-conforming status can only be established if the Signs were legal on December 13, 2000; and

Effect of the Letters on ZR § 52-61's Two-Year Discontinuance Provision

WHEREAS, the Appellant asserts that the Letters should be read to toll ZR § 52-61's two-year discontinuance provision for "non-conforming use" and that there has not been a two-year discontinuance of the relevant sign types within the relevant periods; and

WHEREAS, first, the Appellant represents that there has never been a two-year discontinuance of advertising message from before May 1999 until approximately March 22, 2010; and

WHEREAS, now, the Appellant asserts that there has not been a two-year discontinuance in the non-commercial signs since March 22, 2010, so the non-conforming size and height existing on December 13, 2000 can continue pursuant to ZR § 42-48; and

WHEREAS, the Appellant asserts that Local Law 14, enacted on February 27, 2001, in tandem with the non-conforming use provisions of ZR § 42-48, allows an option to maintain the advertising copy under the voluntary compliance program until the signs are removed during the three-year takedown period; and

WHEREAS, the Appellant notes that the City began enforcement against the Signs in 2002, which the Appellant

found to be inconsistent with the allowance for three years to remove the signs pursuant to Local Law 14's voluntary compliance plan; and

WHEREAS, the Appellant asserts that in response to its concerns about the 2002 enforcement, DOB issued the April 2002 Letter, in which it agreed that the Zoning Resolution provisions prohibiting advertising signs would not be enforced; and

WHEREAS, the April 2002 Letter reads in pertinent part:

> At this time, the Department does not intend to issue further violations for similar signs unless the sign and/or sign structure is in a hazardous condition. However, please note that once a voluntary compliance plan is filed and a sign that the Department concludes is unlawful is not included in such compliance plan, it will be subject to appropriate enforcement action by the Department; and

WHEREAS, the Appellant asserts that advertising could be maintained on the Signs until a voluntary compliance plan was filed which included the Signs, in order to protect their value for ultimate inclusion in the voluntary compliance plan; and

WHEREAS, the Appellant asserts that the April 2002 Letter effectively terminated the running of the two-year period commencing on February 27, 2001, during which the Signs would have had to display accessory business or non-commercial copy to avoid discontinuance of their non-conforming use at their original size and height, since they were entitled to display advertising copy per the April 2002 Letter; and

WHEREAS, the Appellant asserts that the initial two-year period that would have commenced on February 27, 2001 was terminated on April 17, 2002 through the April 2002 Letter; and

WHEREAS, the Appellant asserts that per the April 2002 Letter, a new two-year period would not have commenced until a compliance plan is in effect and a sign is not protected by the plan; and

WHEREAS, the Appellant asserts that the intent of the April 2002 Letter was to preserve the value of signs as advertising signs and relies on a March 22, 2002 letter to then-DOB Commissioner Patricia Lancaster in support of the claim that there was a mutual intent to preserve maximum rights for the sign companies; and

WHEREAS, the Appellant asserts that on April 12, 2005, an amendment in Local Law 31 eliminated the voluntary compliance plan provisions of Local Law 14; and

WHEREAS, the Appellant asserts that a new two-year period within which accessory business or non-commercial copy would have to be displayed on the Signs in order for non-conforming status use to continue would be April 12, 2005; and

WHEREAS, the Appellant notes that DOB did not, however, begin enforcement against the Signs until after it adopted Rule 49 on July 19, 2006, which allowed for implementation of Local Law 14, as amended by Local Law 31; and

WHEREAS, the Appellant states that, on October 17, 2006, by agreement in the Clear Channel litigation, the City agreed to stay the enforcement of the Zoning Resolution and Administrative Code, which otherwise prohibited the maintenance of advertising on the Signs (the October 2006 Letter); and

WHEREAS, the October 2006 Letter states in pertinent part:

> We . . . want to confirm that [the stay] will cover (i) the portion of New York City's Zoning Resolution §§ 42-55 and 32-662 concerning the placement of outdoor advertising signs along the City's arterial highways and parks, (ii) the City of New York Local Laws 14 of 2001 and 31 of 2005 in their entirety (except, solely with respect to nonarterial signs, the provisions of Admin. Code §§ 26-127.3, 26-259, 26-262, and 27-177 [only with respect to new signs], shall not be stayed), and (iii) the entirety of the Department of Buildings ("DOB") Rule 49 (except, solely with respect to nonarterial signs . . .(collectively referred to in this letter as the "Regulations").
>
> * * *
>
> Other than as set forth above, enforcement of the Regulations shall be stayed industry-wide until ten (10) days after a decision by the Southern District on the preliminary injunction motions . . . The stay will not extend to any proceedings, pending or otherwise, based on provisions of law other than the Regulations, nor to any proceeding to enforce the requirement to register by November 27 as set forth above; and

WHEREAS, the Appellant asserts that assuming a new two-year period commenced for a second time on April 12, 2005, it terminated on October 17, 2006 (approximately 18 months later); and

WHEREAS, the Appellant notes that the District Court rendered a decision on March 31, 2009 and that, in light of the fact that an appeal was taken to the Second Circuit Court of Appeals, it entered another agreement, the April 2009 Letter, with the City to further extend the period in which enforcement activity was suspended until 15 days after a decision on the appeal; and

WHEREAS, the April 2009 Letter states in pertinent part:

> This letter is to confirm that [during any proceedings in the Second Circuit] the City will not enforce the provisions of New York City Zoning Resolution Sections 42-55 and 32-662 as to any signs that existed along an arterial highway prior to the commencement of this litigation on October 6, 2006, or enforce any provisions of City of New York Local Laws 14 of 2002 and 31 of 2005 that authorize the issuance of violations . . . for violating Sections 42-55 and 32-622 of the

Zoning Resolution; and

WHEREAS, the Appellant asserts that ZR § 52-61 was not included in any of the Letters because they dealt solely with advertising signs to which a stay of ZR § 52-61 was irrelevant since ZR § 52-61 would never apply to the use of signs for advertising purposes; and

WHEREAS, the Appellant notes that the Second Circuit's decision to uphold the District Court's decision in the City's favor was rendered on February 3, 2010 and, by further agreement, enforcement was suspended until March 22, 2010 when outdoor advertising companies were required to submit certifications as to those arterial highway signs for which they seek to claim non-conforming status; and

WHEREAS, accordingly, the Appellant asserts that March 22, 2010 is the relevant date for commencing the two-year period within which the display of accessory business or non-commercial messages was required in order for the non-conforming use status of the signs as accessory business or non-commercial signs at the dimensions existing on December 13, 2000 to be maintained; and

WHEREAS, the Appellant asserts that the Signs have displayed non-commercial messages since sometime before March 22, 2010 and, thus, have retained their status as non-conforming accessory business or non-commercial signs at the dimension and height on December 13, 2000; and

The Applicability of ZR § 42-58

WHEREAS, the Appellant asserts that DOB has exceeded the parameters of the appeal stipulation by pursuing arguments related to the requirements of establishing a non-conforming use pursuant to ZR § 42-58; and

WHEREAS, however, the Appellant addresses DOB's assertion that the sign must have been established as a non-advertising sign prior to December 13, 2000 in order to meet the requirements for a non-conforming use pursuant to ZR § 42-58; and

WHEREAS, in response to DOB's secondary argument, the Appellant states that DOB contemplated the conversion of the Signs from illegal advertising signs to accessory or non-commercial signs and such conversion is allowed by the text of ZR § 42-58 even when no legal use was established by December 13, 2000; and

WHEREAS, the Appellant asserts that ZR § 42-58 does not include a lawful establishment requirement and that having a sign, alone, of any kind, by December 13, 2000 satisfies the text; and

WHEREAS, the Appellant asserts that ZR § 42-58, which was adopted on February 27, 2001, conferred non-conforming use status to signs with permits for accessory business use issued prior to that date so that signs could be converted from advertising to accessory business or non-commercial copy at their size and height existing on December 13, 2000; and

WHEREAS, the Appellant asserts that the February 27, 2001 date of adoption is the first day on which a two-year period of discontinuance would have begun to run at the end of which the non-conforming use status would have been lost should advertising copy not have been replaced with accessory business or non-commercial copy; and

WHEREAS, the Appellant notes that the Signs were (1) installed prior to December 13, 2000, pursuant to DOB permits; (2) the dimensions of each sign is 20 feet vertically and 60 feet horizontally for a total surface area of 1,200 sq. ft.; and (3) parties agree that although the permit for the sign stated accessory/business sign, the copy for the signs was for advertising from before December 13, 2000 (approximately May 1999) until March 22, 2010; and

WHEREAS, the Appellant asserts that even though the Signs were installed impermissibly as advertising signs, because the signs were installed prior to December 13, 2000, they are eligible for the non-conforming use status set forth at ZR § 42-58 for the size of 1,200 sq. ft. as opposed to the 500 sq. ft. that would be permitted under current regulations; and

WHEREAS, the Appellant asserts that the use of the word "also" in ZR § 42-58 between the requirement for sign installation prior to December 13, 2000 and the conferring of "non-conforming use" status clearly conveys the intention that where a sign was permitted and in existence on December 13, 2000 it would have non-conforming use status as an accessory business sign or non-commercial sign if it carried such messages after that date; and

WHEREAS, the Appellant states that ZR § 42-48 would not have been necessary if accessory or non-commercial copy would have had to have been on the signs on December 13, 2000; and

WHEREAS, further, the Appellant asserts that DOB has changed its position on the ability to convert from an advertising sign to an accessory sign and that the doctrine of judicial estoppel precludes it from doing so; and

WHEREAS, the Appellant quotes to a reply memorandum of law from the Clear Channel litigation dated July 28, 2008, in which the City stated:

