
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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

Volume 99, No. 15

April 16, 2014

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Tuesday, April 8, 2014**

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DOCKETS

New Case Filed Up to April 8, 2014

51-14-BZ

1369 East 28th Street, East side of East 28th Street, 220 feet north from Avenue N, Block 7664, Lot(s) 17, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of an existing single family residence, contrary to §23-47 for rear yard §23-141 floor area, §23461 side yard. R2 zoning district.. R-2 district.

52-14-BZ

1339 East 28th Street, East side of East 28th Street, 320 feet South of Avenue M, Block 7664, Lot(s) 28, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of an existing single family residence contrary to §23-47 rear yard, §23-141 floor area, min open space §23-461 side yard. R2 zoning district.. R2 district.

53-14-BZ

12 West 27th Street, 2nd floor, 27th Street between Broadway and 6th Avenue, Block 828, Lot(s) 56, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow a physical culture establishment (Exceed Fitness). M1-6 zoning district. M1-5 district.

54-14-BZ

1506 Decatur St, Nor east corner of Irving Avenue and Decatur Street, Block 3542, Lot(s) 12, Borough of **Queens, Community Board: 05**. Variance (§72-21) to permit development of a (3) three story penthouse residential building contrary to use regulations (§42-00). M1-4 zoning district. M1-4 district.

55-14-BZ

388 Bridge Street, Through lot parcel on block bounded by Lawrence, Fulton Willoughby, and Bridge Streets in Brooklyn, Block 152, Lot(s) 1001/06, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to allow the physical culture establishment (388 Athletic Club,)to operate on the fifth and sixth floors of a new 53 Story commercial and residential building. C6-45 zoning district. C6-45/DB 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

MAY 6, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 6, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

245-32-BZ

APPLICANT – Sion Hourizadeh, for Michael Raso, owner.
SUBJECT – Application June 20, 2012 – Extension of Term (§11-411) of a previously approved variance which permitted automotive repair (UG 16B) with a commercial office (UG 6) at the second story. C2-2/R5 zoning district.
PREMISES AFFECTED – 123-05 101 Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

611-52-BZ

APPLICANT – Gerald J. Caliendo, for John Blumenfield - HL Dalis, Inc., owner.
SUBJECT – Application October 15, 2013 – Extension of Term (§11-411) of a previously approved variance permitting a one story warehouse building located in a residential zoning district, which expired on May 5, 2013. R5 zoning district.

PREMISES AFFECTED – 35-35 24th Street, east side of 24th Street, 130.63 feet south from the intersection of 35th Avenue and 24th Street, Block 338, Lot 8, Borough of Queens.

COMMUNITY BOARD #1Q

322-05-BZ

APPLICANT – Eric Palatnik P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application March 7, 2014 – Extension of Time to Complete Construction for a previously granted Variance (72-21)ZR for an enlargement of an existing two single story plus cellar single family home and the change in use to a community use facility (*Queens Jewish Community Council*) which expired on March 7, 2014. R4B zoning district.

PREMISES AFFECTED – 69-69 Main Street, Main Street and 70th Avenue, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

173-09-BZ

APPLICANT – Goldman Harris LLC, for 839-45 Realty LLC, owner; Ranco Capital LLC, lessee.

SUBJECT – Application March 25, 2014 – Extension of Time to Complete Construction of a previously granted

Variance (72-21) for the construction of a four story mixed use building contrary to use regulations which expires on December 14, 2014. C8-2/M1-1 zoning district.

PREMISES AFFECTED – 839-845 Broadway aka 12-14 Park Street, southeast corner of Broadway and Park Street, Block 3134, Lots 5, 6, 10, 11, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEALS CALENDAR

304-13-A

APPLICANT – Simons & Wright, for 517 West 19th Street LLC, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeal challenging DOB 's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2 WCH special district.

PREMISES AFFECTED – 517-519 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #4M

312-13-A

APPLICANT – Simons & Wright, for Lan Chen Corp. 36-36 Prince Street, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeal challenging DOB 's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2 WCH special district.

PREMISES AFFECTED – 521-525 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #4M

313-13-A

APPLICANT – Simons & Wright, for 531 West 19th Street LLC, owner; David Zwirner, lessee.

SUBJECT – Application November 19, 2013 – Appeal challenging DOB 's determination that subject premises is considered an art gallery and therefore a Certificate of Operation for place of assembly shall be required. C6-2 WCH special district.

PREMISES AFFECTED – 531 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #4M

CALENDAR

ZONING CALENDAR

277-13-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for SoBro Development Corporation, owner.

SUBJECT – Application September 27, 2013 – Variance (§72-21) to permit a proposed development of new 12-story mixed-use building with underground parking, two floors of community facility (*church*) space, with 125 multi-family residential units requires multiple bulk/are variances. R7-2 zoning district.

PREMISES AFFECTED – 1769 Fort George Hill, bounded by Fort George Hill to the east an NYCTA No.1 train tracks to the west, Block 2170, Lots 180 & 190, Borough of Manhattan.

COMMUNITY BOARD #12M

279-13-BZ

APPLICANT – Warshaw Burnstein, LLP, for 34th Street Penn Association LLC, owner; 215 West 34th Street Fitness Group, LLC., lessee.

SUBJECT – Application October 2, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*fitness center*) on portions of the cellar and first floors and the entire second and third floors of a new building to be constructed. M1-6 zoning district.

PREMISES AFFECTED – 218-222 West 35th Street, south side of West 35th Street, approximately 150' West of Seventh Avenue, Block 784, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

294-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, Esq., for Susan Go Lick, owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow for the development of a residential building (Use Group 2) with ground floor commercial use Group 6) based on the conditions peculiar to the property. M1-5B zoning district.

PREMISES AFFECTED – 220 Lafayette Street, west side of Lafayette Street between Spring Street and Broome Street, Block 482, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #2M

331-13-BZ

APPLICANT – Warshaw Burstein, LLP, for Isaac Chera, owner; 2007 86th Street Fitness Group, LLP, lessee.

