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Tuesday, April 1, 2014**

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DOCKETS

New Case Filed Up to April 1, 2014

47-14-BZ

122-21 Merrick Boulevard, Property is situated on the northwest corner of Merrick Boulevard and Sunbury road, Block 12480, Lot(s) 32 & 39, Borough of **Queens, Community Board: 12**. Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (McDonald's) with an accessory drive-through facility. C1-2/R5D zoning district. C1-3/R5D district.

48-14-BZ

174 Falmouth Street, Falmouth Street, between Hampton Avenue and Oriental Boulevard, Block 8784, Lot(s) 196, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to enlarge a two story single family home in a residential area, seeks to vary the floor area, floor area ratio, open space and lot coverage requirements. R3-1 zoning district. R3-1 district.

49-14-A

5655 Independence Avenue, Arlington Avenue to Palisade Avenue btwn W 256th Street and Sigma Place, Block 5947, Lot(s) 120, Borough of **Bronx, Community Board: 8**. Proposed the construction of an enlargement to an existing community facility contrary to General City Law Section 35 . R1-1 zoning district. R1-1, R1-2 district.

50-14-BZ

825 Manhattan Avenue, North side of Calyer Street, 25 ft. west of Manhattan Avenue, Block 2573, Lot(s) 17, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to allow a physical culture establishment (Crunch Fitness) within an existing cellar and one-story commercial building. C4-3A zoning district. C4-3A district.

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

CALENDAR

APRIL 29, 2014, 10:00 A.M.

ZONING CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 29, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

371-03-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 655 Fifth Avenue LLC, owner; Sator Realty, Ink, lessee.
SUBJECT – Application January 31, 2014 – Extension of Term of a previously approved Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Facility*) which expires May 11, 2014. C5-3 (MID) zoning district.

PREMISES AFFECTED – 655 Fifth Avenue, northeast corner of Fifth Avenue and East 52nd Street, Block 1288, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

372-03-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Sator Realty, Ink, owner.

SUBJECT – Application January 31, 2014 – Extension of Term of a previously approved Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Facility*) which expires May 11, 2014. C5-3 (MID) zoning district.

PREMISES AFFECTED – 663 Fifth Avenue, East side of Fifth Avenue, between East 52nd and 53rd Streets, Block 1288, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEALS CALENDAR

43-14-A

APPLICANT – Rosan & Rosan, P.C., for Milburn Hotel, owner.

SUBJECT – Application March 14, 2014 – Extension of time to obtain a Class B Certificate of Occupancy to legalize a 120 Hotel units as provided in recent legislation under Chapters 225 and 566 of the Laws of New York 2010. R8B zoning district.

PREMISES AFFECTED – 242 West 76th Street, south side of West 76th Street, 112' west of Broadway, between Broadway and West End Avenue, Block 1167, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #7M

277-12-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1776 Eastchester Realty LLC, owner.

SUBJECT – Application September 14, 2014 – Special permit (§73-49) to permit proposed roof top parking. 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 Road, Block 4226, Lot 16, Borough of Bronx.

COMMUNITY BOARD #11BX

251-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Hutch Realty Partners, owner.

SUBJECT – Application August 29, 2013 – Special Permit (§73-49) to allow roof top parking in M1-1 zoning contrary to §44-11.

PREMISES AFFECTED – 1240 Waters Place, east side of Marconi Street, approximately 1678 ft. north of intersection of Waters Place and Marconi Street, Block 4226, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

2-13-BZ

APPLICANT – Alfonso Duarte, for Humberto Arias, owner.

SUBJECT – Application January 8, 2013 – Variance (§72-21) to permit the legalization of an extension retail use contrary to zoning regulations. R3A zoning district.

PREMISES AFFECTED – 438 Targee Street, west side 10.42' south of Roff Street, Block 645, Lot 56, Borough of Staten Island.

COMMUNITY BOARD #1SI

319-13-BZ

APPLICANT – Herrick, Feinstein LLP, for Harlem Park Acquisition, LLC, owner.

SUBJECT – Application December 17, 2013 – Variance (§72-21) to waive the parking requirements of §25-23 to permit the construction of a new, mixed used building on the subject site. C4-7 zoning district.

PREMISES AFFECTED – 1800 Park Avenue, Park Avenue, East 124th street, East 125 Street, Block 1749, Lot 33 (air rights 24), Borough of Manhattan.

COMMUNITY BOARD #11M

CALENDAR

325-13-BZ

APPLICANT – Eric Palatnik, P.C., for 3170 Webster Avenue LLC, owner; CT Norwood LLC, lessee.

SUBJECT – Application December 23, 2013 – Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (PCE) “Crunch Fitness” within a portions of commercial building, contrary to §32-10. C2-4/R7D zoning district.

PREMISES AFFECTED – 3170 Webster Avenue, East side of Webster Avenue at intersection with East 205th Street. Block 3357, Lot 37, Borough of Bronx.

COMMUNITY BOARD #7BX

Jeff Mulligan, Executive Director

1-14-BZ

APPLICANT – Law Office of Fredrick A Becker, for CPT 520 W 43 Owner LLC c/o Rose Associates, owner; Ewing Massage Entprise, LLC dba Massage Envoy, lessee.

SUBJECT – Application January 6, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (PCE) spa “Massage Envy” at the building contrary to (ZR)32-31. C6-4 zoning district.

PREMISES AFFECTED – 525 West 42nd Street, Northerly side of West 42nd Street 325 feet easterly of Tenth Avenue. Block 1071, Lot 42. Borough of Manhattan.

COMMUNITY BOARD #4M

2-14-BZ

APPLICANT – Law Office of Fredrick A.Becker, for SP101 W 15 LLC, owner; BFX West 15th Street LLC dba BFX Studio, lessee.

SUBJECT – Application January 8, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment/health club “BFX Studio” in portions of the cellar and first floor of the building. C6-2A/R8B zoning district.

PREMISES AFFECTED – 555 6th Avenue, Westerly side of 6th Avenue between West 15th Street and West 16th Street, Block 79, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #4M

4-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TrizecHahn, 1065 Ave. of the Americas LLC, owner; Blink 1065 6th Ave., Ink., lessee.