> Thus, to the extent that plaintiffs and other OACs have been continuously using their arterial signs as advertising signs in the six years since the 2001 zoning amendments, plaintiffs and other OACs have lost the right to rely on their previously issued permits to revert to non-advertising copy. In order to maintain signs with non-commercial or accessory copy along the arterial highways plaintiffs will have to re-apply for new sign permits and will be limited to displaying signs of no more than 500 square feet in size; and

WHEREAS, the Appellant notes that in its memorandum, the City did not mention the lawful establishment requirement; and

WHEREAS, the Appellant also asserts that when a non-conforming right is granted by statute, as is the case here, and as is the case when advertising signs existing in 1979 were accorded non-conforming use status, it is not necessary that a legal use be in existence when such status is conferred; and

WHEREAS, in the alternate, the Appellant asserts that

non-conforming use status should be granted because the conversion to accessory business or non-commercial copy was not required until March 22, 2010; and

WHEREAS, the Appellant asserts that no date by which accessory business or non-commercial copy was required to be posted on signs accorded non-conforming use status was provided in ZR § 42-58; and

WHEREAS, the Appellant asserts that the operative date for the commencement of ZR 52-61's two-year maximum discontinuance is March 22, 2010 and that that was the first day on which OACs were required to elect to install accessory business or non-commercial copy on arterial highway signs and claim their certified non-conforming use status; and

Estoppel Against the City

WHEREAS, the Appellant asserts that although as a general rule estoppel or laches cannot be used as a defense to City actions and is only allowed in the rarest circumstances, the City is estopped from enforcing its zoning regulations related to the Signs; and

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

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

WHEREAS, the Appellant notes that in Inner Force in which one City agency acknowledged receipt of a claim while another branch did not, the petitioner had been left with the understanding that it was proceeding properly and rested on its rights, thus, the court held that equitable estoppel may be used against the City "where the governmental subdivision acts or comports itself wrongfully or negligently, inducing reliance by a party who is entitled to rely and who changes his positions to his detriment or prejudice;" and

WHEREAS, the Appellant also asserts that it is an unreasonable departure for the City to now require that accessory or non-commercial copy have been installed during the stay in order to preserve non-conforming rights, when it did not earlier articulate that requirement; and

DOB'S POSITION

WHEREAS, in support of its position that the Board deny the appeal, DOB asserts that: (1) the letter agreements between the parties during litigation were limited to delaying enforcement against the advertising signs pursuant to ZR § 42-55 (and other specifically noted provisions) and did not toll the two-year discontinuation period set forth at ZR § 52-61 and (2) the Signs were not lawful on December 13, 2000 and thus, they failed to satisfy the requirements of ZR § 42-58; and

The Effect of the Letters on ZR § 52-61's Two-Year Discontinuance Period

WHEREAS, as to the Appellant's tolling arguments, DOB states that the Signs were authorized by permits issued on September 1, 1998 for non-illuminated accessory business signs each having a surface area of 1,200 sq. ft. and that as of February 27, 2001, the Zoning Resolution prohibited non-advertising signs larger than 500 sq. ft. of surface area, and signs entitled to non-conforming use status as of December 13, 2000 could continue subject to regulations governing non-conforming uses; and

WHEREAS, DOB states that, assuming for the purpose of this appeal that these signs were entitled to non-conforming use status, industry-wide stays of enforcement agreed to in litigation cannot be relied upon as a basis for resuming non-conforming accessory sign uses after a two-year period of discontinuance; and

WHEREAS, specifically, DOB rejects the Appellant's assertion that ZR § 52-61 continued to impose a two-year limitation on a discontinuance of the non-conforming non-advertising sign uses during the period that the City agreed to stay enforcement of ZR § 42-55 against the signs; and

WHEREAS, DOB notes that ZR § 52-61 states that if, for a continuous period of two years, active operation of substantially all of the non-conforming use is discontinued, the use must terminate; and

WHEREAS, DOB rejects the Appellant's claim that the Letters tolled ZR § 52-61's discontinuance period against the Signs; the April 2002 Letter stated that at that time DOB did not intend to issue violations against advertising signs; and the October 2006 and April 2009 letters stipulated to a stay during litigation proceedings challenging ZR § 42-55 and ZR § 36-662 as unconstitutional restrictions on commercial speech and none of these documents either expressly or impliedly provide that the DOB would toll ZR § 52-61; and

WHEREAS, DOB asserts that the owners of the subject signs could have no reasonable expectation of benefitting from the start of a new two-year discontinuance period once the stay was lifted; and

WHEREAS, rather, DOB asserts that during the time the City agreed to stay enforcement of ZR § 42-55, it could not enforce ZR § 42-55 to prohibit the advertising sign use even though the accessory sign use was discontinued for a continuous period of two years; and

WHEREAS, DOB contends that enforcement of ZR § 42-55 was *stayed* during the periods of time covered by the above-referenced letters, but the two-year discontinuance period of ZR § 52-61 was not *tolled* and continued to run; and

WHEREAS, DOB states that, therefore, when the last stay was lifted upon the conclusion of the Clear Channel litigation in 2010, DOB could immediately enforce ZR § 42-55 and the owner could not claim to have an additional two years following the conclusion of the litigation to resume the

non-advertising sign use since the two-year discontinuance period had already elapsed; and

WHEREAS, DOB asserts that the stay merely served as a temporary windfall by shielding the signs from violations under ZR § 42-55 but it did not stop the discontinuance clock under ZR § 52-61 and that during the time the stay of enforcement was in effect, the owner of the Signs assumed the risk of losing non-conforming use status under ZR § 42-58; and

WHEREAS, DOB notes that the Appellant asserts that the City's agreements tolled ZR § 52-61 for the duration of the stay of enforcement even though ZR § 52-61 is not explicitly mentioned in the Letters; and

WHEREAS, DOB rejects the Appellant's explanation that ZR § 52-61 was not referenced in the Letters because the stays dealt solely with advertising signs that are not entitled to non-conforming status and ZR § 52-61 was irrelevant to those signs regardless of the outcome of the litigation; and

WHEREAS, finally, DOB asserts that the Appellant's tolling arguments reveal the understanding that the stays and litigation concerned the lawfulness of the Zoning Resolution regulations with respect to advertising signs, not accessory signs and since regulations governing accessory signs were not in controversy, the Appellant had no reasonable expectation that the stay in connection with the litigation would preserve a right to an accessory sign; and

The Applicability of ZR § 42-58

WHEREAS, DOB states that ZR § 42-58 confers non-conforming status to a non-advertising sign erected prior to December 13, 2000 with respect to the extent of the degree of non-conformity of such sign as of such date with the provisions of ZR §§ 42-52, 42-53, 42-54 and 42-55(a)(1) and (b) where such sign has been issued a permit on or before December 13, 2000; and

WHEREAS, DOB states that the question of whether the applications to register these Signs actually included evidence per 1 RCNY § 49-15 (Sign inventory to be submitted with registration application) that non-conforming signs existed, and the size of the signs that existed, as of the relevant date set forth in ZR § 42-58 is moot because such non-conforming uses are required to cease under ZR § 52-61 but if the Board should not consider this issue moot, it requests the opportunity to address this issue at such time; and

WHEREAS, DOB states that the issue is whether it correctly determined that the Signs are not entitled to claim non-conforming accessory use status pursuant to ZR § 42-58 because the signs were advertising signs on December 13, 2000, the relevant date for establishing a non-conforming accessory sign use; and

WHEREAS, DOB states that to the extent the Board finds that the signs became non-conforming accessory signs on December 13, 2000, the non-conforming uses were discontinued for more than two years while the signs were used to display advertising copy and the uses must terminate per ZR § 52-61 (General Provisions, Discontinuance); and

WHEREAS, DOB states that since ZR § 42-58 confers non-conforming status on a sign "with respect to the degree of non-conformity of such sign as of December 13, 2000 and where such sign shall have been issued a permit on or before such date," the provision requires that the sign exist lawfully on December 13, 2000 in accordance with a permit received prior to December 13, 2000 and with the Zoning Resolution before the new regulations governing size, illumination, projection, height and use took effect on February 27, 2001; and

WHEREAS, DOB states that only a sign that is lawfully erected prior to December 13, 2000 and existing on that date in accordance with its permit has non-conforming status as to its surface area, illumination, projection, height and use as either a non-conforming sign other than an advertising sign or a non-conforming advertising sign; and

WHEREAS, DOB states that contrary to the Appellant's claim, a sign that was used in violation of its permit and the Zoning Resolution on December 13, 2000 is not entitled to non-conforming use status under ZR § 42-58; and

WHEREAS, further, DOB asserts that ZR § 42-58's phrase, "with respect to the degree of non-conformity of such sign as of December 13, 2000," makes clear that a sign must be non-conforming on December 13, 2000 in order for the sign's non-conformity as to ZR §§ 42-52, 42-53, 52-54 and 42-55 (a) (1) and (b) to be established; and

WHEREAS, DOB states that a non-conforming use is defined in ZR § 12-10 as "any lawful use… which does not conform to any one or more of the applicable use regulations of the district in which it is located," but that a sign used contrary to permit and contrary to the Zoning Resolution on December 13, 2000 does not have any degree of non-conformity because it is not a lawful use on that date; and

WHEREAS, accordingly, DOB states that the advertising signs displayed on December 13, 2000 were not lawful and therefore were not non-conforming signs on that date as is required by ZR § 42-58; and

WHEREAS, DOB states that as of June 28, 1940, advertising signs were prohibited within 200 feet of an arterial highway (see ZR § 21-B, superseded by ZR § 42-53 and ZR § 42-55), so no advertising sign was allowed at the premises on December 13, 2000; and

WHEREAS, further, DOB states that the ZR § 12-10 definition states that an "advertising sign" "is not accessory to a use located on the zoning lot;" and