SUBJECT – Application December 31, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*fitness center*) within the existing building at the Premises. C4-2 zoning district.

PREMISES AFFECTED – 2005 86th Street aka 2007 86th Street, north side of 86th street, west of its intersection with 20th Avenue, Block 6346, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #11BK

3-14-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly Friedman, for Saint David School, owner.

SUBJECT – Application January 8, 2014 – Variance (§72-21) to permit the enlargement of Saint David's School. R8B/R10/C1-5MP zoning district.

PREMISES AFFECTED – 12-22 East 89th Street aka 1238 Madison Avenue, south side of East 89th St, west of the corner formed by the intersection of Madison Avenue and East 89th Street, Block 1500, Lot 62, Borough of Manhattan.

COMMUNITY BOARD # 8M

7-14-BZ

APPLICANT – Greenberg Traurig, LLP, for Rockaway Realty LLC, owner; 1380 Rockaway Parkway Fitness Group, LLC, lessee.

SUBJECT – Application January 16, 2014 – Special Permit (§73-36) to permit the conversion of the existing on-story, plus cellar to a physical culture establishment (*Planet Fitness*) in connection with an application to rezone the property from an R5D/C1-3(Z) to an R5D/C2-3(ZD).

PREMISES AFFECTED – 1380 Rockaway Parkway, west side of Rockaway Parkway, midblock between Farragut Road and Glenwood Road, 204.85' south of Farragut Road, Block 8165, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #18BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, APRIL 8, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

960-67-BZ & 116-68-BZ

APPLICANT – Akerman LLP By Steven Sinacori for 40 CPS Associates, LLC, owner.

SUBJECT – Application December 26, 2013 – Amendment of two previously approved variances (§72-21) to allow the merger of the zoning lots and the transfer of development rights from 36 to 40 Central Park South. R10-H zoning district.

PREMISES AFFECTED – 36 & 40 Central Park South, South side of Central Park South between 6th and 5th Avenues. Block 1274, Lot(s) 6, 11, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to two existing variances, to allow (1) the merger of Lot 6 and Lot 11 into a single zoning lot; (2) the potential transfer of unused development rights from Lot 6 to Lot 11; and (3) an amendment to the site plan to reflect the proposed merger of Lot 6 and Lot 11; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in *The City Record*, and then to decision on April 8, 2014; 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, Community Board 5, Manhattan, recommends approval of this application on the condition that the applicant’s Inclusionary Housing development partner appear before it; any future modifications are presented to it and the Board of Standards and Appeals; and the applicant will discuss design with it; and

WHEREAS, the application is brought on behalf of the owners of Lot 6 (the “Lot 6 Owner”) and Lot 11 (the “Lot 11

Owner”) (collectively, “the applicants”); and

WHEREAS, Lot 6 (which includes a 40 Central Park South building and a 41 West 58th Street building) is a through block site located partially within an R10H zoning district, partially within a C5-1 zoning district, and partially within a C5-2.5(MiD) zoning district; and

WHEREAS, on June 25, 1968, pursuant to BSA Cal. No. 116-68-BZ, the Board granted a variance for Lot 6 (the “Lot 6 Variance”) that allowed an existing professional office located on a portion of the first floor of a 21-story building in what was then an R10 zoning district to be converted to an eating and drinking establishment; the restaurant use is located entirely within the building at 40 Central Park South; and

WHEREAS, on December 21, 1999, the Board approved an amendment of the variance to permit the enlargement of the eating and drinking establishment; and

WHEREAS, Lot 6 has a lot area of 25,607.1 sq. ft., 125 feet of frontage on Central Park South, and 130 feet of frontage on West 58th Street; it is occupied by two residential buildings: 41 West 58th Street, located on the southern portion of the site, and 40 Central Park South, located on the northern portion of the site; and

WHEREAS, the Lot 6 Owner states that the combined floor area for the two buildings on Lot 6 is 251,816 sq. ft. and that there are 4,255 sq. ft. of unused floor area under the applicable maximum 10.0 FAR 51,214 sq. ft. of additional unused floor area available through the Inclusionary Housing program; and

WHEREAS, accordingly, the Lot 6 Owner represents that there is a potential for a total of 55,469 additional sq. ft. of floor area available on Lot 6; and

WHEREAS, Lot 11, which currently constitutes a separate zoning lot, is a through block site partially within an R10H zoning district and partially within a C5-2.5(MiD) district; and

WHEREAS, on November 13, 1968, at which time Lot 11 was located partially within an R10 zoning district and partially within a C5-3 zoning district, pursuant to BSA Cal. No. 960-67-BZ, the Board granted a variance of the applicable use and bulk regulation for the Lot 11 building (the “Lot 11 Building”) to allow transient hotel use within the R10 zoning district and to allow waivers to FAR, rear yard, and sky exposure plane regulations along Central Park South and West 58th Street; and

WHEREAS, the Board approved three amendments in the 1970s and 1980s, which allowed for massing reconfiguration, the enlargement of the banquet hall, and the enclosure of the rooftop recreation area; and

WHEREAS, Lot 11 has a lot area of 20,284.8 sq. ft. with 75 feet of frontage on Central Park South and 127 feet of frontage on West 58th Street; it is occupied by a 44-story transient hotel; and

WHEREAS, the Lot 11 Owner states that the R10H

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portion of Lot 11 is subject to a base 10.0 FAR, which may be increased to 12.0 FAR through the Inclusionary Housing program; the C5-2.5(MiD) portion of Lot 11 is subject to a maximum 12.0 FAR; and

WHEREAS, the Lot 11 Owner asserts that under current zoning, Lot 11 may be developed with up to 243,418 sq. ft. of floor area; and

WHEREAS, pursuant to the Board's approval, the Lot 11 Building contains 369,558 sq. ft. of floor area, which exceeds the amount of floor area currently permitted on Lot 11 by 126,140 sq. ft.; and