SUBJECT – Application January 9, 2014 – Special Permit (§73-36) to allow physical culture establishment “Blink Fitness” within portions of an existing commercial building contrary to (ZR)32-10 zoning resolution. C5-3(mid)(T) zoning district.

PREMISES AFFECTED – 1065 Avenue of The Americas, aka 111 West 40th Street, 112 West 41st Street. NWC of Avenue of the Americas and West 40th Street. Block 993, Lot 29. Borough of Manhattan.

COMMUNITY BOARD #5M

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 1, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for
DLC Properties, LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of
Time to obtain a Certificate of Occupancy of a previously
granted variance for the continued operation of a UG16 auto
repair shop with sales, which expired on June 8, 2010;
Waiver of the Rules. C2-2(R6B), R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard,
south side of Northern Boulevard, 350 East of intersection
of Northern Boulevard, and 206th Street, Block 7305, Lot
19, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the
Rules of Practice and Procedure, a reopening, and an
extension of time to obtain a certificate of occupancy for the
continued use of an auto repair shop with sales (Use Group
16), which expired on June 8, 2010; and

WHEREAS, a public hearing was held on this
application on March 11, 2014, after due notice by
publication in *The City Record*, and then to decision on April
1, 2014; and

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

WHEREAS, the subject site is located on the south side
of Northern Boulevard between 208th Street and Oceania
Street, partially within a C2-2 (R6B) zoning district and
partially within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over
the subject site since December 13, 1955 when, under the
subject calendar number, the Board granted a variance to
permit the reconstruction of an automotive repair facility in a
residential zoning district; and

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

WHEREAS, on May 25, 1999, the Board granted an

extension of term for ten years from the expiration of the
previous grant, and amended the grant to permit the existing
opening in the fence between the parking area of the subject
site and the owner’s property to the east, to expire on
November 3, 2008; and

WHEREAS, on March 6, 2001, the Board granted a
special permit to allow the construction of a second floor to
the existing commercial building to be occupied by office and
storage space; and

WHEREAS, subsequent grants extended the amount of
time to complete construction and obtain a certificate of
occupancy; and

WHEREAS, most recently, on December 8, 2009, the
Board granted an extension of term for ten years from the
expiration of the previous grant, to expire on November 13,
2018, and amended the grant to permit a change in the hours
of operation from Monday through Friday, from 8:30 a.m. to
5:00 p.m. to Monday through Friday, from 8:00 a.m. to 6:00
p.m. (the establishment is closed on the weekends); and

WHEREAS, under the 2009 grant, a certificate of
occupancy was to be obtained by June 8, 2010; however, the
applicant states that a certificate of occupancy has not yet been
obtained; in addition, the applicant notes that the owner no
longer plans to construct the second story authorized under the
2001 special permit described above; and

WHEREAS, accordingly, the applicant now requests
an extension of time to obtain the certificate of occupancy;
and

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

Therefore it is Resolved, that the Board of Standards and
Appeals *waives* the Rules of Practice and Procedure, *reopens*,
and *amends* the resolution, dated December 13, 1955, so that
as amended this portion the resolution reads: “to grant a one
year extension of time to obtain a certificate of occupancy, to
expire on April 1, 2015; *on condition* that the use and
operation of the site shall substantially conform to the
previously approved plans; and *on further condition*:

THAT a certificate of occupancy will be obtained by
April 1, 2015;

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

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

(DOB Application No. 420055184)

Adopted by the Board of Standards and Appeals, April
1, 2014.

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5-28-BZ

APPLICANT – Eric Palatnik, P.C., for Steven Feldman, owner; Anwar Ismael, lessee.

SUBJECT – Application August 20, 2013 – Amendment (§11-413) of a previously approved variance which permitted the operation of an automotive service station (UG 16B). The amendment seeks to change the use to a car rental establishment (UG 8). R6 zoning district.

PREMISES AFFECTED – 664 New York Avenue, west side of New York Avenue, spanning the entire length of the block between Hawthorne Street and Winthrop Street, Block 4819, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

156-02-BZ

APPLICANT – Herrick Feinstein Lullaby Jennifer Dickson, for 8021 15th Avenue Corp., owner; JP Morgan Chase & Co., lessee.

SUBJECT – Application August 1, 2013 – Extension of Term (§11-411) of an approved variance which permitted a car sales lot with accessory office and parking, which expired on August 5, 2013: Amendment (§11-413) to permit change in use to an accessory parking lot to an existing bank. R5B zoning district.

PREMISES AFFECTED – 964 65th Street, between Fort Hamilton Parkway and Tenth Avenue. Block 5750, Lot 49 (Tent 51). Borough of Brooklyn.

COMMUNITY BOARD #10BK

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 May 6, 2014, at 10 A.M., for decision, hearing closed.

174-07-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bolla EM Realty, LLC, owner.

SUBJECT – Application November 12, 2013 – Extension of Time to complete construction of an approved Special Permit (§73-211) which permitted the reconstruction of an existing auto service station (UG 16B), which expired on June 17, 2012; Amendment to permit changes to the canopy structure, exterior yard and interior accessory convenience store layout. C2-3/R7-A zoning district.

PREMISES AFFECTED – 1935 Coney Island Avenue, northeast corner of Avenue P. Block 6758, Lot 51. Borough

of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

177-07-BZ

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

SUBJECT – Application January 2, 2014 – Amendment of an approved Variance (§72-21) which permitted construction of a two-story and mezzanine, two-family residential building, contrary to front yard regulations (§23-45(a)); the amendment seeks to permit construction of a three-story, three-family residential building. R5 zoning district.

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

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

APPEALS CALENDAR

215-13-A

APPLICANT – Anthony A. Lenza , owner
SUBJECT – Application July 16, 2013 – Appeal challenging denial of the Department of Building’s determination regarding floor area (§12-10 (12) (ii)). R1-1 zoning district.