WHEREAS, DOB states that both Signs were authorized by permits issued on September 1, 1998 for non-illuminated accessory signs each having a surface area of 1,200 sq. ft. and that according to the Appellant's affidavit by Frank Nataro, the chief operating officer of the former owner of the Signs, the Signs were being used for advertising on December 13, 2000; and

WHEREAS, DOB states that the affidavit is supported by outdoor advertising display contracts, including an agreement to advertise an AT&T Wireless product in November and December 2000; and

WHEREAS, therefore, DOB states that since the Signs were used for advertising contrary to their permits and the Zoning Resolution, the signs were unlawful and not non-conforming on December 13, 2000 and any claim for non-conforming status under ZR § 42-58 must fail; and

WHEREAS, DOB asserts that the statute would not make sense if, as the Appellant contends, it grants non-conforming use status to a sign for a different use than the use authorized by the permit; and

WHEREAS, specifically, DOB states that the repeated phrase "such sign" in ZR § 42-58 makes clear that the same sign for which non-conforming use status is sought must have a permit issued prior to December 13, 2000 and that permitted sign's degree of non-conformity on December 13, 2000 establishes its non-conformity with ZR §§ 42-52, 42-53, 42-54 and 42-55 (a) (1) and (b); and

WHEREAS, DOB states that it is clear that the Appellant held permits for accessory signs issued prior to December 13, 2000; however, the Appellant concedes that on December 13, 2000 different signs used for unlawful advertising were on display; and

WHEREAS, DOB states that given that the permitted accessory signs were not the same as the ones on display on December 13, 2000, the accessory signs are not entitled to non-conforming use status; and

WHEREAS, DOB distinguishes ZR § 42-58 from ZR § 42-55(c), in that the former does not grant non-conforming use status to unlawful sign use; and

WHEREAS, DOB acknowledges that, in contrast, ZR § 42-55(c) confers non-conforming use status on a sign in existence on a specified date, regardless of whether the sign is authorized by a permit or was used consistently with its permit on such date; and

WHEREAS, DOB notes that the purpose of ZR § 42-55(c) is to allow unlawful advertising signs to be legalized, thus, the text merely requires that the sign exist as of a specified date and 1 RCNY § 49-15(d)(15) accepts, but does not require, permits as evidence that a non-conforming advertising use existed on the relevant date; under ZR § 42-55(c), a permit for an accessory sign may be submitted as evidence of a non-conforming advertising sign on the relevant date provided sufficient proof demonstrates that the sign was used, albeit contrary to the accessory sign permit, for advertising; and

WHEREAS, DOB asserts that there would be no reason for ZR § 42-58 to require a permit issued for a sign erected prior to December 13, 2000 if the sign could have been used in violation of its permit on that date and still be entitled to lawful non-conforming use status; and

WHEREAS, DOB asserts that since ZR § 42-58 requires an accessory sign to be lawfully non-conforming on December 13, 2000 to obtain the benefits of being treated as a non-conforming accessory sign pursuant to ZR § 52-82 with respect to ZR §§ 42-52, 42-53, 52-54 and 42-55 (a) (1) and (b), there is no support in the text for Appellant's argument that accessory or non-commercial copy was not required to be posted on the signs until March 20, 2010 when Local Law 14's New York City Construction Code amendments were enacted; and

WHEREAS, DOB states that any sign that was used for advertising on December 13, 2000 was unlawful and cannot meet the definition of a "non-conforming" use and that there is no need for the statute to provide a date by which to post accessory or non-commercial copy because the right to do so is already determined by the degree of non-conformance of the sign on December 13, 2000 and the two-year discontinuance period of ZR § 52-61; and

WHEREAS, DOB states that the Zoning Resolution does not grant a right to be non-conforming as to size, illumination, projection, height and use for a sign used contrary to its permit on December 13, 2000; rather, the right to be non-conforming pursuant to ZR § 42-58 is determined by the sign's lawful permitted use on December 13, 2000; and

WHEREAS, DOB states that its position that ZR § 42-58 confers non-conforming use status on a sign used on December 13, 2000 consistent with the permit and with the Zoning Resolution does not contradict the City's prior statements; and

WHEREAS, DOB states that the Appellant references certain statements made in the litigation Clear Channel Outdoor, Inc. v. City of New York, 608 F. Supp. 2d 477 [SDNY 2009], aff'd 594 F3d 94, which do not support the claim that a sign is entitled to non-conforming use status where the sign existing on December 13, 2000 was being unlawfully used contrary to its permit and the Zoning Resolution; and

WHEREAS, specifically, DOB asserts that the City's statements referenced in the Appellant's letter merely explain that a sign that is lawfully established as a non-conforming accessory sign loses its right to return to its non-conforming use after such sign is used as an advertising sign for more than two years and that a sign that was never lawfully non-conforming has no non-conforming use to reactivate; and

WHEREAS, DOB states that to the extent the Signs were non-conforming accessory signs, ZR § 52-61 imposes a two-year limitation on a discontinuance of the non-conforming sign uses notwithstanding the City's agreements to stay enforcement of ZR § 42-55 against all signs during litigation proceedings challenging ZR § 42-55 and ZR § 36-662 as unconstitutional restrictions on commercial speech; and

CONCLUSION

WHEREAS, the Board agrees with DOB that there is no basis in the Letters, the Zoning Resolution, or the Administrative Code to allow for the Signs to remain as accessory or non-commercial signs at their existing parameters of 1,200 sq. ft.; and

WHEREAS, the Board's primary points are that (1) the Appellant has not provided any support for its assertion that the Letters staying enforcement of ZR § 42-55 also delayed the starting point for the two-year discontinuance provision at ZR § 52-61 and (2) the Board agrees with DOB that legal

establishment of an accessory or non-commercial sign use on December 13, 2000 is a requirement for ZR § 42-58 to allow for the 1,200 sq. ft. signs to remain; and

WHEREAS, the Board finds that the Appellant fails on both of its arguments and DOB has basis to reject the Signs for either discontinuing the accessory use for a period of greater than two years or for failing to be lawfully established on December 13, 2000; and

WHEREAS, however, if the Board considers the Letters, the Board is unconvinced that the stay was to be read broadly due to the precision of the defined term "Regulations," regulations which were not to be enforced, which establishes a finite universe to be temporarily suspended that does not include ZR § 52-61 or the ZR § 12-10 definition of non-conforming use; and

WHEREAS, the Board is not compelled by the Appellant's arguments that ZR § 52-61 was left out of the Letters for a purpose or that silence on it suggests it was intended not to be included; and

WHEREAS, the Board notes that the citywide sign enforcement and associated litigation involved many different situations, kinds of signs, and zoning districts, and among all the relevant and applicable provisions of the Zoning Resolution, the Letters only identified ZR §§ 42-55 and 36-622 as not being enforced; and

WHEREAS, the Board finds that the identification of just two sections necessarily limited what could have been a much broader and uncertain landscape given the multitude of signs and other applicable provisions, which may or may not have seemed relevant at the time the Letters were drafted; and

WHEREAS, the Board recognizes that the purpose of a stay, like that set forth in the Letters, preserves the status quo; it does not allow for the commonly understood and enforced non-conforming use provisions of the Zoning Resolution to be rewritten; and

WHEREAS, accordingly, the Board finds that there is not any basis for the two-year discontinuation period to begin on March 22, 2010, rather than the February 27, 2001 date of the text amendment; and

WHEREAS, putting aside the question of legal establishment, the Board concludes that because there was not any implicit or explicit directive to toll the two-year discontinuance period, and the ability to install accessory or non-commercial signs with surface area in excess of 500 sq. ft. was extinguished on February 27, 2003, two years subsequent to the date of the text change; and

WHEREAS, the Board agrees with DOB that the Appellant made the choice to continue the advertising use through March 22, 2010 rather than endeavor to resume its now non-conforming accessory or non-commercial use in 2001, 2002, or 2003; and

WHEREAS, although the Board has not read or considered the terms of the parties' stipulation about the scope of the appeal and acknowledges that the Appellant has contested that DOB's arguments about the ZR § 42-58 requirements are beyond the scope, it concludes that because the Appellant and DOB both pursued the discussion of ZR § 42-58 and legal establishment, that it will also address the issue; and

WHEREAS, further, the Board finds that it is not possible to consider the requirements of ZR § 52-61 in a vacuum without incorporating the provisions of ZR § 42-58 and the ZR § 12-10 definition of non-conforming use; and

WHEREAS, first, the Board finds that the Appellant's reliance on (and declaration that) the Signs have existed without interruption as advertising signs from prior to December 13, 2000 to approximately March 22, 2010 makes any consideration under ZR § 52-61 a nonstarter because it fails the ZR § 12-10 requirement that the non-conforming use be lawfully established; and

WHEREAS, the Board finds that ZR § 42-58 must be read to require that the non-conforming use be *lawfully* established by December 13, 2000, and that a lawful use must comply with bulk and use parameters, which could have included a surface area of 1,200 sq. ft. but was limited to accessory or non-commercial use; and

WHEREAS, the Board notes that there is not any dispute that on December 13, 2000, the use was not legal; and

WHEREAS, the Board agrees with DOB that ZR § 42-58, which relies on the defined term "non-conforming use," does not include an exception to the ZR § 12-10 requirement for lawful establishment; and

WHEREAS, the Board does not find that ZR § 42-58 contemplates conferring non-conforming rights that were never established; and

WHEREAS, the Board finds that certain of the Appellant's arguments including those related to the continuity of the advertising use without any two-year interruption are misplaced and confuse the issue about what non-conforming use ZR § 42-58 protects; and