WHEREAS, the Lot 11 Owner states that there are 14,297 sq. ft. of unused floor area under on Lot 6 (if tenant recreation space is included per ZR § 81-241) and 41,172 sq. ft. of additional unused floor area available through the Inclusionary Housing program (per ZR § 23-951); and

WHEREAS, the applicants now seek the Board's consent to merge Lot 6 and Lot 11 into a single zoning lot, which would allow for the transfer of excess development rights from Lot 6 to Lot 11; and

WHEREAS, the applicants seek authorization to ultimately transfer up to 55,469 sq. ft. of unused development rights (provided the recreation space and Inclusionary Housing requirements are satisfied) from Lot 6 to adjacent Lot 11; and

WHEREAS, the applicants also propose to modify the site plan to reflect the merger of Lots 6 and 11 within the subject zoning lot; and

WHEREAS, the applicants represent that the proposed zoning lot merger and floor area transfer will not have any effect on the existing buildings located on Lot 6 or on the operation of the eating and drinking establishments therein; and

WHEREAS, the applicants assert that a transfer of the unused floor area from Lot 6 should be allowed because it is not in conflict with the Lot 6 Variance; and

WHEREAS, the applicants represent that the proposed transfer of development rights is consistent with the Court's decision in Bella Vista v. Bennett, 89 N.Y. 2d 565 (1997), setting forth the parameters of Board review of requests for the transfer of development rights from sites for which a variance has been granted; and

WHEREAS, the applicants state that its application for the original 1968 variance and 1999 amendment for Lot 6 reflect that the unused development rights were not assumed or considered in the Board's analysis; and

WHEREAS, the applicants state that the documents in support of the original variance discuss only the economics of the ground floor space that was subject to the variance, specifically its limited utility and value as a professional office and its significantly greater value for a restaurant use; and

WHEREAS, the applicants state that the submissions associated with the 1999 amendment to the Lot 6 Variance

analyze the economic viability of the existing Lot 6 buildings with and without the proposed expansion of the restaurant use but are silent on the potential use and value of Lot 6's unused development rights; and

WHEREAS, the applicants assert that at the time of the 1968 Lot 6 Variance and 1999 amendment, there would have been little demand for, and accordingly virtually no value in, Lot 6's unused development rights; and

WHEREAS, further, the applicants note that at all relevant times, the subject block (Block 1274) was fully developed with substantial buildings and the buildings on Lot 6 were full occupied with residential use; and

WHEREAS, specifically, the applicants note that Lot 6 was adjacent to the 44-story Park Lane Hotel to the east, developed in the late 1960's pursuant to a Board variance which included a floor area waiver; and adjacent to the 35-story Hotel St. Moritz and a ten-story residential condominium to the west; and

WHEREAS, accordingly, the applicants assert that at the time of the Board's prior approvals, there were no viable receiving sites for Lot 6's unused development rights and, consequently, they had little if any value; and

WHEREAS, the applicants assert that the historic records and market conditions support the conclusion that the unused developed rights were not considered by the Board in its determination that the 1968 variance was the minimum necessary to resolve the economic hardship on the site; and

WHEREAS, the applicants state that an approval of the requested development rights transfer from the subject site does not undermine the integrity of the Board's earlier findings concerning ZR §§ 72-21(b) or 72-21(e) because the facts of the instant application are readily distinguishable from those underlying the Court's holding in Bella Vista; and

WHEREAS, the applicants conclude that the use of the development rights as a result of the proposed zoning lot merger is therefore not inconsistent with the Board's prior approvals; and

WHEREAS, the Board notes that Bella Vista concerned a permit request for a new as-of-right residential building proposed to be built through the transfer of development rights-- from a site in which the Board granted a use variance to permit operation of a movie theater in a residential zoning district, to a separate adjacent site under common ownership-- for development of a complying residential building; and

WHEREAS, the Court held that review and approval of such transfers by the Board was required, inter alia, because the basis for the original grant, particularly with respect to the findings of financial hardship under ZR § 72-21(b) and minimum variance needed to provide relief under ZR § 72-21(e), may be implicated by the proposed transfer; and

WHEREAS, the Board notes that, unlike in Bella Vista, Lot 6 and the receiving development site (Lot 11) have been under separate, unrelated ownership since at least the time of

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the Board's 1968 grant and the owner of the variance site therefore lacked control over either the timing of new development on the adjacent property or the use of the development rights for such a development; and

WHEREAS, the Board also notes that a brief period of time elapsed between the date of the Bella Vista variance grant and the date of the subsequent permit application which also distinguishes that case from the proposed development rights transfer under review in the subject application; and

WHEREAS, the Board notes that in Bella Vista, the permit application proposing to use floor area transferred from the variance site was filed only three years after the Board grant, while the variance for the subject site was granted in 1968, 45 years before the filing of the instant application; and

WHEREAS, the Board agrees that the differences in timing and in the health of the respective real estate markets distinguish the Bella Vista case from the instant case and supports the conclusion that the use of Lot 6's unused development rights was not foreseeable by the Lot 6 Owner or the Board; and

WHEREAS, the Board also notes that the 1968 variance was for the conversion of a portion of the first floor of one of two buildings on a zoning lot from one non-conforming use to another non-conforming use, which represents a relatively small portion of the zoning lot, occupied by two buildings and more than 250,000 sq. ft. of floor area, that is subject to the variance; and

WHEREAS, the Board finds that the proposed transfer of development rights does not implicate or affect the basis for its findings in general, and specifically the (b) and (e) finding, at the time that they were made; and

WHEREAS, the Board agrees that the unused development rights were not considered in its analysis for the Lot 6 Variance and 1999 amendment and, thus, does not find that the future use of those rights disturbs the Board's prior approvals; and