PREMISES AFFECTED – 300 Four Corners Road, Block 894, Lot 235, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination for DOB Application No. 520079405, dated June 17, 2013, issued by the Department of Buildings (“DOB”) (the “Final Determination”); and

WHEREAS, the Final Determination states, in pertinent part:

The request to propose additional floor area deductions for insulated exterior walls complying with the conditions under the definition for “floor area” under ZR 12-10(12) that are located at the cellar, adjacent to the enclosed parking areas, and adjacent to the attic areas with less than 8 ft. of structural headroom for certain zoning districts and number of dwelling units is hereby denied.

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“Floor area” is defined in ZR 12-10 as the “sum of the gross areas of the several floors of a building or buildings, measured from the exterior faces or exterior walls . . .” The definition also lists what floor area within the building includes and what floor area shall not include. Certain portions of the exterior walls that are energy efficient and meeting the conditions described in the definition in ZR 12-10 are not included in the floor area of the building.

However, any areas on any floor that are not counted towards the gross floor area of the building are not allowed additional floor area deductions, such as floor spaces for mechanical equipment that are located within the cellar floor; and

WHEREAS, a public hearing was held on this appeal on March 11, 2014, after due notice by publication in *The City Record*, and then to decision on April 1, 2014; and

WHEREAS, the site had visits by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the appeal is filed on behalf of the owner of the subject site, who contends that DOB’s determination was erroneous (the “Appellant”); and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the site is located on the south side of Four Corners Road, 163 feet from Todt Hill Road, within an R1-1 zoning district; and

WHEREAS, the site is occupied by a detached, three-story, single-family residential building (the “Building”); and

WHEREAS, on May 2, 2012, the Appellant filed an Alteration Type 1 Job Application to vertically and horizontally enlarge the cellar, first, and second floors of the Building; and

WHEREAS, DOB denied the application for its use of floor area deductions associated with energy efficient walls in areas that are not counted towards the gross floor area of the Building; and

WHEREAS, the Appellant requested a determination from DOB that the ZR § 12-10(12) definition of “floor area,” which excludes certain energy efficient exterior walls, up to eight inches, from being counted as floor area should be applied to the proposed installation of energy efficient exterior walls at the cellar level, the accessory parking garage, and in the attic; and

WHEREAS, the Final Determination held that the proposed energy efficient walls to be installed at the cellar level, accessory parking garage, and attic cannot be deducted from floor area pursuant to the definition of “floor area” at ZR § 12-10; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 Definitions

Floor area

"Floor area" is the sum of the gross areas of the several floors of a #building# or #buildings#, measured from the exterior faces of exterior walls or from the center lines of walls separating two #buildings#. In particular, #floor area# includes:

- (a) #basement# space, except as specifically excluded in this definition;
- (b) elevator shafts or stairwells at each floor;
- (c) floor space in penthouses;
- (d) attic space (whether or not a floor has been laid) providing structural headroom of five feet or more in R2A, R2X, R3, R4 or R5 Districts, eight feet or more in R1 and R2 Districts, other than R2A and R2X Districts, and eight feet or more for #single-# or #two-family residences# in R6, R7, R8, R9 and R10 Districts. For #buildings# with three or more #dwelling units# in R6, R7, R8, R9 and R10 Districts #developed# or #enlarged# prior to February 2, 2011, such attic space providing structural headroom of eight feet or more shall be considered #floor area#. For #buildings# with three or more #dwelling units# in R6, R7, R8, R9, and R10 Districts #developed# or #enlarged# after February 2, 2011, any attic space shall be considered #floor area#;
- (e) floor space in gallerias, interior balconies, mezzanines or bridges;
- (f) floor space in open or roofed terraces, bridges, breeze ways or porches, if more than 50 percent of the perimeter of such terrace, breeze way, or porch is enclosed, and provided that a parapet not higher than 3 feet, 8 inches, or a railing not less than 50 percent open and not higher than 4 feet, 6 inches, shall not constitute an enclosure;
- (g) any other floor space used for dwelling purposes, no matter where located within a #building#, when not specifically excluded;
- (h) floor space in #accessory buildings#, except for floor space used for #accessory# off-street parking;
- (i) floor space used for #accessory# off-street parking spaces provided in any #story# after June 30, 1989:
 - (1) within #detached# or #semi-detached single-# or #two family residences# in R1-2A, R2A, R2X, R3, R4 or R5 Districts, except that:
 - (i) in R2A Districts, #floor area# within such #residences# shall include only floor space in excess of 300 square feet for one such space; and
 - (ii) in all R1-2A Districts, and in R3, R4A and R4-1 Districts in #lower density growth management areas#, #floor area# within such #residences# shall include only floor space in excess of 300 square feet for one such space and in excess of 500 square feet for two such spaces;
 - (2) within #buildings# containing #residences

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developed# or #enlarged# pursuant to the optional regulations applicable in a #predominantly built-up area#;

- (3) in excess of 100 square feet per required space in individual garages within other #buildings# containing #residences# (#attached buildings#, rowhouses or multiple dwellings) in R3-2, R4 or R5 Districts, except that in R3-2 Districts within #lower density growth management areas#, #floor area# shall only include floor space in excess of 300 square feet for one such space and in excess of 500 square feet for two such spaces. However, all of the floor space within any #story# in individual garages shall be considered #floor area# where, subsequent to June 7, 1989, the level of any #yard# except that portion of a #yard# in front of a garage on the #zoning lot# is lowered below the lower of:
 - (i) #curb level#; or
 - (ii) grade existing on June 7, 1989 . . .