WHEREAS, the Board notes that the Appellant chose to continue the advertising signs, which were safe from enforcement during the stays, at the detriment of preserving the right to an accessory or non-commercial sign under pre-February 27, 2001 parameters; and

WHEREAS, the Board agrees with DOB that ZR § 42-58, unlike ZR § 42-55, relies on the lawful establishment of the non-conforming use; and

WHEREAS, further, the Board notes that advertising signs had been illegal at the site within 200 feet of the arterial since 1940, whereas other sign provisions had more contemporary rezoning dates; and

WHEREAS, the Board notes that ZR § 52-61 does not address the notion of a time period to revert to a secondary non-conforming use (re: an accessory or non-commercial sign with dimensions in excess of zoning) and there is nothing about converting from one never legal use to another which was legal at the time of permitting but only installed for a brief period; and

WHEREAS, the Board finds that the Appellant distorts the non-conforming use provisions by asserting that advertising signs preserve the right of accessory use signs at a

certain size and other physical parameters as there is not any connection between the non-conformance of the advertising signs which relate to content and the physical parameters of signs with restricted (accessory/non-commercial) content; and

WHEREAS, accordingly the Board finds that the deciding factor is the Signs' content as accessory signs are permitted even today, at smaller dimension; and

WHEREAS, finally, the Board notes that the Appellant has enjoyed the benefit of the Signs, which were never legal and were installed contrary to permit, for more than ten years; and

WHEREAS, lastly, the Board is not persuaded by the Appellant's invocation of the equitable estoppel doctrine or reversal of position; and

WHEREAS, the Board distinguishes the Appellant's case law on the matter of equitable estoppel on the primary basis that in DeMasco the City actually maintained a business relationship with the junkyard on which the junkyard relied as an indication that its rights were preserved and in Inner Force, the City made a specific procedural decision on which the petitioner relied; and

WHEREAS, the Board does not find that DOB's lack of enforcement or participation in the Letters has any relationship to the cases; and

WHEREAS, the Board also does not find that DOB has reversed its position, as the Appellant suggests; and

WHEREAS, in fact, the Board finds that the Appellant's statements about DOB's position actually reflect that DOB has maintained its position about requiring lawful establishment and that nothing was introduced into the record to support a claim that a conversion back to accessory/non-commercial use within two years of the end of the stay had ever been contemplated; and

WHEREAS, the Board finds that the absence of stating a requirement to conform to certain zoning requirements does not lead to a change in position once those requirements are articulated; and

WHEREAS, accordingly, the Board finds that both of the Appellant's arguments fail and DOB properly rejected the Signs from registration.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determinations of the Department of Buildings, dated April 4, 2012, is hereby denied.

Adopted by the Board of Standards and Appeals, February 26, 2013.

89-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 460 Thornycroft Avenue, North of Oakland Street between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #3SI

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

92-07-A thru 94-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 472/476/480 Thornycroft Avenue, North of Oakland Street, between Winchester Avenue, and Pacific Avenue, south of Saint Albans Place. Block 5238, Lots 13, 16, 17, Borough of Staten Island.

COMMUNITY BOARD #3SI

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

95-07-A

APPLICANT – Pleasant Plains Holding LLC, for Pleasant Plains Holding LLC, owner.

SUBJECT – Application April 19, 2007 – Proposal to build three two-family and one one-family homes located within the bed of a mapped street (Thorneycroft Avenue), contrary to Section 35 of the General City Law. R3-2 Zoning district.

PREMISES AFFECTED – 281 Oakland Street, between Winchester Avenue and Pacific Avenue, south of Saint Albans Place, Block 5238, Lot 2, Borough of Staten Island.

COMMUNITY BOARD #3SI

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

110-10-BZY

APPLICANT – Sheldon Lobel, P.C., for Castle Hill Equities LLC c/o Blake Partners LLC, owner.

SUBJECT – Application November 19, 2012 – Extension of time to complete construction (§11-332) for an additional two years for a minor development, which expired on October 19, 2012. R5A zoning district.

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

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

201-10-BZY
APPLICANT – Kramer Levin Naftalis & Frankel, for 180 Orchard LLC., owner.
SUBJECT – Application January 18, 2013 – Extension of time to complete construction (§11-332) for an additional two years for a minor development, which will expire on March 15, 2013. C4-4A zoning district.
PREMISES AFFECTED – 180 Orchard Street, Orchard Street to Ludlow Street, Block 412, Lot 5, Borough of Manhattan.
COMMUNITY BOARD #3M
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 March 19, 2013, at 10 A.M., for decision, hearing closed.

103-12-A
APPLICANT – Sheldon Lobel, P.C., for 74-47 Adelphi Realty LLC, owner.
SUBJECT – Application April 12, 2012 – Appeal seeking a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.
PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, south of Park Avenue with frontage along Adelphi Street, block 2044, Lot 52, 53, Borough of Brooklyn.
COMMUNITY BOARD #2BK
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

288-12-A thru 290-12-A
APPLICANT – Rothkrug Rothkrug & Spector LLP, for Orin, Inc., owner.
SUBJECT – Application October 9, 2012 – Proposed construction of three two-family homes not fronting on a legally mapped street, contrary to General City Law Section 36. R3X (SRD) zoning district.
PREMISES AFFECTED – 319, 323, 327 Ramona Avenue, northwest corner of intersection of Ramona Avenue and Huguenot Avenue, Block 6843, Lot 2, 3, 4, Borough of Staten Island.
COMMUNITY BOARD #3SI
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

304-12-A
APPLICANT –Eric Palatnik, P.C., for Success Team Development, LLC, owner.
SUBJECT – Application October 26, 2012 – Proposed seven-story residential development located within mapped but inbuilt portion of Ash Avenue, contrary to General City Law Section 35. R6A zoning district.
PREMISES AFFECTED – 42-32 147th Street, west side, south of the intersection of Sanford Avenue and 147th Street, Block 5374, Lot 59, Borough of Queens.
COMMUNITY BOARD #7Q
ACTION OF THE BOARD – Laid over to April 9, 2013, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 26, 2013
1:30 P.M.

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

ZONING CALENDAR

157-11-BZ
CEQR #12-BSA-029M
APPLICANT – Sheldon Lobel, P.C., for 1968 2nd Avenue Realty LLC., owner.
SUBJECT – Application October 5, 2011 – Variance (§72-21) to allow for the legalization of an existing supermarket, contrary to rear yard (§33-261) and loading berth (§36-683) requirements. C1-5/R8A and R7A zoning districts.
PREMISES AFFECTED – 1968 Second Avenue, northeast corner of the intersection of Second Avenue and 101st Street, Block 1673, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #11M
ACTION OF THE BOARD – Application withdrawn.
THE VOTE TO WITHDRAW –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
Adopted by the Board of Standards and Appeals, February 26, 2013.

61-12-BZ
CEQR #12-BSA-093M
APPLICANT – Sheldon Lobel, P.C., for Martha Schwartz, owner; Altamarea Group, lessee.
SUBJECT – Application March 15, 2012 – Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). M1-5B zoning district.
PREMISES AFFECTED – 216 Lafayette Street, between Spring Street and Broome Street, 25' of frontage along Lafayette Street, Block 482, Lot 28, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 15, 2012, acting on Department of Buildings Application No. 120960291, reads in pertinent part:

> Proposed work to create a new use –UG#6 below the floor level of second floor level in Zoning M1-5B is not permitted as per ZR 42-14/2b. Provide approval from BSA as per ZR 42-31; and

WHEREAS, this is an application under ZR § 72-21, to permit within an M1-5B zoning district, the conversion of a portion of the first floor of an existing two-story building to a Use Group 6 use (including eating and drinking establishment), contrary to ZR § 42-14; and

WHEREAS, a public hearing was held on this application on August 7, 2012, after due notice by publication in the *City Record*, with continued hearings on September 25, 2012, November 20, 2012, and January 29, 2013, and then to decision on February 26, 2013; and

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

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

WHEREAS, New York State Assembly Member Deborah J. Glick provided testimony in opposition to this application; and

WHEREAS, the owners of the adjacent building at 57 Crosby Street and the building at 55 Crosby Street, represented by counsel, provided written and oral testimony in opposition to the application; and

WHEREAS, a representative of the Friends of Petrosino Square, and other community members, also provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are known as the "Opposition"; and

WHEREAS, the Opposition raises the following primary concerns: (1) the intended size and scale of the combined restaurant is out of context with the surrounding area and would have a negative impact on the surrounding neighborhood; (2) the proposed expansion is not in the public interest; (3) the proposal will have detrimental impacts on traffic; (4) the proposal will exacerbate the negative impacts of the existing restaurant's ventilation system on the adjacent buildings and worsen the existing rodent problem near the site; (5) the claimed hardships are self-created due to the existence of the Joint Living-Work Quarters for Artists ("JLWQA") use in the rear portion of the building; and (6) a special permit from the City Planning Commission, pursuant to ZR § 74-781, rather than a variance, is the appropriate form of relief; and

WHEREAS, the subject site is located on the west side of Lafayette Street, between Broome Street and Spring Street, within an M1-5B zoning district; and

WHEREAS, the site has 25.59 feet of frontage on Lafayette Street, a depth of 100 feet, and a lot area of approximately 2,529 sq. ft.; and

WHEREAS, the site is occupied by a two-story building, with a total floor area of 4,344 sq. ft. (1.72 FAR); and

WHEREAS, the applicant states that the building is divided midway through the cellar, first, and second floors by a solid concrete masonry wall that divides the building into two portions (front and rear); and

WHEREAS, the applicant represents that the front portion of the building is currently vacant, though the front portion of the ground floor has been used for Use Group 6 retail uses for the past 15 years; the rear portion of the building is occupied by JLWQA use; and