WHEREAS, the Lot 11 Owner states that there is not yet a decision regarding a future development of Lot 11 and is considering: (1) the continued use of the Lot 11 Building as a transient hotel pursuant to the existing variance; (2) conversion of a portion of the Lot 11 Building to residential use, which would require approval from the Board; and (3) a surrender of the variance on Lot 11 and the construction of a new building in accordance with the current zoning regulations, which might use excess development rights available on Lot 6; and

WHEREAS, the applicant states that regardless of the plan to proceed, the Lot 11 Building will continue to be used as a transient hotel pursuant to the variance for some period of time and that, due to the fact that it is currently overbuilt as to floor area, no transfer of unused development rights from Lot

6 will be possible without other changes to or demolition of the Lot 11 Building; and

WHEREAS, the Board notes that the Lot 6 Owner does not propose any alteration to the building or use at 40 Central Park South and, thus, Lot 6 will continue to operate in accordance with the Board-approved plans and the conditions of its grant; and

WHEREAS, as to Lot 11, the Lot 11 Owner acknowledges that notwithstanding the Board's consent to a zoning lot merger and floor area transfer from Lot 6, any changes to the Lot 11 Building require prior approval from the Board as either (1) acceptance of a surrender of the Lot 11 variance; (2) amendment to the Lot 11 variance; or (3) a new variance; and

WHEREAS, the Board notes that it does not take any position on the floor area calculations, which are subject to DOB review and approval, and that any changes to Lot 6 or Lot 11 are subject to the Board's review and approval; and

WHEREAS, the Board notes that even if the Lot 11 Owner ultimately demolishes the Lot 11 Building and surrenders the Lot 11 variance, as a single zoning lot, Lot 6 and Lot 11 remain under the Board's jurisdiction; and

WHEREAS, the Board notes that, by this amendment to BSA Cal Nos. 960-67-BZ and 116-68-BZ, it does not approve an amount of floor area available for transfer or allocated to each site; and

WHEREAS, at hearing, the Board asked the Lot 11 Owner to clarify its floor area calculations for Lot 6 and the Lot 11 Owner confirmed that there are 307,285 sq. ft. available to Lot 6, including an Inclusionary Housing bonus (205,860 sq. ft. on the R10H/C5-1 portion of the site without the bonus; 41,172 sq. ft. of bonus; and 60,253 sq. ft. on the C5-2.5 sq. ft. where the bonus is not available); and

WHEREAS, the Lot 11 Owner represents that after the 251,816 sq. ft. of floor area associated with the Lot 6 buildings is subtracted from 307,285 sq. ft., there are 55,469 sq. ft. of unused development rights; and

WHEREAS, the Board notes that the respective fee owners of Lot 6 and Lot 11 authorized the application; and

WHEREAS, based upon its review of the record, the Board does not object to the proposed increase in the size of the zoning lot and associated modification of the site plan; and

WHEREAS, additionally, the Board does not object to a transfer of unused development rights from Lot 6 to Lot 11, subsequent to the proposed zoning lot merger, but notes that any further changes to Lot 6 and Lot 11 that are inconsistent with prior approvals are subject to the Board's review and approval.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolutions, having been adopted on June 25, 1968 and November 13, 1968, so that as amended this portion of the resolutions shall read: "to permit the merger of Lot 6 and Lot 11, to permit the associated

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modifications to the BSA-approved site plan, and to consent to a future transfer of development rights from Lot 6 and Lot 11, *on condition* that all site conditions will comply with drawings marked 'Received April 1, 2014'– (1) sheet; and *on further condition*:

THAT the zoning calculations, including any transfer of development rights, are subject to DOB's review and approval and must be in full compliance with underlying bulk regulations;

THAT any modifications to the individual Lot 6 or Lot 11 or to the future merged zoning lot remain subject to the Board's jurisdiction;

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

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

Adopted by the Board of Standards and Appeals, April 8, 2014.

546-82-BZ

APPLICANT – Akerman Senterfitt, LLP, for Pasquale Carpentire, owner; Ganesh Budhu, lessee.

SUBJECT – Application June 20, 2013 – Extension of term of previously granted variance for the continued operation of a non-conforming open public parking lot which expired on June 14, 2013. R7-A zoning district.

PREMISES AFFECTED – 148-15 89th Avenue, bounded by 88th Avenue to its north, 150th Street to its east, 148th Street to its west, 89th Avenue to its south, Block 9693, Lot 60, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a parking lot (Use Group 8), which expired on June 14, 2013; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014 and then to decision on April 8, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan,

Commissioner Hinkson, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is on the north side of 89th Avenue, between 148th Street and 150th Street; and

WHEREAS, the site is located within an R7A zoning district within the Downtown Special Jamaica District, and is occupied by a parking lot; and

WHEREAS, on June 14, 1983, under the subject calendar number, the Board granted a variance to allow an enlargement of an existing legal non-conforming open parking lot for a term of ten years; and

WHEREAS, on May 9, 1985, the grant was extended another ten years from its 1993 expiration, to expire on June 14, 2003, and amended to limit the capacity to 68 parking spaces and ten reservoir spaces; and

WHEREAS, most recently, on September 9, 2008, the Board permitted an amendment to the grant to allow unattended parking of non-commercial vehicles at the site and extended the term of the grant for ten years, to expire on June 14, 2013; and

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

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

WHEREAS, at hearing, the Board directed the applicant to remove the barbed wire from the fence surrounding the site; and

WHEREAS, in response, the applicant submitted photographs depicting the removal of the barbed wire; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 14, 1983, so that as amended the resolution reads: "to grant an extension of the variance for a term of ten years from the expiration of the prior grant, to expire on June 14, 2023; *on condition* that all site conditions will comply with drawings marked 'Received January 9, 2014'– (1) sheet;; and *on further condition*:

THAT the term of the variance will expire on June 14, 2023;

THAT barbed wire will not be installed atop the fence at the site;

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

THAT an amended certificate of occupancy will be obtained by April 8, 2015;

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

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the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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.”