However, the #floor area# of a #building# shall not include:

- (1) #cellar# space, except where such space is used for dwelling purposes. #Cellar# space used for retailing shall be included for the purpose of calculating requirements for #accessory# off-street parking spaces, #accessory# bicycle parking spaces and #accessory# off-street loading berths;
- (2) elevator or stair bulkheads, #accessory# water tanks, or cooling towers, except that such exclusions shall not apply in R2A Districts;
- (3) uncovered steps;
- (4) attic space (whether or not a floor has been laid) providing structural headroom of less than five feet in R2A, R2X, R3, R4 or R5 Districts, less than eight feet in R1 and R2 Districts, other than R2A and R2X Districts, and less than eight feet for #single-# or #two-family residences# in R6, R7, R8, R9 and R10 Districts. For #buildings# with three or more #dwelling units# in R6, R7, R8, R9 and R10 Districts #developed# or #enlarged# prior to February 2, 2011, such attic space providing structural headroom of less than eight feet shall not be considered #floor area#;
- (5) floor space in open or roofed terraces, bridges, breeze ways or porches, provided that not more than 50 percent of the perimeter of such terrace, breeze way, or porch is enclosed, and provided that a parapet not higher than 3 feet, 8 inches, or a

railing not less than 50 percent open and not higher than 4 feet, 6 inches, shall not constitute an enclosure;

- (6) floor space used for #accessory# off-street parking spaces provided in any #story# . . .
- (12) exterior wall thickness, up to eight inches:
 - (i) where such wall thickness is added to the exterior face of a #building# wall existing on April 30, 2012, provided the added wall thickness has a thermal resistance (R-value) of at least 1.5 per inch; or
 - (ii) where such wall thickness is part of an exterior wall constructed after April 30, 2012, equal to the number of inches by which the wall's total thickness exceeds eight inches, provided the above-grade exterior walls of the #building# envelope are more energy efficient than required by the New York City Energy Conservation Code (NYCECC) as determined by the following:

- (1) the area-weighted average U-factor of all opaque above-grade wall assemblies shall be no greater than 80 percent of the area-weighted average Ufactor determined by using the prescribed requirements of the NYCECC; and
- (2) the area-weighted average U-factor of all abovegrade exterior wall assemblies, including vertical fenestrations, shall be no more than 90 percent of the area-weighted average U-factor determined by using the prescribed requirements of the NYCECC. . .

For the purposes of calculating compliance with this paragraph, (12)(ii), the term "above-grade" shall only include those portions of walls located above the grade adjoining such wall. Compliance with this paragraph shall be demonstrated to the Department of Buildings at the time of issuance of the building permit for such exterior walls. The total area of wall thickness excluded from the calculation of #floor area# shall be reflected on the next issued temporary or final certificate of occupancy for the #building#, as well as all subsequent certificates of occupancy; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that the Zone Green Text Amendment, adopted by the City Council on April 30, 2012 allows that up to eight inches of thickness of exterior walls that meet the energy efficiency standards of the Zoning Resolution can be excluded from floor area calculations even when the area associated with the walls is already excluded from floor area calculations; and

WHEREAS, specifically, the Appellant cites to ZR § 12-10(12)(i) and (ii), which describe the criteria for the exclusion of energy efficient exterior walls; and

WHEREAS, the Appellant proposes to install new walls

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exceeding eight inches in thickness in the cellar and cellar addition, first floor, accessory garage, second floor, and attic; and

WHEREAS, the Appellant asserts that the area occupied by all energy efficient exterior walls, including those it proposes - in the cellar, accessory garage, and in areas with height less than eight feet - that meet the standards of the Zoning Resolution are deducted from floor area calculations by the Zone Green Text Amendment, regardless of whether there are other zoning provisions which already exclude the walls' thickness from floor area calculations; and

WHEREAS, the Appellant states that DOB deducted the area associated with up to eight inches of the walls' thickness on the first floor and portions of the second floor, but that it denied the request to deduct the area associated with the walls in the cellar, the accessory garage, and portions of the second floor and attic with heights less than eight feet; and

WHEREAS, the Appellant relies on (1) what he finds to be the plain language of the text; and (2) the broad intent to increase energy efficiency; and

WHEREAS, as to the text, the Appellant states that the plain reading of the Zoning Resolution supports the exclusion of any exterior wall constructed to energy efficient standards; and

WHEREAS, the Appellant asserts that there is not any distinction under the Zoning Resolution between energy efficient exterior walls with thickness that may be excluded from floor area calculations and energy efficient exterior walls with thickness that may not be excluded; and

WHEREAS, the Appellant asserts that absent a distinction between the walls granted exclusion from floor area and those not granted exclusion, all walls must be treated the same regardless of whether they are in portions of the building already eligible for floor area exclusions; and

WHEREAS, accordingly, the Appellant asserts that the space occupied by the thickness of all energy efficient exterior walls that satisfy the Zoning Resolution's standards may be excluded from floor area calculations; and

WHEREAS, as to the intent of the text, the Appellant cites to a purpose statement, which includes "to remove zoning impediments to the construction and retrofitting of green buildings" and that its focus was to promote energy-efficient building walls and reduce the City's energy use and carbon emissions; and

WHEREAS, the Appellant asserts that energy efficient walls throughout a building will increase the overall energy efficiency of the building and promote the Zone Green Text Amendment's purpose; and

WHEREAS, specifically, the Appellant states that insulated basements can help reduce energy costs, citing to the U.S. Department of Energy, and further that garages can be sources of heat loss/gain in a building; and

WHEREAS, the Appellant asserts that DOB's reading of the text eliminates the incentive for property owners to construct energy efficient walls in cellars, garages, and portions of buildings with heights less than eight feet; and

WHEREAS, the Appellant asserts that the absence of an

incentive is inconsistent with the Zoning Resolution and will prohibit reductions in energy costs and carbon emissions in the City; and

WHEREAS, the Appellant submitted a letter to the Department of City Planning (DCP) seeking a response to its assertion that the purpose and effect of the Zone Green Text Amendment is to maximize energy efficiency of the entire building so there is a cumulative effect on the City's overall energy usage and efficiency and that, accordingly, the text allows for floor area deductions for all energy efficient walls; and

WHEREAS, by letter dated March 27, 2014, DCP submitted a response to the Appellant's letter, which states that the Zone Green Text did not specify that there was a bonus increase in floor area for insulation and that the intent of the text was to encourage the retrofit of existing buildings, that would as a result of the additional insulation exceed the floor area permitted, and would therefore be prevented from installing additional insulation and to encourage the use of highly efficient insulating materials in new construction without penalizing the property owner for the amount of space the thicker insulation occupies; and