WHEREAS, the applicant notes that in 1999 an easement was granted by the owner of Block 482, Lot 9, the adjacent property to the rear of the site, to permit ingress and egress by JLWQA tenants from the rear portion of the site to Crosby Street; and

WHEREAS, the applicant currently operates the restaurant located at 218 Lafayette Street (Block 482, Lot 27) on the first floor of the adjacent two-story building, and proposes to expand the existing restaurant into the cellar, ground floor, and second floor of the front portion of the subject building; and

WHEREAS, specifically, the applicant proposes to convert a total of 2,286 sq. ft. (0.53 FAR) of floor area of the subject building (1,265 sq. ft. on the first floor and 1,021 sq. ft. on the second floor), and an additional 985 sq. ft. of floor space at the cellar to a Use Group 6 eating and drinking establishment in conjunction with the existing restaurant at the adjacent 218 Lafayette Street; and

WHEREAS, the applicant notes that the second floor of the building is permitted to convert to restaurant use as-of-right, and therefore the proposed variance is only for the approximately 2,250 sq. ft. of floor space located at the front portion of the first floor and cellar of the subject building; and

WHEREAS, the rear portion of the cellar, first floor,

and second floor will remain as JLWQA space; and

WHEREAS, because the proposed Use Group 6 use is not permitted below the second floor in the subject M1-5B zoning district, the requested waiver is necessary; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the underbuilt nature of the existing building; (2) the obsolescence of the existing building for manufacturing use; and (3) the effective shallowness of the lot; and

WHEREAS, as to the underbuilt nature of the existing building, the applicant states that the subject building is one of the smallest buildings in the surrounding area; and

WHEREAS, the applicant submitted an area study of the blocks within an 800-ft. radius of the site which reflects that the subject building has the ninth smallest floor area and the eighth smallest FAR of the more than 130 lots within the study area; and

WHEREAS, the applicant represents that this small building condition presents difficulties to the owner, as a lack of available space limits the ability to generate income for the site, and the building is dwarfed by much larger buildings in the immediate area; and

WHEREAS, the area study submitted by the applicant further reflects that the subject building is also one of only 13 properties within the 800-ft. radius area improved with a building of two stories or less, and the applicant states that this condition creates practical difficulties for the owner as there are only two floors from which to generate income; and

WHEREAS, the applicant represents that the unique small floor area, underbuilt FAR and two-story condition at the building do not support the use of the ground floor for a conforming use, resulting in difficulties in generating a reasonable return absent the requested variance; and

WHEREAS, the applicant states that the presence of JLWQA space in the subject building creates an additional hardship in that the existing two-story building cannot be enlarged despite the permitted maximum 5.0 FAR because, pursuant to ZR § 43-17 (Special Provisions for Joint Living-Work Quarters for Artists in M1-5A and M1-5B Districts), "no *building* containing *joint living-work quarters for artists* shall be *enlarged*"; and

WHEREAS, the applicant states that of the 12 other small buildings in the area study, the subject building is the only site that contains JLWQA use and is therefore unable to enlarge; and

WHEREAS, the applicant further states that the building is obsolete for manufacturing uses due to the limited space available to install any equipment to accommodate such conforming use; and

WHEREAS, specifically, the applicant states that any manufacturing or wholesale tenant would have operational problems including (1) no loading docks; (2) an extremely small floorplate and (3) the lack of an elevator to move product between the ground and cellar floors; and

WHEREAS, the applicant represents that these factors, among others, have contributed to the historic inability to maintain a continued M1-5B conforming use on the ground floor of the building; and

WHEREAS, the applicant represents that the site suffers from an additional hardship due to the effective shallowness and undersized nature of the lot; and

WHEREAS, specifically, the applicant states that although the subject lot is 100 feet deep, the existing building is divided midway on the cellar, first, and second floors by a demising wall that effectively cuts the building in half; and

WHEREAS, the applicant further states that this feature results in effective lot dimensions for the non-JLWQA front portion of approximately 50 feet deep by 25 feet wide, or 1,250 sq. ft., and this effective floorplate of 50 feet deep makes the site one of the shallowest in the surrounding area; and

WHEREAS, the applicant represents that the shallow floorplate, which is part of a condition dating back 30 years in a building that is close to 100 years old, is a unique condition that gives rise to significant difficulties in using the space for an as-of-right use; and

WHEREAS, the Board disagrees with the applicant's arguments regarding the effective shallowness of the lot, as it considers the demising wall that divides the building in half to be a self-created hardship for which the applicant is not entitled to relief; and

WHEREAS, however, the Board finds that the other unique physical conditions cited by the applicant, specifically the underbuilt nature of the existing building and its obsolescence for manufacturing use, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, as to the financial feasibility of the site, the applicant submitted a feasibility study analyzing the following scenarios: (1) an as-of-right scenario with ground floor warehouse/storage use; (2) an as-of-right scenario with ground floor business service use; (3) an as-of-right scenario with JLWQA use; and (4) the proposed scenario; and

WHEREAS, the applicant asserts that the three as of right scenarios would result in a negative rate of return and that the proposed use is the minimum necessary to achieve a reasonable return; and

WHEREAS, the Board directed the applicant to provide an analysis of a "stand-alone" restaurant at the site, without reference to the existing restaurant at 218 Lafayette Street, as well as an analysis of retail use of the site; and

WHEREAS, in response, the applicant provided a letter from its financial analyst stating that use of the building for a stand-alone restaurant or retail as opposed to an expansion of the existing restaurant at 218 Lafayette Street should not affect the financial feasibility of the project; thus, a stand-alone restaurant or retail use would realize a reasonable return; and

WHEREAS, at the Board's direction, the applicant also provided analyses of alternative variance scenarios, including:

(1) an enlarged five-story building with Use Group 7 use on the ground floor and Use Group 6 use above, which would be permitted as of right except for the need to waive ZR § 43-17 to permit enlargement of a JLWQA building; and (2) an enlarged seven-story building containing solely Use Group 17 JLWQA use, which would require a waiver of ZR § 43-17 to permit enlargement of a JLWQA building and ZR § 42-14 to permit new JLWQA use; and

WHEREAS, the applicant asserts that neither of the alternative variance scenarios would realize a reasonable return; and

WHEREAS, the Opposition submitted a letter from a real estate broker stating that a lesser variance for conventional retail use in the subject building would result in a rental value of $90 per sq. ft., which would provide a reasonable return; and

WHEREAS, in response, the applicant submitted a letter from its financial analyst which states that the Opposition's estimate that conventional retail use could garner a rental value of $90 per sq. ft. is unsupported, but that even if that $90 per sq. ft. price for conventional retail space claimed by the Opposition is substituted for the $105 per sq. ft. rent currently assumed by the applicant's analysis, then the project would not be economically feasible, as the capitalized value would be eight percent less than the project development cost; and

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

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

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity are used for Use Group 6 purposes on the first floor with residential or loft space above; and

WHEREAS, the applicant states that the immediately surrounding neighborhood maintains a distinctly commercial character, and the ground floors of all but one of the lots on the blockfront on which the site is located, Lafayette Street between Spring Street and Broome Street, are occupied by Use Group 6 uses; and

WHEREAS, the applicant further states that this portion of Lafayette Street is particularly characterized by ground floor restaurant use; there are six restaurants, together with a large bank, a large furniture store, and a lingerie boutique; and

WHEREAS, the applicant notes that Use Group 6 use, including an eating and drinking establishment, is permitted as of right on the building's second floor; and

WHEREAS, further, the applicant notes that the existing two-story building will remain and that it will not be enlarged and no bulk waivers are sought; and

WHEREAS, the Opposition argues that the proposed expansion of the restaurant at 218 Lafayette Street to the subject building would create a large restaurant that does not fit within context of community, and that the smaller restaurants which currently exist in the neighborhood do not result in the traffic, safety, noise, and congestion issues that larger restaurants will inevitably bring to the area, and the applicant has not presented any adequate plan for handling the increase in traffic, congestion, and noise that a larger restaurant would bring to the community; and

WHEREAS, in response, the applicant states that the character of the surrounding area is primarily Use Group 6 on the ground floor, and the character of this particular blockfront is primarily restaurant use, and while many of the eating and drinking establishments in the area are smaller, the proposed restaurant here will by no means be the "mega" restaurant alleged by the Opposition, but will instead be comparable in square footage and/or number of patrons to other neighborhood restaurants, including Balthazar and Spring Natural; and

WHEREAS, in light of the concerns raised by the Opposition regarding the expansion of the existing restaurant at 218 Lafayette Street to the subject building, and the fact that the applicant's financial analysis indicates that a smaller, stand-alone restaurant would realize a reasonable return on the site, the Board finds it appropriate to limit any Use Group 6 eating and drinking establishment on the site to the confines of the subject building and not permit any connection to or expansion of the existing restaurant at 218 Lafayette Street and the subject site; and

WHEREAS, the Opposition asserts that the existing restaurant at 218 Lafayette Street emits foul odors that negatively impact the surrounding neighbors and has created a rodent problem at the rear of the restaurant, and that expanding the restaurant use to the subject building would exacerbate these conditions; and

WHEREAS, in response, the applicant submitted a letter from the project architect stating that the ventilation system at the existing restaurant has recently been upgraded and now exhaust toward Lafayette Street in an effort to reduce any impact on the rear neighbors and the proposed ventilation at the subject building would be located toward the front half of the building; and

WHEREAS, as to the alleged rodent problem, the applicant states to the extent such a problem exists it is not related to the existing restaurant at 218 Lafayette Street, which does not have access to the rear of the building, does not store garbage receptacles at the rear of the building, received an "A" grade from the Department of Health, and has never been issued a violation for anything involving vermin; and