(Alt. No. 1206/79)

Adopted by the Board of Standards and Appeals, April 8, 2014.

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center Inc., owner.

SUBJECT – Application October 16, 2013 – Amendment of a previously approved Special Permit (§73-36) for a physical culture establishment (*Bodhi Fitness Center*). The amendment seeks to enlarge the PCE space by 3,999 sq. ft. M1-1, C2-2/R6 zoning district.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment of a previously-granted special permit for a physical culture establishment (“PCE”) to permit the enlargement of the PCE; and

WHEREAS, a public hearing was held on this application on March 4, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014 and then to decision on April 8, 2014; and

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

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

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

WHEREAS, the subject site is located on the east side of Prince Street between 35th Avenue and Northern Boulevard, partially within an M1-1 zoning district and partially within a C2-2 zoning district; and

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

WHEREAS, the PCE is located on a portion of the first story of the building and occupies 8,962 sq. ft. of floor area; and

WHEREAS, the PCE is operated as Bodhi Fitness; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 11, 2002 when, under the subject calendar number, the Board granted a special permit to legalize a physical culture establishment in the subject building for a term of ten years, to expire on June 1, 2008; and

WHEREAS, most recently, on August 25, 2009, the Board granted an extension of the term for ten years, to expire on June 1, 2018; and

WHEREAS, the applicant now seeks an amendment to permit the enlargement of the PCE into other portions of the first story of the building; specifically, the proposal would increase the floor area of the PCE from 8,962 sq. ft. to 12,961 sq. ft.; and

WHEREAS, in addition, the applicant seeks an amendment authorizing minor modifications to the layout of the changing rooms and an increase in the number of accessory parking spaces for the PCE within the cellar of the building from 16 to 17; and

WHEREAS, at hearing, the Board directed the applicant to: (1) confirm that the proposed accessory signage for the PCE complies with the zoning district regulations; and (2) submit a revised site plan that shows the entire zoning lot and the entrance to the parking facility; and

WHEREAS, in response, the applicant confirmed that the signage complies and submitted a revised site plan that shows the entire zoning lot, as well as the entrance to the parking facility; and

WHEREAS, based upon its review of the record, the Board finds the requested amendments to the plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens*, and *amends* the resolution to permit the noted modifications; *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 April 2, 2014’– (5) sheets; and *on further condition*:

THAT signage for the PCE will comply with the C2 regulations;

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;

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.”

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(DOB Application No. 420908174)

Adopted by the Board of Standards and Appeals, April 8, 2014.

369-05-BZ

APPLICANT – Eric Palatnik, P.C., for Flatland 3706 Real Estate, LLC, owner.

SUBJECT – Application February 7, 2014 – Extension of Time to Complete Construction of a previously approved variance (§72-21) to construct a four-story multiple dwelling, which expires on October 17, 2014. R3-2(HS) zoning district.

PREMISES AFFECTED – 908 Clove Road, between Bard and Tyler Avenues, Block 323, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0
Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, within an R3-2 zoning district, within the Special Hillside Preservation District, the construction of a three-story Use Group 2 multiple dwelling for adults age 55 and over, which expires on October 17, 2014; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in *The City Record*, and then to decision on April 8, 2014; and

WHEREAS, the subject site is located on the south side of Clove Road, between Broadway and Bement Avenue, within an R3-2 (HS) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since October 17, 2006 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a three-story, 25-unit Use Group 2 multiple dwelling for adults age 55 and over; and

WHEREAS, substantial construction was to be completed by October 17, 2010, in accordance with ZR § 72-23; however, as of that date, only the foundation and the sanitary and storm sewer lines on Clove Road had been completed; accordingly, on October 26, 2010, the Board extended the time to complete construction for four years, to expire on October 17, 2014; and

WHEREAS, the applicant states that, subsequent to the 2010 extension of time to complete construction, work ceased

and the site went into foreclosure and a new developer took ownership of the site on July 10, 2013; and

WHEREAS, accordingly, the applicant now seeks additional time to obtain funding and complete construction; and

WHEREAS, at hearing, the Board directed the applicant to repair the construction fence around the site; the Board also questioned whether the requested three years would be sufficient to complete construction, given that the applicant has represented that funding has not yet been secured; and

WHEREAS, in response, the applicant submitted photos showing that the fence had been repaired; and

WHEREAS, as to whether a three-year extension of time would be sufficient, the applicant responded that it while is anticipated that three years will be sufficient, a four-year extension would be preferred; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 17, 2006, so that as amended the resolution reads: “to grant an extension of the time to complete construction for a term of four years from April 8, 2014, to expire on April 8, 2018; *on condition*:

THAT substantial construction will be completed by April 8, 2018;

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 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. 500740665)

Adopted by the Board of Standards and Appeals, April 8, 2014.

823-19-BZ

APPLICANT – Eric Palatnik, P.C., for Israel Minzer, owner.

SUBJECT – Application April 20, 2012 – Amendment (§§ 11-412 and 11-413) of a previously approved variance which permitted a one story warehouse (UG 16). The application seeks to construct an as-of-right two-story community facility (UG 4) atop the warehouse and reduce the warehouse space to accommodate 13 required accessory

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parking spaces for the proposed community facility use. R5 zoning district.

PREMISES AFFECTED – 1901 10th Avenue, southeast corner of East 19th Street and 10th Avenue, Block 890, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

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

457-56-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Medow-"The Shop" 148-152L.P., owner.

SUBJECT – Application November 19, 2013 –

Extension of Term of variance permitting accessory parking of motor vehicles, customer parking, and loading and unloading in conjunction with adjacent factory building. R6B zoning district.

Extension of Term of variance permitting accessory parking of motor vehicles, customer parking, and loading and unloading in conjunction with adjacent factory building. R6B zoning district.

PREMISES AFFECTED – 152-154 India Street, Southern side of India Street, 150 ft. east of intersection of India Street and Manhattan Avenue. Block 2541, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for continued hearing.