WHEREAS, accordingly, DCP states that it agrees with DOB that allowing the requested deduction would be the equivalent of double-dipping, which was not the intent of the Zone Green Text; and

DOB'S POSITION

WHEREAS, DOB asserts that energy efficient exterior walls may not be deducted from floor area calculation in portions of the building that are already excluded from floor area calculations (1) pursuant to the ZR § 12-10 definition of floor area; and (2) because to do so would constitute double-dipping; and

WHEREAS, DOB states that a property owner cannot exclude an area from floor area under the exclusions from floor area in the ZR § 12-10 definition of floor area and then seek to deduct the same area again, based on a separate exclusion from floor area in the ZR § 12-10 definition; and

WHEREAS, DOB cites to the Appellant's proposed plans, which do not identify any floor area for the cellar level or accessory garage and thus completely exempts those spaces, and which deduct 442.65 sq. ft. of attic floor area from the proposed 442.65 sq. ft. of attic floor area, which results in a net 0 sq. ft. of floor area for the attic; and

WHEREAS, DOB agrees with the Appellant that cellars, accessory garages, and certain attic floor area are properly excluded from floor area calculations, per the ZR § 12-10 definition of floor area¹; and

WHEREAS, DOB notes that ZR § 12-10 defines floor area as "the sum of the gross areas of several floors of a

¹ DOB notes that it is currently reviewing the plans to confirm whether the proposed cellar and attic include space that should be included in floor area calculations and if the proposed use is consistent with DOB regulations. However, the Final Determination was based on plans that excluded the entire cellar from floor area calculations.

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building or buildings, measured from the exterior walls...” and then identifies particular areas that are included in the floor area calculation; and

WHEREAS, DOB notes that when calculating the floor area of spaces that are included in the floor area calculation, property owners must include the exterior walls of the areas that are included in the ZR § 12-10 floor area calculation; and

WHEREAS, DOB states that exterior walls are counted in spaces that are included as floor area, but when excluding a space from the floor area calculation, the exterior walls of that space are also excluded from the floor area calculation; and

WHEREAS, DOB states that a cellar level may be excluded from floor area because the ZR § 12-10(1) definition of floor area excludes “cellar space, except where such space is used for dwelling purposes;” and

WHEREAS, DOB notes that as indicated on the proposal’s zoning analysis, the Appellant excluded the cellar space from floor area and as such, did not include the exterior walls of the cellar space in the floor area calculations; and

WHEREAS, DOB states that an accessory parking garage may be excluded from floor area because the ZR § 12-10(6)(iv) definition of floor area excludes “floor space used for accessory off-street parking spaces provided in any story...located not more than 23 feet above curb level, in any other building...;” and

WHEREAS, DOB notes that the Appellant did not include the exterior walls of the accessory parking garage in the floor area calculations; and

WHEREAS, DOB states that the attic space may be excluded from floor area because the ZR § 12-10(4) definition of floor area excludes “attic space (whether or not a floor has been laid) providing structural headroom of...less than eight feet in R1 and R2 Districts;” and

WHEREAS, DOB notes that the Appellant did not include the exterior walls of the attic space; and

WHEREAS, DOB states that since the Appellant has already excluded the exterior walls from the floor area calculation in the cellar, accessory garage, and attic, the Appellant cannot then exclude (or deduct) the exterior walls a second time, effectively, based on the ZR § 12-10(12) definition of floor area which excludes certain energy efficient “exterior wall thickness, up to eight inches;” and

WHEREAS, DOB asserts that a property owner may not take a deduction twice for the same building condition and to do as the Appellant proposes would be to “double-dip” by subtracting floor area that was not included in the floor area calculations; and

WHEREAS, DOB states that if the noted energy efficient walls had not already been excluded from the floor area calculation, then they could be excluded from floor area; and

WHEREAS, DOB states that, in contrast, up to eight inches of thickness of energy efficient exterior walls would be excluded from floor area if the energy efficient exterior walls were added to a second floor bedroom as the bedroom would be included in the floor area calculation, but the eight-inch exterior wall would be excluded (or deducted); and

WHEREAS, DOB provided the following example of what would be considered “double dipping” in the context of floor area deductions: in certain districts, the ZR § 12-10 definition of floor area excludes 50 sq. ft. of space used for mechanical equipment from the first dwelling unit; when that mechanical space is located in a 1,000 sq.-ft. cellar which is not used for dwelling purposes, the entire 1,000 sq. ft. cellar is excluded from floor area, but not the 1,000 sq. ft. and the 50 sq. ft. mechanical deduction, which is subsumed in the cellar exclusion; and

WHEREAS, therefore, DOB contends that it properly determined that the space occupied by the thickness of the noted walls cannot be deducted from the floor area calculations; and

CONCLUSION

WHEREAS, the Board agrees with DOB and the Department of City Planning that the thickness of the proposed cellar, accessory garage, and attic walls cannot be deducted from the floor area calculations for the building; and

WHEREAS, the Board finds that, according to the plain text of the ZR § 12-10 definition of floor area, those portions of the Building are already excluded from floor area calculations; and

WHEREAS, specifically, the ZR § 12-10 definition of floor area identifies exclusions from floor area calculations for cellars (at sub-paragraph (1)); certain attic space (at sub-paragraph (4)); and certain accessory parking garages (at sub-paragraph (6)); and

WHEREAS, the Board finds that pursuant to the Zone Green Text Amendment, energy efficient walls to a thickness of eight inches were noted (at sub-paragraph (12)) as an additional, but separate, building element that can be excluded from floor area calculations; and

WHEREAS, the Board does not find any support in the text for the Appellant’s conclusion that multiple exclusions can apply to the same building condition; and

WHEREAS, the Board recognizes the intent of the Zone Green Text Amendment to promote energy efficient construction, but does not see any basis in the text that allows for a reduction in floor area from portions of buildings that are already excluded from floor area calculations; and