WHEREAS, in response to the concerns raised by the Opposition that the proposal would have a detrimental impact on traffic in the surrounding area, the applicant submitted a letter from an environmental consultant noting that the vast majority of the patrons of the existing restaurant arrive by foot or mass transit, and not by car, and the applicant notes that an as-of-right commercial or manufacturing use would generate delivery and/or patron traffic that would similarly affect the

surrounding neighborhood; and

WHEREAS, as to concerns regarding pedestrian traffic, the applicant states that the photographs submitted by the Opposition showing busy sidewalks in the Petrosino Square area all show establishments with sidewalk cafes and outdoor seating, which the existing restaurant does not currently maintain and is not proposed at the site, and the applicant notes that none of the submitted photographs are of the outside of the existing restaurant; and

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

WHEREAS, the Opposition asserts that the alleged hardship is self-created due to the existence of the JLWQA use in the rear portion of the building; and

WHEREAS, in response, the applicant states that the unnecessary hardship encountered by a strict application of the zoning regulations to the site was not caused by the owner of the site nor a predecessor in interest, but is inherent in the (1) underdeveloped nature of the building, (2) existing building conditions, including (a) small floorplates, (b) the lack of a loading dock, and (c) the lack of elevators, and (3) use regulations which prohibit enlargement of the Building (with the exception of mezzanines within JLWQA units); and

WHEREAS, as noted above, the Board finds that the hardship alleged by the applicant with regard to the demising wall that creates a shallow lot condition in the building is a self-created hardship; however, the Board finds the remaining hardships cited by the applicant were not created by the owner or a predecessor in title, but are due to the unique conditions of the site; and

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

WHEREAS, the applicant asserts that the proposal for Use Group 6 use represents the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, the Opposition asserts that restricted Use Group 6 use, which would exclude an eating and drinking establishment would represent a lesser variance yet still be feasible; and

WHEREAS, as noted above, the Board finds it appropriate to limit any Use Group 6 eating and drinking establishment use of the site to the subject building and not permit any connection to the existing eating and drinking establishment at 218 Lafayette Street; and

WHEREAS, further, the Board notes that in cases where it restricted all eating and drinking use, the buildings were substantially larger and more fully developed and primarily with new residential use that it deemed to provide the required economic relief; the Board finds such cases to be distinguishable and directs its inquiry to the specific conditions of the subject site; and

WHEREAS, accordingly, the Board finds that the proposal, for the re-use of an existing building where the proposed use is permitted as of right on the second floor, without any enlargement of the building envelope, is the minimum necessary to afford relief, based on the analysis of the site and the economic feasibility; and

WHEREAS, the Opposition raised a supplemental argument that the applicant is required to seek a special permit from the City Planning Commission in lieu of a variance; and

WHEREAS, the Board finds that the variance process, with its five required findings, actually reflects the breadth of analysis that the Opposition seeks and that the Opposition's arguments that the special permit should be sought first are actually incompatible with the arguments that they request that the highest threshold be set for granting relief to allow the proposed Use Group 6 use throughout the building; 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 Section 617.4 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 12BSA093M, dated March 16, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, to permit, within an M1-5B zoning district, the conversion of a portion of the first floor and cellar of an existing two-story building to a Use Group 6 use (including eating and drinking establishment); *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 February 25, 2013"– seven (7) sheets; and *on*

further condition:

THAT the term of this grant will expire on February 26, 2023;

THAT the use will be limited to Use Group 6 on the ground floor and cellar levels (with 1,265 sq. ft. of Use Group 6 floor area at the first floor and 985 sq. ft. of Use Group 6 floor space at the cellar), as shown in the BSA-approved plans;

THAT if the use of the ground floor and cellar is as a Use Group 6 eating and drinking establishment, the following conditions will apply: (1) the maximum seating capacity, including any accessory bar seating, will be limited to a maximum of 45 patrons on the first floor and 40 patrons on the second floor; (2) the closing time will be no later than 11:00 p.m., Sunday through Thursday, and 12:00 a.m., Friday and Saturday; (3) there will be no live music or DJs; (4) there will be no outdoor space for eating and drinking; and (5) there will be no interior connection between the eating and drinking establishment and the adjacent buildings, except for emergency ingress/egress in the cellar as reflected on the BSA-approved plans;

THAT the operation of the site will be in compliance with Noise Code regulations;

THAT any rooftop mechanical and ventilation equipment related to the Use Group 6 uses will be directed away from adjoining residential buildings;

THAT the above conditions will be noted on the Certificate of Occupancy;

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

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

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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, February 26, 2013.

75-12-BZ
CEQR #12-BSA-106M

APPLICANT – Sheldon Lobel, P.C., for 547 Broadway Realty, Inc. c/o Andrews Building Corporation, owner.

SUBJECT – Application March 30, 2012 – Variance (§72-21) to permit the legalization of retail use (UG 6) on the first floor and expand the use into the cellar and sub-cellar, contrary to use regulations (§42-14 (D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 547 Broadway, between Prince Street and Spring Street, Block 498, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 29, 2012, acting on Department of Buildings Application No. 120991150, reads in pertinent part:

> Proposed works to create a new use – UG#6 below the floor level of second floor level in Zoning M1-5B is not permitted as per ZR 42-12/2b. Provide approval from BSA as per ZR 42-12; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the legalization of the first floor of an existing six-story building to a commercial retail use (UG 6) with expansion into the cellar and accessory retail use in the subcellar, contrary to ZR § 42-14(d)(2)(b); and

WHEREAS, a public hearing was held on this application on December 4, 2012, after due notice by publication in the *City Record*, with a continued hearing on January 15, 2013, and then to decision on February 26, 2013; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application, with the condition that an eating and drinking establishment not be permitted; and

WHEREAS, the subject site is a through lot with frontage on Broadway and Mercer Street, between Prince Street and Spring Street, in an M1-5B zoning district within the SoHo-Cast Iron Historic District; and

WHEREAS, the site has 25 feet of frontage on Broadway and Mercer Street, a depth of 200.25 feet, and a lot area of 5,006.25 sq. ft.; and

WHEREAS, the site is currently occupied by a 26,058

sq. ft. (5.2 FAR) building with a five-story portion on Mercer Street and a six-story portion on Broadway, with ground floor retail use, commercial use on the second floor, and Joint Live Work Quarters for Artists ("JLWQA") units on the third through sixth floors; and

WHEREAS, on April 12, 1988, under BSA Cal. No. 1081-85-ALC, the Board granted an authorization pursuant to ZR § 72-30 to exclude floor area from the relocation incentive contribution relating to the building's change of use from commercial/manufacturing to JLWQA use on the third through sixth floors; and

WHEREAS, the applicant now seeks to legalize the 4,832 sq. ft. of retail floor area on the first floor, and to expand the retail use to 10,266 sq. ft. of floor space at the cellar and sub-cellar; and

WHEREAS, because Use Group 6 retail is not permitted below the second floor in the subject M1-5B zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the narrowness of the lot; and (2) the obsolescence of the existing building for manufacturing use; and

WHEREAS, as to the narrow width, the applicant states that the building has a width of 25'-0", which results in narrow floor plates that are ill-suited for manufacturing use or other conforming uses; and

WHEREAS, further, the applicant represents that the building has a light well which is along one lot line and measures 5'-10" by 29'-10", reducing the effective interior width of the building to 15'-5" at its narrowest point, which exacerbates the hardship by further limiting the floor plates for a conforming use; and

WHEREAS, the applicant represents that the configuration on the subject site is unique in the surrounding area; and

WHEREAS, the applicant provided a study which indicated that out of 500 lots on blocks zoned M1-5B or M1-5A within 1,000 feet of the site, there are only 182 lots that are 25'-0" or less in width; of these 182 lots, 75 lots have an effective width of less than 25'-0", and only five of these lots have conforming uses on the ground floor; and

WHEREAS, further, of these 75 lots, only six contain buildings with light wells other than the subject site; and only one building containing a light well is occupied by a conforming use (JLWQA) on the ground floor; and

WHEREAS, the applicant concludes that the lack of conforming uses occupying buildings with narrow widths reinforces the fact that such narrow widths are unable to reasonably accommodate conforming uses; and

WHEREAS, as to the obsolescence of the building, the applicant identifies the following conditions: (a) the absence of a loading dock and the inability to install a loading dock, (b) limited street access at the site, (c) severely limited space to install any equipment to accommodate light manufacturing uses and (d) the lack of a working freight elevator; and

WHEREAS, the applicant states that other narrow properties within 400 feet of the site may have similar characteristics, however, none are occupied by a conforming use; and

WHEREAS, the applicant states that, further, the ground floor tenant is severely limited in its access to the building since the upper floor JLWQA tenants have street access through both Broadway and Mercer Street; and

WHEREAS, based on the above arguments and analyses, the Board agrees that the unique physical conditions cited above, when considered in the aggregate, create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing the following scenarios: (1) conforming use at the first floor and cellar; and (2) the proposed ground floor and cellar retail use; and

WHEREAS, the study concluded that the conforming scenario would not result in a reasonable return, but that the proposal would realize a reasonable return; and

WHEREAS, the applicant represents that the first floor and the cellar were listed with a real estate broker for a period of 120 days, however the broker was unable to secure a tenant to occupy the space for light manufacturing use; and

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

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

WHEREAS, the applicant notes that many of the buildings in the immediate vicinity contain ground floor retail uses with residential space above, particularly along both Broadway, a major retail street, and along Mercer Street between Prince and Spring Streets; and

WHEREAS, further, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, approving the proposal on February 13, 2013; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant has agreed to not allow any eating or drinking establishments to occupy the ground floor space; and

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

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

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a

reasonable and productive use of the site; and

WHEREAS, the applicant notes that there is no proposed increase in the bulk of the building; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford 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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Sections 617.6(h) and 617.2(h) of 6 NYCRR; 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. 12BSA106M, dated October 3, 2012; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the legalization of the first floor of an existing building to a commercial retail use (UG 6) with expansion into the cellar and accessory retail use in the sub-cellar, contrary to ZR § 42-14(d)(2)(b); *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 February 7, 2013"– seven (7) sheets; and *on further condition*:

THAT no eating and drinking establishment will be permitted on the site;

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

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, February 26, 2013.