142-92-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application March 20, 2014 –

Amendment of a previously approved special permit (§73-48) for a community facility (*New York Methodist Hospital*).

The application seeks to amend the approved plans to accommodate required accessory parking in a new ambulatory care facility. R6, C1-3/R6B & R7B zoning districts.

PREMISES AFFECTED – 473-541 6th Street aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block 1084, Lot 36, 164, 1001/1002, Borough of Brooklyn.

COMMUNITY BOARD #6BK

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

192-96-BZ

APPLICANT – Sheldon Lobel, PC, for 1832 Realty LLC, owner.

SUBJECT – Application January 7, 2014 – Amendment of a previously approved variance (§72-21) which permitted a large retail store (UG 10) contrary to use regulations. The application seeks to eliminate the term, which expires on September 23, 2022. C1-2/R5 zoning district.

PREMISES AFFECTED – 1832 86th Street, aka 1854 86th Street; 1-29 Bay Street, 2-6 Bay 20th Street, located on the southwest side of 86th Street spanning the entire block frontage between Bay 19th St and Bay 20th Street. Block 6370, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #11BK

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

160-00-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for 243-02 So. Conduit Avenue, LLC, owner.

SUBJECT – Application April 2, 2013 – ZR 11-411 Extension of Term for the continued operation of an automotive service station (*Citgo*) which expired on November 21, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on November 21, 2001; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 244-04 Francis Lewis Boulevard, southwest corner of South Conduit and Francis Lewis Boulevard, Block 13599, Lot 25, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for continued hearing.

247-09-BZ

APPLICANT – Michael T. Sillerman, Esq. of Kramer Levin Naftalis & Frankel LLP, for Central Synagogue, owner.

SUBJECT – Application February 26, 2014 – Extension of Time to complete construction of a previously approved variance (§72-21) for the expansion of a UG4 community use facility (*Central Synagogue*), which expires on February 23, 2014. C5-2 & C5-2.5 (MiD) zoning district.

PREMISES AFFECTED – 123 East 55th Street, North side of East 55th Street, between park and Lexington Avenue, Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,

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Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1
ACTION OF THE BOARD – Laid over to April 29,
2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

156-13-A

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

SUBJECT – Application May 17, 2013 – Appeal of DOB
determination that the subject advertising sign is not entitled
to non-conforming use status. C6-4/HY zoning district.

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

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Commissioner Ottley-Brown,
Commissioner Hinkson and Commissioner Montanez4

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an appeal of two final
determinations, issued by the Manhattan Borough
Commissioner of the Department of Buildings (“DOB”) on
April 17, 2013 and on May 1, 2013, acting on DOB
Application Nos. 102663949 and 102663930, respectively
(the “Final Determinations”), which state, in pertinent part
that:

As of this date, the Department has not received sufficient
information to demonstrate that the approval and permit
should not be revoked. Therefore, pursuant to Sections 28-
104.2.10 and 28-105.10 of the Administrative Code of the
City of New York, the approval and permit are hereby
revoked; and

WHEREAS, a public hearing was held on this appeal on
November 19, 2013, after due notice by publication in *The
City Record*, with continued hearings on December 17, 2013,
January 28, 2014, and February 11, 2014, and then to decision
on April 8, 2014; and

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

WHEREAS, the subject site is located on the
southwest corner of the intersection of Dyer Avenue and
West 31st Street, within a C6-4 zoning district within the
Special Hudson Yards District; and

WHEREAS, the site is occupied by a 12-story
commercial building; a 1,200 sq. ft. illuminated advertising
sign (the “Sign”) is located on the east wall of the 12-story
building; and

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

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

WHEREAS, the Board notes that by letter dated April
7, 2014, the Appellant requested withdrawal of the appeal,
and by letter dated April 8, 2014, DOB requested that the
Board deny the Appellant’s request, citing concerns about
public policy and its ability to take enforcement actions
against the Sign and other similarly-situated signs; and

WHEREAS, per § 1-12.2 of the Rules of Practice and
Procedure, the Board may consider a request to withdraw an
appeal at any time before the Board’s final determination;
however, the Board may reject the withdrawal request if it
determines that proper enforcement or public policy would
be served by rendering a decision; and

WHEREAS, the Board agrees with DOB that the
appeal has broad public policy and enforcement
implications; accordingly, the Appellant’s request to
withdraw the appeal is denied; and

PROCEDURAL HISTORY

WHEREAS, on December 22, 1999, DOB issued a
permit under Job. No. 102663930; this permit authorized the
installation of the structural components of the Sign (the “Sign
Structure Permit”); one day later, on December 23, 1999,
DOB issued a permit under Job. No. 102663930; this permit
authorized the installation of the Sign itself (“the Sign
Permit”); at the time, the site and the permit applications were
subject to the sign regulations applicable in an M1-6 zoning
district; and

WHEREAS, on January 19, 2005, the site was rezoned
from an M1-6 zoning district to a C6-4 zoning district within
the Special Hudson Yards District; and

WHEREAS, in early 2013, DOB audited the
applications documents for the Sign Permit and the Sign
Structure Permit; with regard to the Sign Permit, DOB raised
the following objection:

Provide additional information to clarify whether the sign is
not within 200’-0” of an arterial highway or public park as per
ZR 42-55; and

WHEREAS, with regard to the Sign Structure Permit,
DOB raised the following objections:

Sign audit application no. 102663949 in conjunction to this
application shall be resolved before sign structure application
(audit) is lifted;

For sign structures, verify compliance with TPPN No. 5/00;
and

WHEREAS, based on these objections, on or about

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January 11, 2013, DOB notified the Appellant of its intent to revoke the Sign Structure Permit, and on or about February 14, 2013, DOB notified the Appellant of its intent to revoke the Sign Permit; and

WHEREAS, by letter dated April 17, 2013, the Sign Permit was revoked, and by letter dated May 1, 2013, the Sign Structure Permit was revoked; and