WHEREAS, the Board notes that the Zoning Resolution does not contemplate double-counting of exclusions and cites to DOB’s cellar mechanical space example and its conclusion that if cellar space is already excluded from floor area calculations it cannot also have a deduction for mechanical space within it; and

WHEREAS, the Board finds that such double-counting of floor area deductions or the practice of deducting floor area from portions of the building that do not actually generate floor area leads to absurd results from a zoning perspective; and

WHEREAS, the Board finds that the Appellant’s reading, although it may promote a broader incentive for energy efficient construction, is simply not supported by the text; and

WHEREAS, the Board limits its decision to the Final

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Determination and the plans associated with it, which reflect portions of the building that DOB concludes are not included in the floor area calculations, such as the cellar, garage, and portions of the attic with heights less than eight feet; and

Therefore it is Resolved, that the Board denies the appeal and affirms DOB's determination that the sum of the space occupied by the cellar, garage, and attic walls cannot be deducted from the building's total floor area.

Adopted by the Board of Standards and Appeals, April 1, 2014.

140-11-A & 141-11-A

APPLICANT – Sheldon Lobel, P.C., for BQM Management, LLC, owner.

SUBJECT – Application December 18, 2013 – Extension of time and complete construction and secure Certificates of Occupancy. R5D zoning district.

PREMISES AFFECTED – 69-17 38th Avenue aka 69-19 38th Avenue, north side of 38th Avenue, between the BQE and 69th Street, Block 1282, Lot 64, Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for decision, hearing closed.

296-13-A

APPLICANT – Jack Lester, for SRS Real Estate Holdings c/o Richard Whel, Esq., owner.

SUBJECT – Application October 24, 2013 – An appeal to Department of Buildings' determination to permit an eating and drinking establishment. Appellant argues that the non-conforming use has been discontinued and the use is contrary to open space regulations (§52-332). R6B zoning district.

PREMISES AFFECTED – 280 Bond Street, Block 423, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 20, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

94-13-BZ

CEQR #13-BSA-115Q,

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

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

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

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 28, 2013, acting on Department of Buildings Application No. 420812632, reads in pertinent part:

Daycare is classified under UG 3 by Department's Memo July 6, 1976 [and therefore] is not permitted in M1-3 district as per ZR 42-00; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-3 zoning district, the conversion of the first story of an existing one-story and basement commercial building to a Use Group 3 daycare, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in the *City Record*, with continued hearings on September 10, 2013 and February 25, 2014, and then to decision on April 1, 2014; and

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

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of 40th Avenue and 12th Street, within an M1-3 zoning district; and

WHEREAS, the site is a single zoning lot comprising Tax Lots 548, 618, 619, and 621, has a lot area of approximately 16,139 sq. ft., 200 feet of frontage along 12th Street, and 74.34 feet of frontage along 40th Avenue; and

WHEREAS, the applicant represents that Lot 548 is currently occupied by a one-story and basement commercial building with 14,947 sq. ft. of floor area (0.93 FAR); Lots 618, 619, and 621 are currently a parking lot; and

WHEREAS, the applicant proposes to renovate the first story of the building to allow a Use Group 3 daycare ("the

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School”) with approximately 7,473 sq. ft. of floor area (0.46 FAR), and utilize Lots 618, 619, and 621 for accessory off-street parking and a play area; the applicant notes that the basement will not be altered under the subject application and will remain Use Group 6 (offices); and

WHEREAS, the applicant states that the renovated building will serve an estimated 117 children ranging in age from two to five years and approximately 25 employees, and provide related sanitary facilities and administrative offices; and

WHEREAS, the applicant states that the School will be in compliance with the New York Health Code on Child Care Services and will operate from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant states that the School requires a minimum of 7,500 sq. ft. in order to carry out its program (child care for 117 students) in accordance with the New York Health Code; and

WHEREAS, in addition, the applicant represents that its students are drawn from primarily within a half-mile radius of the site; and

WHEREAS, finally, the applicant notes that the owner will be directly involved in the management of the School, in order to minimize costs and to ensure ongoing compliance with the rules and regulations governing the operation of the School; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-3 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant represents that it conducted a search of nearby residence and commercial districts with the following site criteria: (1) a minimum of 7,500 sq. ft. of program space in order to accommodate the School’s 117 students in accordance with the New York Health Code; (2) parking and recreation space; (3) minimal construction costs; (4) proximity to the neighborhood surrounding the site; and (5) proximity to public transportation; and

WHEREAS, the applicant states that during its search, it evaluated the feasibility of five buildings within the area and on sites where Use Group 3 is permitted as-of-right: 34-19 Tenth Street; 34-51 Vernon Boulevard; 30-01 Northern Boulevard; 65-35 Queens Boulevard; and 45-02 Skillman Avenue; and

WHEREAS, the applicant represents that each building was unsuitable for the School, in that: 34-19 Tenth Avenue was not in close proximity to public transportation and its space was not suitable for children and would have required extensive renovations, including the installation of an elevator; 34-51 Vernon Boulevard had only 6,500 sq. ft. of usable space and no on-site parking area; 30-01 Northern Boulevard had only 5,000 sq. ft. of usable space, would

have required extensive renovations, had neither on-site recreation space, nor a nearby park; 65-35 Queens Boulevard had less than the required amount of usable space and is already occupied by a child care center on the second story; and 45-02 Skillman Avenue had only 3,000 sq. ft. of usable space; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as-of-right; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located approximately 200 feet from an R6 zoning district, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that an ambient noise survey was conducted at the site, which indicated that the predominant noise source in the area is vehicular traffic, which according to the survey conducted during peak, weekday travel periods, averaged 27 dB(A); and

WHEREAS, the applicant notes that 27 dB(A) is well below the 45 dB(A) that is considered acceptable according to the CEQR Technical Manual, and that such low noise level within the building is owing to the fact that it was built with sound-attenuating exterior wall and window construction; and

WHEREAS, the Board finds that the conditions surrounding the site and the building’s use will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-3 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant represents that the majority of students will be dropped off by parents commuting on the subway (F train), which is located less than two blocks from the site; and