159-12-BZ
CEQR #12-BSA-138Q

APPLICANT – Eric Palatnik, P.C., for Joseph L. Musso, owner.

SUBJECT – Application May 22, 2012 – Variance (§72-21) to allow for the enlargement of a Use Group 4 medical office building, contrary to rear yard requirements (§24-36). R3-2 zoning district.

PREMISES AFFECTED – 94-07 156th Avenue, between Cross Bay Boulevard and Killarney Street, Block 11588, Lot 67, 69, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 4, 2012, acting on Department of Buildings Application No. 420294568, reads in pertinent part:

Second floor extension in rear yard is contrary to ZR 24-36; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the proposed extension of the existing second floor of the subject building, which does not comply with zoning regulations for the minimum required rear yard, contrary to ZR § 24-36; and

WHEREAS, a public hearing was held on this application on November 20, 2012, after due notice by publication in the *City Record*, with a continued hearing on January 29, 2013, and then to decision on February 26, 2013; and

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

WHEREAS, Community Board 10, Queens, recommends approval of this application; and

WHEREAS, New York State Senator Joseph P. Addabbo, Jr., and New York State Assembly Member Phillip Goldfeder provided written testimony in support of this application; and

WHEREAS, the subject site is located on the north side of 156th Avenue, between Killarney Street and Cross Bay

Boulevard, within an R3-2 zoning district; and

WHEREAS, the subject lot has approximately 51.5 feet of frontage on 156th Avenue, a depth ranging from 96 feet to 108 feet, and a total lot area of 5,215 sq. ft.; and

WHEREAS, the site is occupied by a two-story medical office building (Use Group 4) with a floor area of 3,881 sq. ft. (0.75 FAR); and

WHEREAS, the applicant states that the subject building was originally constructed as a two-story multi-family home, and in 2006 an as-of-right addition was constructed at the rear of the building, including the construction of a new foundation system for the rear enlargement (the "2006 Enlargement"), and the building was converted to medical office use; and

WHEREAS, the applicant notes that the first floor of the building is constructed to the rear lot line, but the second floor of the building is currently situated at the front of the building and does not extend to the rear lot line; and

WHEREAS, the applicant now proposes to enlarge the building by extending the second story to the rear lot line, directly above the existing first floor; and

WHEREAS, the proposed building will have the following complying parameters: 4,948 sq. ft. of floor area (0.95 FAR); a lot coverage of 47 percent; a total height of 19'-8"; a side yard with a width of 8'-0" along the eastern lot line; a side yard with a width of 7'-6" along the western lot line; and a front yard with a depth of approximately 26'-0"; and

WHEREAS, however, the applicant proposes to provide a rear yard with a depth of 1'-10" (the minimum required rear yard is 30'-0"); and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the poor sub-surface soil conditions at the site; (2) the high water table at the site; and (3) the existing building structure; and

WHEREAS, the applicant submitted a report from an engineer stating that soil borings at the site reflect that (1) the site has poor soil conditions with a fill layer that is approximately 9'-0" thick, (2) the fill layer is underlain by loose to moderately dense sandy soil, and (3) natural groundwater was encountered at a depth of approximately 6'-11" below existing grade; and

WHEREAS, the applicant states that the subject site is also underbuilt for community facility use and any enlargement of the building must be constructed above grade because the existing building on the site in conjunction with the poor soil conditions and high water table preclude the applicant from enlarging the building below grade; and

WHEREAS, the applicant further represents that the existing building structure, which was originally constructed as a wood-frame home, impedes the viability of a complying enlargement of the building; and

WHEREAS, specifically, the applicant analyzed an as-of-right scenario consisting of a 1,160 sq. ft. addition above the second floor level at the front of the building; and

WHEREAS, the applicant also submitted an engineer's report which states that the foundation for the existing two-story building cannot support the additional third floor loads, and new foundation elements would be required to support the addition; and

WHEREAS, however, the engineer's report notes that the proposed enlargement, consisting of the extension of the existing second story of the building to the rear lot line, directly above the existing first floor, can be supported by the new foundation system that was constructed for the rear portion of the building in association with the 2006 Enlargement, and therefore the proposed addition would only require the construction of a new floor level and roof using engineered wood joists; and

WHEREAS, the applicant notes that while a new foundation system capable of accommodating an additional story was constructed at the rear of the building in association with the 2006 Enlargement, the front of the building maintains the prior foundation system which is not capable of accommodating a third story without the addition of new foundation elements; and

WHEREAS, the applicant states that these foundation elements include the installation of new helical piles and pile caps, a steel frame, and metal floor joists that support a concrete slab; and

WHEREAS, the applicant further states that the as-of-right addition of a third story at the front of the building would also be too heavy for the existing framing to support, and new structural framing would have to be installed to accommodate the addition; and

WHEREAS, the engineer's report provided a cost estimate for the aforementioned premium costs associated with the as-of-right scenario, which indicates that the construction of a third floor at the front of the building will result in approximately $215,400 in additional costs as compared to the proposed enlargement, due to the additional foundation, framing, and elevator costs associated with the work; and

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

WHEREAS, the applicant provided a financial analysis for (1) the existing medical office building without any enlargement; (2) an as-of-right enlargement to the medical office building, consisting of a 1,160 sq. ft. third floor addition at the front of the building; and (3) the proposed 1,067 sq. ft. enlargement of the medical office building consisting of an extension of the second floor to the rear lot line; and

WHEREAS, the applicant concluded that the existing and as-of-right scenarios would not result in a reasonable return due to the unique physical conditions of the site, but that the proposed building would realize a reasonable return and has submitted evidence in support of that assertion; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable

possibility that development in strict compliance with applicable zoning requirements will provide a reasonable return; and

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

WHEREAS, the applicant states that the area to the east and south of the site is comprised primarily of two-story one- and two-family homes, with a few multiple dwellings and community facilities interspersed; and

WHEREAS, the applicant submitted an analysis of the surrounding neighborhood character which notes that, with the exception of the four-story building located adjacent to the west of the site, no other building in the study area exceeds two stories in height, and the effect of extending the bulk of the second floor, which will not increase the existing height of the building, would be minimal; and

WHEREAS, the neighborhood analysis submitted by the applicant states that the neighborhood character in the study area is mainly perceived from the street, and because the proposed second floor extension will not be clearly visible from the street it will not have a negative impact on the neighborhood character; and

WHEREAS, the neighborhood analysis further states that the consistent form of the neighborhood is two-story buildings without setbacks, and therefore, the second floor extension will arguably result in a building that is more consistent with the neighborhood character than the existing building; and

WHEREAS, the neighborhood analysis indicates that the proposed second floor extension will have no meaningful impact on the four-story building to the north and west of the site that is additionally buffered from the site by a parking lot, and will similarly not impact the neighboring properties to the east and northeast, as the footprint of the building is aligned with adjacent lot to the rear for just three feet at the very rear of the adjacent lot and will not result in the loss of light and air or in the crowding of the buildings; and

WHEREAS, the analysis submitted by the applicant concludes that the proposed second floor extension is more consistent with the surrounding neighborhood character, which includes a very uniform building height of two stories, than the as-of-right addition of a third story at the front of the building; and

WHEREAS, the applicant notes that the proposed extension of the community facility use at the second floor would be allowed as a permitted obstruction in the rear yard up to a height of one-story or 23'-0"; thus, the proposed extension, with a height of approximately 19'-8", is within the permitted rear yard obstruction height of 23'-0" and is only non-complying because it is two stories; and

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

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, on a site within an R3-2 zoning district, the proposed horizontal enlargement to the existing second floor of the subject building, which does not comply with zoning regulations for the minimum required rear yard, contrary to ZR § 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 February 14, 2013"- eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: 4,948 sq. ft. of floor area (0.95 FAR); a total height of 19'-8"; and minimum rear yard depth of 1'-10", as illustrated on the BSA-approved plans;

THAT no mechanical equipment will be located within 30'-0" of the rear lot line;

THAT there will be no entrance or exit at the rear of the building;

THAT construction shall proceed in accordance with 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, February 26, 2013.