WHEREAS, the instant appeal followed; and

WHEREAS, initially, the contested issue on appeal was whether the Sign was “within view” of an approach to the Lincoln Tunnel; DOB initially advanced the argument that the Sign was “within view” of an approach per the Board’s interpretation of “within view” in BSA Cal. No. 134-13-A (538 Tenth Avenue, Manhattan) (adopting the “360 Degrees Standard” for determining whether a sign is “within view”); and

WHEREAS, the Appellant countered that because a motorist would have to tilt her head in order to view the Sign, the Sign should not be considered “within view”; however, even if the Sign is considered “within view” of a restricted roadway, the Appellant asserts that the roadway in question—the length of Dyer Avenue between the site (at West 31st Street) and the Lincoln Tunnel (hereafter “Lincoln Tunnel Expressway/Dyer Avenue”)—is neither a designated arterial highway itself, nor an “approach” to a designated arterial highway, per 1 RCNY § 49-01 (“Rule 49”), because northbound traffic along the roadway has an opportunity to enter the street network well north of the site at West 39th Street; and

WHEREAS, DOB agrees with the Appellant that Lincoln Tunnel Expressway/Dyer Avenue does not satisfy the definition of “approach” set forth in Rule 491; however, DOB asserts that the roadway itself is a designated arterial highway shown on the Master Plan of Arterial Highways and Major Streets (“Master Plan”) as part of the Lincoln Tunnel toll crossing and designated by the City Planning Commission (“CPC”) in its January 15, 1958 resolution (the “1958 CPC Resolution”); as such, DOB states that the Sign, which is within view of and a few linear feet from Lincoln Tunnel Expressway/Dyer Avenue, is prohibited by ZR § 42-552; and

WHEREAS, as set forth below, the Appellant disagrees that Lincoln Tunnel Expressway/Dyer Avenue is a designated arterial highway; therefore, the issue on appeal is whether that roadway is a designated arterial highway or an approach to a designated arterial highway under the Zoning Resolution; and

1 The Board agrees with the parties that Lincoln Tunnel Expressway/Dyer Avenue does not satisfy the definition of “approach” set forth in Rule 49.

2 Because the parties agree that the Sign is “within view” of certain portions of the full length of Lincoln Tunnel Expressway/Dyer Avenue, there is no further discussion of the 360 Degrees Standard in this appeal.

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 Definitions

Non-conforming, or non-conformity

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

ZR § 42-55

Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways

M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

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

- (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
- (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be structurally altered, relocated or reconstructed

For the purposes of this Section, arterial highways shall include all highways that are shown on the Master Plan of Arterial Highways and Major Streets as “principal routes,” “parkways” or “toll crossings,” and that have been designated by the City Planning Commission as arterial highways to which the provisions of this Section shall apply.

ZR Appendix H

Designation of Arterial Highways

Pursuant to the provisions of Section 32-66 and 42-55 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) of the Zoning Resolution of the City of New York, the City Planning Commission has designated as arterial highway to which the provisions of Sections 32-66 and 42-55 apply, the following arterial highways which appear on the City Map and which are also indicated as Principal Routes, Parkways and Toll Crossings on the duly adopted Master Plan of Arterial Highways and Major Streets. . . .

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TOLL CROSSINGS . . . Lincoln Tunnel and Approaches;

* * *

1 RCNY 49-01 Definitions

Approach. The term “approach” as found within the description of arterial highways indicated within Appendix C3 of the Zoning Resolution, shall mean that portion of a roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant asserts that the Sign and Sign Structure Permits were improperly revoked by DOB because the Sign is not subject to the arterial highway restrictions on advertising signs; and

WHEREAS, specifically, the Appellant states that although the Sign is within view of Lincoln Tunnel Expressway/Dyer Avenue, that roadway is neither a designated arterial highway, nor an approach to a designated arterial highway; and

Arterial Highway

WHEREAS, the Appellant asserts that Lincoln Tunnel Expressway/Dyer Avenue is not an arterial highway for the following reasons: (1) the roadway is not listed by name in Appendix H; (2) the Master Plan is too vague to effect a designation of a particular roadway; (3) the 1958 CPC Resolution did not expressly designate the roadway as a toll crossing; and (4) the Master Plan and the CPC Resolution are, at best, ambiguous as to whether they designated the roadway as part of the Lincoln Tunnel toll crossing; and

WHEREAS, the Appellant states that although Lincoln Tunnel Expressway/Dyer Avenue appears as a series of dots on the Master Plan as a toll crossing, the roadway is not designated by name as an arterial highway in Appendix H of the Zoning Resolution; rather, the Appellant contends that Appendix H of the Zoning Resolution (“Appendix H”) lists only “Lincoln Tunnel and Approaches” under the toll crossings section; and

WHEREAS, the Appellant states that DOB’s basis for determining that the Lincoln Tunnel Expressway/Dyer Avenue appears on the Master Plan cannot be correct because even though the dots approximate where Lincoln Tunnel Expressway/Dyer Avenue is located, the Master Plan is too vague to give fair notice of the requirement; and

WHEREAS, likewise, the Appellant asserts that the 1958 CPC Resolution—which DOB contends amended the

Master Plan to make Lincoln Tunnel Expressway/Dyer Avenue a toll crossing subject to the arterial highway provisions—failed to expressly designate Lincoln Tunnel Expressway/Dyer Avenue and only did so by implication when it depicted the roadway on the Master Plan as a toll crossing; and

WHEREAS, the Appellant contends that the dots were not placed on the Master Plan to denote an official extension of the Lincoln Tunnel toll crossing but rather as a reference showing the connection to the Mid-Manhattan Expressway, which was relocated pursuant to the 1958 CPC Resolution; and