WHEREAS, as for vehicular traffic, the applicant states that, based on its assessment of existing traffic conditions in the vicinity, the School can operate safely without significant impacts; and

WHEREAS, in particular, the applicant states that

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students will enter and exit the building via an entrance on 12th Street, which the applicant notes is not a primary thoroughfare based on its study of traffic patterns; in addition, a four-way stop sign and pedestrian lanes have been installed at the intersection of 12th Street and 40th Avenue; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation (“DOT”); and

WHEREAS, the applicant represents that, to the extent deemed appropriate by DOT, it will install additional signage, “School Crossing” pavement markings, and crossing guards in the vicinity; and

WHEREAS, by letter dated April 8, 2013, DOT states that it has no objection to the proposed construction and will, upon approval of the application, prepare a safe route to school map with signs and marking; and

WHEREAS, the Board finds that the above-mentioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; 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, the proposed project will not interfere with any pending public improvement project; and

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 13BSA115Q, dated May 23, 2013; and

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

WHEREAS, the New York City Department of Environmental Protection’s (“DEP”) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the October 2013 Remedial Action Plan and Construction Health and Safety Plan; and

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

WHEREAS, DEP reviewed the applicant’s March 2014 Air Quality Impact Assessment and determined that no significant air quality impacts to the proposed project are anticipated; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II, 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 §§ 73-19 and 73-03 and grants a special permit, to allow the conversion of the first story of an existing one-story and basement commercial building to a Use Group 3 daycare, on a site within an M1-3 zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received September 20, 2013” – (2) sheets and “May 24, 2013”-(4) sheet; and *on further condition*:

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

THAT any change in the operator of the school requires review and approval by the Board;

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

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

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

Adopted by the Board of Standards and Appeals, April 1, 2014.

103-13-BZ

APPLICANT – Rothkrug Routhkrug & Spector LLP, for Blackstone New York LLC, owner.

SUBJECT – Application April 16, 2013 – Variance (§72-21) to permit the development of a cellar and four-story, eight-family residential building, contrary to §42-10 zoning resolution. M1-1 zoning district.

PREMISES AFFECTED – 81 Jefferson Street, north side of Jefferson Street, 256’ west of intersection of Evergreen Avenue and Jefferson Street, Block 3162, Lot 42, Borough

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of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for deferred decision.

281-13-BZ

CEQR #14-BSA-051M

APPLICANT – Joshua Rinesmith, Warshaw Burstein LLP for FC-Canal LLC, owner; 320 Canal Fitness Group, LLC, lessee.

SUBJECT – Application October 4, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Planet Fitness*) on the cellar and first floor of the existing building. C6-2A zoning district.

PREMISES AFFECTED – 350-370 Canal Street, premises is comprised of 3 properties located on the west portion of block 211 at the intersection of Canal Street and Church Street. Block 211, Lot(s) 3, 29, 7501. Borough of Manhattan.

COMMUNITY BOARD #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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 24, 2013, acting on Department of Buildings (“DOB”) Application No. 121789181, reads in pertinent part:

Proposed use as a physical culture establishment is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-2A zoning district within the Special Tribeca Mixed Use District, the operation of a physical culture establishment (“PCE”) within portions of the cellar of a two-story commercial building and within portions of the cellar and first story of a 21-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 4, 2014, after due notice by publication in *The City Record*, and then to decision on April 1, 2014; and

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

WHEREAS, Community Board 1, Manhattan, expresses no objection to this application; and

WHEREAS, the subject site is a single zoning lot comprising Tax Lots 3, 29, and 7501, which occupies the eastern portion of the block bounded by Canal Street, Church Street, Lispenard Street, and West Broadway, within a C6-4A zoning district within the Special Tribeca Mixed

Use District; and

WHEREAS, the site has approximately 217 feet of frontage along Canal Street, approximately 153 feet of frontage along Church Street, approximately 226 feet of frontage along Lispenard Street, and 41,739 sq. ft. of lot area; and

WHEREAS, the site is occupied by three buildings; Lot 29 is occupied by a 21-story hotel building, Lot 3 is occupied by a two-story commercial building, and Lot 7501 (formerly Lot 11; a/k/a 7-11 Lispenard Street) is occupied by a six-story mixed residential and commercial building; the buildings have a total floor area of 224,404 sq. ft. of (5.37 FAR); and

WHEREAS, the PCE is proposed to occupy 620 sq. ft. of floor area on the first story of the 21-story hotel building and a total of 12,786 sq. ft. of floor space in the cellars of the 21-story building and the two-story commercial building, for a total PCE size of 13,406 sq. ft. of floor space; and

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

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the hours of operation for the PCE will be seven days per week, 24 hours per day; and

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

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

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

WHEREAS, the Board also 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 discussed in the Environmental Assessment Statement, CEQR No.14BSA051M dated October 3, 2013; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources;

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C6-2A zoning district within the Special Tribeca Mixed Use District, the operation of a PCE within portions of the cellar of a two-story commercial building and within portions of the cellar and first story of a 21-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 10, 2014 – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 1, 2024;

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

THAT any massages will be performed only by New York State licensed massage professionals;

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 the above conditions will appear on the Certificate of Occupancy;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 1, 2014.

291-13-BZ

CEQR #14-BSA-059K

APPLICANT – Eric Palatnik, P.C., for 840-842 LLC, owner; Crunch LLC, lessee.

SUBJECT – Application October 22, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch LLC*) within a portion of an existing building. C8-2 zoning district.