234-12-BZ
CEQR #13-BSA-006X
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1776 Eastchester Realty LLC, owner; LA Fitness, lessee.
SUBJECT – Application July 20, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*LA Fitness*). M1-1 zoning district.
PREMISES AFFECTED – 1776 Eastchester Road, east of Basset Avenue, west of Marconi Street, 385' north of intersection of Basset Avenue and Eastchester Street, Block 4226, Lot 16, Borough of Bronx.
COMMUNITY BOARD #11BX
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated October 19, 2012, acting on Department of Buildings Application No. 2201787, reads in pertinent part:

> Proposed PCE in a M1-1 zoning district in contrary to Section 42-10 ZR and requires a special permit from the BSA pursuant to 73-36 ZR; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in an M1-1 zoning district, the operation of a physical culture establishment (PCE) on the first and second floors of a proposed seven-story enlargement to an existing two-story building, contrary to ZR § 42-10; and

WHEREAS, the site is located within a larger zoning lot to be occupied by the Hutchinson Metro Center, a 42-acre campus with hotel and office space, and related uses located off the Hutchinson River Parkway in the Pelham Bay section of the Bronx; and

WHEREAS, a public hearing was held on this application on January 29, 2013, after due notice by publication in *The City Record*, and then to decision on February 26, 2013; and

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

WHEREAS, Community Board 11, Bronx, recommends approval of this application; and

WHEREAS, the subject site is a through lot located east of Basset Avenue, west of Marconi Street, approximately 385 feet north of the intersection of Basset Avenue and Eastchester Road; and

WHEREAS, the site is occupied by an existing two-story building which is proposed to be enlarged to a seven-story commercial building; and

WHEREAS, the proposed PCE will occupy 44,273 sq. ft. of floor area, including 29,873 sq. ft. on the first floor for a front desk, retail sales area, circuit equipment, free weights, pool, locker rooms, and a children's area, and 14,400 sq. ft. on the second floor for a spinning area, aerobics studio, cardio equipment, and a personal training area; and

WHEREAS, the PCE will be operated as L.A. Fitness; and

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

WHEREAS, the applicant requests the Board to permit the PCE to operate 24 hours a day, seven days a week; and

WHEREAS, in support of such hours, the applicant represents that the PCE is within a larger office complex located within a manufacturing district where residential uses are prohibited, and will cater primarily to business and institutions located within the development and in the surrounding area; and

WHEREAS, further, the applicant represents that many of the potential patrons work in facilities that have 24-hour operations including medical facilities and multiple hospitals located in the immediate area (including Bronx Psychiatric Center, Jacobi Medical Center, Einstein College of Medicine and Calvary Hospital; and

WHEREAS, the applicant provided a map showing the proximity of the surrounding institutions; and

WHEREAS, based on the above, the Board agrees that in this instance, a 24-hour operation for the proposed PCE is appropriate; and

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

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

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

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

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

WHEREAS, the project is classified as a 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.13BSA006X, dated July 19, 2012; and

WHEREAS, the EAS documents that the operation of

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration 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 in an M1-1 zoning district, the operation of a physical culture establishment on the first and second floors of a proposed seven-story enlargement to an existing two-story building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 20, 2013" – Eight (8) sheets and *on further condition*:

THAT the term of this grant will expire on February 26, 2023;

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

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, February 26, 2013.

35-11-BZ

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

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

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

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to April 23, 2013, at 1:30 P.M., for adjourned hearing.

63-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Harris and Marceline Gindi, owner; Khai Bneu Avrohom Yaakov, Inc. c/o Allen Konstam, lessee.

SUBJECT – Application March 19, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A House of Worship (*Khal Bnei Avrohom Yaakov*), which is contrary to floor area (24-11), lot coverage, front yard (24-34), side yard (24-35a) parking (25-31), height (24-521), and setback requirements. R2 zoning district.

PREMISES AFFECTED – 2701 Avenue N, Rectangular lot on the northeast corner of the intersection of East 27th Street and Avenue N. Block 7663, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 9, 2013, at 1:30 P.M., for continued hearing.

106-12-BZ

APPLICANT – Eric Palatnik, P.C., for Edgar Soto, owner; Autozone, Inc., lessee.

SUBJECT – Application April 17, 2012 – Special Permit (§73-50) to permit the development of a new one-story retail store (UG 6), contrary to rear yard regulations (§33-292). C8-3 zoning district.

PREMISES AFFECTED – 2102 Jerome Avenue between East Burnside Avenue and East 181st Street, Block 3179, Lot 20, Borough of Bronx.

COMMUNITY BOARD #5BX

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 March 12, 2013, at 1:30 P.M., for decision, hearing closed.

233-12-BZ
APPLICANT – Richard G. Leland, Esq./Fried Frank Harris Shriver & Jacob, for Porsche Realty, LLC, owner; Van Wagner Communications, lessee.
SUBJECT – Application July 19, 2012 – Variance (§72-21) to legalize an advertising sign in a residential district, contrary to use regulations (§22-00). R3X zoning district.
PREMISES AFFECTED – 246-12 South Conduit Avenue, bounded by 139th Avenue, 246th Street and South Conduit Avenue, Block 13622, Lot 7, Borough of Queens.
COMMUNITY BOARD #13Q
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for decision, hearing closed.

242-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Congregation Toldos Yehuda, owners.
SUBJECT – Application August 2, 2012 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship (*Congregation Toldos Yehuda*), contrary to height, setback, sky exposure plane, rear yard, and parking requirements. M1-1 zoning district.
PREMISES AFFECTED – 1621-1629 61st Street, northeast side of 61st Street, 170' southeast from the intersection of 16th Avenue and 61st Street, 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 April 9, 2013, at 1:30 P.M., for decision, hearing closed.

250-12-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Carla Zeitouny and Raymond Zeitouny, owners.
SUBJECT – Application August 13, 2012 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461); less than the required rear yard (§23-47) and perimeter wall height (§23-631). R3-2 zoning district.
PREMISES AFFECTED – 2410 Avenue S, south side of Avenue S, between East 24th and Bedford Avenue, Block 7303, Lot 4, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for continued hearing.

285-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Pigranel Management Corp., owner; Narita Bodywork, Inc., lessee.
SUBJECT – Application October 3, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Narita Bodyworks*) on the 4th floor of existing building. M1-6 zoning district.
PREMISES AFFECTED – 54 West 39th Street, south side of West 39th Street, between Fifth Avenue and Avenue of the Americas, Block 840, Lot 78, Borough of Manhattan.
COMMUNITY BOARD #5M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0
ACTION OF THE BOARD – Laid over to March 12, 2013, at 1:30 P.M., for decision, hearing closed.

295-12-BZ
APPLICANT – Sheldon Lobel, P.C., for Laura Danoff and Scott Danoff, owners.
SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit the expansion of a non-conforming Use Group 4 dentist's office, contrary to §52-22. R1-2 zoning district.
PREMISES AFFECTED – 49-33 Little Neck Parkway, Block 8263, Lot 110, Borough of Queens.
COMMUNITY BOARD #11Q
ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for continued hearing.

298-12-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.
SUBJECT – Application October 17, 2012 – Variance (§72-21) to permit the conversion of nine floors of an existing ten-story building to Use Group 3 college or university use (*New York University*), contrary to use regulations. M1-5B zoning district.
PREMISES AFFECTED – 726-730 Broadway, block bounded by Broadway, Astor Place, Lafayette Street and East 4th Street, Block 545, Lot 15, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Laid over to April 9, 2013, at 1:30 P.M., for deferred decision.

302-12-BZ
APPLICANT – Davidoff Hutcher & Citgron LLP, for YHD 18 LLC, owner; Lithe Method LLC, lessee.
SUBJECT – Application October 18, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Lithe Method*). C6-4A zoning district.
PREMISES AFFECTED – 32 West 18th Street, between

Fifth and Sixth Avenues, Block 819, Lot 1401, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for decision, hearing closed.

315-12-BZ

APPLICANT – Akerman Senterfitt, LLP, for Pali Realty LLC, owner.

SUBJECT – Application November 20, 2012 – Special Permit (§73-50) to allow for a community facility building, contrary to rear yard requirements (§33-29). C4-3 zoning district.

PREMISES AFFECTED – 23-25 31st Street, east side of 31st Street, between 23rd Avenue and 23rd Road, Block 835, Lot 27 & 31, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to March 19, 2013, at 1:30 P.M., for continued hearing.

318-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 45-47 Crosby Street Tenant Corp./CFA Management, owner; SoulCycle 45 Crosby Street, LLC, lessee.

SUBJECT – Application November 29, 2012 – Special permit (§73-36) to allow a physical culture establishment (*SoulCycle*) within a portion of an existing building. M1-5B zoning district.

PREMISES AFFECTED – 45 Crosby Street, east side of Crosby Street, 137.25' north of intersection with Broome Street, Block 482, Lot 3, 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 March 19, 2013, at 1:30 P.M., for decision, hearing closed.

320-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for West 116 Owners Realty LLC, owner; Blink 116th Street, Inc., lessee.

SUBJECT – Application December 6, 2012 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*). C4-5X zoning district.

PREMISES AFFECTED – 23 West 116th Street, north side of West 116th Street, 450' east of intersection of Lenox Avenue and W. 116th Street, Lot 1600, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #10M

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 March 19, 2013, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on January 8, 2013, under Calendar No. 200-12-BZ and printed in Volume 98, Bulletin Nos. 1-2, is hereby corrected to read as follows:

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

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

> ZR 109-121 – The existing floor area exceeds the 4.8 permitted by this section within Preservation Area A.
> ZR 109-122 – The proposed enlargement exceeds lot coverage permitted by this section.
> 1. ZR 54-31 – In a C6-2G Zoning District within Preservation Area A the existing bulk and lot coverage are non-complying, therefore the proposed enlargement increases the non-compliance and is not permitted; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the applicant states that due to the

building's non-complying bulk, without a variance, no enlargement of the building envelope would be allowed; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, with regard to noise, the applicant states that the new windows proposed for the enlargement will be inoperable on the first through third floors, which will be occupied by large assembly spaces, and will only be

operable on the fourth through eighth floors; additionally, the wall construction and new windows will have higher STC ratings than the existing wall and windows, and provide a greater level of noise attenuation; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of OCM could occur in its existing building; and

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.12BSA148M, dated June 26, 2012; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site in a C6-2G zoning district within the Special Little Italy District (LI) Area A, the enlargement of an existing nine-story community facility building (Use Group 4), which does not comply with the underlying zoning district regulations for floor area and lot coverage and increases the degree of non-complying floor area and lot coverage conditions, contrary to ZR §§ 109-121, 109-122, and 54-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 21, 2012" – Thirteen (13) sheets, and *on further condition*:

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

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

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

THAT no commercial catering will take place onsite;

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

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

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

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

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

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

***The resolution has been amended. Corrected in Bulletin Nos. 8-9, Vol. 98, dated February 26, 2013.**