PREMISES AFFECTED – 842 Lefferts Avenue, south side of Lefferts Avenue, approximately 262’ west of intersection of Utica Avenue and Lefferts Avenue, Block 1430, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 8, 2013, acting on Department of Buildings (“DOB”) Application No. 320907202, reads in pertinent part:

Proposed PCE in a C8-2 district is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C8-2 zoning district, the operation of a physical culture establishment (“PCE”) in the cellar and on the first, second and third stories of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 4, 2014, after due notice by publication in *The City Record*, and then to decision on April 1, 2014; and

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

WHEREAS, Community Board 9, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Lefferts Avenue between Schenectady Avenue and Utica Avenue, within a C8-2 zoning district; and

WHEREAS, the site has approximately 130 feet of frontage along Lefferts Avenue and 7,540 sq. ft. of lot area; and

WHEREAS, the site is occupied by a three-story commercial building with 18,213 sq. ft. of floor area (2.42 FAR); the applicant notes that the site has been under the Board’s jurisdiction since January 7, 1964, when, under BSA Cal. No. 110-63-BZX, the Board permitted an extension of time to complete construction of the building under ZR § 11-32; most recently, on August 16, 2005, the Board, under BSA Cal. No. 321-04-BZ, granted a special permit for the conversion of the building from commercial

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use to a school; and

WHEREAS, the applicant states that the conversion authorized by the Board under BSA Cal. No. 321-04-BZ did not occur and that the building was used as offices until it recently became vacant; and

WHEREAS, the applicant now proposes to convert the entire building to PCE use; specifically, the PCE will occupy all three stories of the building (18,213 sq. ft. of floor area) and the cellar (6,071 sq. ft. of floor space), for a total PCE size of 24,284 sq. ft. of floor space; and

WHEREAS, the PCE will be operated as Crunch; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

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

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

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA059K dated October 14, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C8-2 zoning district, the operation of a PCE in the cellar and on the first, second and third stories of a three-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 9, 2014" – Nine (9) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 1, 2024;

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

THAT any massages will be performed only by New York State licensed massage professionals;

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 the above conditions will appear on the Certificate of Occupancy;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 1, 2014.

130-13-BZ

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

SUBJECT – Application May 7, 2013 – Re-Instatement (§11-411) of a variance which permitted a one-story motor vehicle storage garage with repair (UG 16B), which expired on February 14, 1981; Amendment (§11-413) to change the use to retail (UG 6); Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1590 Nostrand Avenue,

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

COMMUNITY BOARD #17BK

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 29, 2014, at 10 A.M., for decision, hearing closed.

178-13-BZ

APPLICANT – Jeffery A. Chester, Esq./GSHLLP for Peter Procops, owner; McDonald's Corporation, lessee.

SUBJECT – Application June 9, 2013 – Special Permit (§73-243) to allow an eating and drinking establishment with an existing accessory drive-through facility. C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection with Beach Channel Drive, Block 15709, Lot 101. Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

179-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for East 24 Realty LLC by Sarah Weiss, owner.

SUBJECT – Application June 19, 2013 – Special Permit (§73-622) for the enlargement of a single-family home contrary to floor area, open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 933-939 East 24th Street, East side of East 24th Street between Avenue I and Avenue J, Block 7588, Lot 29 & 31 (31 tentative), Borough of Brooklyn.

COMMUNITY BOARD #14BK

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 29, 2014, at 10 A.M., for decision, hearing closed.

250-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 3555 White Plains Road Corp., owner; 3555 White Plains Road Fitness Group. LLC., lessee.

SUBJECT – Application August 28, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fitness Center*). R7A/C2-4 zoning district.

PREMISES AFFECTED – 3555 White Plains Road, west

side of White Plains Road approximately 100' south of the intersection formed by East 213 Street and White plains Road, Block 4643, Lot 43, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

252-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Eli Schron, owner.

SUBJECT – Application August 29, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R-2 zoning district. PREMISES AFFECTED – 1221 East 22nd Street, east side of East 22nd Street between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

270-13-BZ

APPLICANT – Eric Palatnik, P.C., for Margaret Angel, LLC, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 288 Dover Street, Dover Street, south of Oriental Boulevard, Block 8417, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

273-13-BZ

APPLICANT – Akerman Senterfitt, LLP, for 321-23 East 60th Street LLC, owner.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the development of an eight-story residential building containing 28 dwelling units, contrary to use regulations (§32-10). C8-4 zoning district.

PREMISES AFFECTED – 321 East 60th Street, Northeast corner of East 60th Street and the Ed Koch Queensboro Bridge Exit. Block 1435, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

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

MINUTES

Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for decision, hearing closed.

275-13-BZ

APPLICANT – Warsaw Burstein, LLP, for Kedzkidz Realty LLC., owner; Antonaccio-Crous, LLC, lessee.

SUBJECT – Application September 26, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Bikram Yoga Soho*). M1-5 zoning district.

PREMISES AFFECTED – 404-406 Broadway, east side of Broadway south of its intersection with Canal Street in TriBeCa, Block 196, Lot 3. Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for continued hearing.

285-13-BZ

APPLICANT – Warsaw Burstein, LLP, for 495 Flatbush Ave, LLC, owner; 495 Flatbush Fitness Group, LLC, lessee.

SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fitness Center*). C8-6 zoning district.

PREMISES AFFECTED – 495 Flatbush Avenue, east side of Flatbush Avenue approximately 110 feet northwest of its intersection with Lefferts Avenue, Block 1197, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #9BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 29, 2014, at 10 A.M., for decision, hearing closed.

286-13-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Trebinski, owner.

SUBJECT – Application October 11, 2013 – Variance (§72-21) for the proposed enlargement of an existing one-story residential home, contrary to front yard (§23-45); side yard (§23-161); floor area and lot coverage (§23-141) and off street parking requirements (§25-621(B)). R4 zoning district.

PREMISES AFFECTED – 2904 Voorhies Avenue, Voorhies Avenue, between Nostrand Avenue and a dead end portion of East 29th Street, Block 8791, Lot 201, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

310-13-BZ

APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub, LLC., owner; Metropolitan College of New York, lessee.

SUBJECT – Application November 22, 2013 – Variance (§72-21) to allow a UG3 college (*Metropolitan College of New York*) within a proposed mixed use building, contrary to use regulations (§44-00). M1-1/C4-4 zoning district.

PREMISES AFFECTED – 459 East 149th Street, northwest corner of Brook Avenue and East 149th Street, Block 2294, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to May 6, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.