WHEREAS, in support of this assertion, the Appellant provided copies of CPC resolutions from the 1940s, 1950s, and 1960s that expressly state the name of the roadway to be designated as an arterial highway; the Appellant states that the 1958 CPC Resolution, in contrast, explicitly detailed the modifications to the Mid-Manhattan Expressway, but contained no clear language designating Lincoln Tunnel Expressway/Dyer Avenue as an arterial highway; and

WHEREAS, further, the Appellant asserts that the 1958 CPC Resolution suffers from internal inconsistencies and ambiguities that make it impossible to determine whether it modified the Master Plan with respect to Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, the Appellant also asserts that modifications to the City Map—which DOB notes correspond to the descriptions of Lincoln Tunnel Expressway/Dyer Avenue—are not relevant to the question of whether the roadway was designated under the 1958 CPC Resolution, because, as a matter of law, a City Map change does not fix the terms of a CPC resolution; and

WHEREAS, the Appellant contends that because both the 1958 CPC Resolution and the Master Plan are ambiguous as to whether Lincoln Tunnel Expressway/Dyer Avenue is a toll crossing and an arterial highway, the ambiguity must be resolved in favor of the property owner in accordance with Allen v. Adami, 39 NY2d 275, 277 (1976); 440 East 102nd Street Corp. v. Murdock, 285 NY 298, 304 (1941); and Exxon Corp. v. New York City Board of Standards and Appeals, 128 AD2d 289, 295-296 (1st Dep’t 1987), app. denied 70 NY2d 614 (1988); and

WHEREAS, finally, the Appellant states that by looking to the 1958 CPC Resolution and the Master Plan—which, again, the Appellant considers too vague to rely on—to determine whether the Sign is subject to the arterial highway restrictions, DOB is ignoring its prior interpretation, as embodied in Rule 49, contrary to Allen v. Blum, 85 AD2d 228, 236 (1st Dep’t 1982); and Chambers v. Coughlin, 76 Ad2d 980, 981 (3rd Dep’t 1980); and

WHEREAS, additionally, the Appellant asserts that, pursuant to Parkview Associates v. City of New York, 71 NY2d 274, 281 (1988), the specifics of a CPC resolution

3 Previously, Appendix H was known as Appendix C; Rule 49 has not been amended to reflect the update. The change from C to H was purely administrative and had no substantive effect on the designation of any arterial highway.

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control the images on the map; as such, the vague dots on the Master Plan are clarified by the absence of explicit language designating Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing in the 1958 CPC Resolution; and

WHEREAS, accordingly, the Appellant contends that Lincoln Tunnel Expressway/Dyer Avenue is not a designated arterial highway; and

Approach

WHEREAS, the Appellant asserts that, as roadway connecting to the Lincoln Tunnel, Lincoln Tunnel Expressway/Dyer Avenue is subject to the Rule 49 definition of “approach,” and according to such definition, the roadway is not an approach; and

WHEREAS, the Appellant states that in promulgating a definition for “approach” in Rule 49, DOB has already determined whether Lincoln Tunnel Expressway/Dyer Avenue is subject to the arterial highway restrictions; and

WHEREAS, the Appellant states, in essence, that if it is not apparent from the applicable CPC resolution and Master Plan whether a roadway is designated as an arterial highway, DOB must apply Rule 49’s definition of approach; and

WHEREAS, the Appellant asserts that, by definition, Lincoln Tunnel Expressway/Dyer Avenue is not an approach (and therefore not subject to the arterial highway restrictions) because northbound traffic along the roadway has an opportunity to enter the street network well north of the site at West 39th Street; and

WHEREAS, thus, the Appellant contends that the arterial highway sign restrictions are inapplicable to the Sign; and

WHEREAS, accordingly, the Appellant states that DOB’s revocation of the Sign Permit and the Sign Structure Permit must be reversed; and

DOB’S POSITION

WHEREAS, DOB asserts that the Sign is within view of Lincoln Tunnel Expressway/Dyer Avenue, which is a designated arterial highway; thus, the Sign and Sign Structure Permits were issued in 1999 contrary to ZR § 42-534 and were properly revoked; and

Arterial Highway

WHEREAS, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is a designated arterial highway because it is: (1) shown on the Master Plan; and (2) designated as a toll crossing by CPC in the 1958 CPC Resolution; and

WHEREAS, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan, in that it is depicted as a series of dots descending from the Lincoln

Tunnel, which, according to the Master Plan’s legend, indicate that the roadway is part of the Lincoln Tunnel toll crossing; and

WHEREAS, DOB disagrees with the Appellant that the dots are too vague to be understood as designating the roadways that comprise Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing; DOB states that there is sufficient information on the face of the Master Plan and in the relevant CPC resolutions adopting modifications to the Master Plan to demonstrate that the roadway is an arterial highway; and

WHEREAS, DOB notes that the Master Plan was a requirement of former New York City Charter § 197, which also required modification of the Master Plan from time to time to show desirable streets, roads, highways, and other features to provide for future growth, development, and adequate facilities in the city; and

WHEREAS, DOB states that the Master Plan shows integral parts of the highway system and is intended to be a macroscopic, schematic framework for development and purposefully does not show precise lines for all routes; nevertheless, DOB asserts that one can identify the location of Lincoln Tunnel Expressway/Dyer Avenue and determine that it is in fact a toll crossing by examining the 1958 CPC Resolution; and

WHEREAS, specifically, DOB states that the 1958 CPC Resolution makes reference to “[n]ew approaches for the Lincoln Tunnel, which have been recently built, [that] extend southerly to 30th Street and this street has been widened between Ninth and Tenth Avenues” and that such reference reflects a designation of Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing; and

WHEREAS, DOB asserts that the widened street at West 30th Street between Ninth and Tenth Avenues referenced by CPC can only be Lincoln Tunnel Expressway/Dyer Avenue since no other street matches this description; and

WHEREAS, accordingly, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan; and

WHEREAS, likewise, DOB asserts that the language of the 1958 CPC Resolution—in addition to facilitating an understanding of the Master Plan—reflects a designation of Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing; and

WHEREAS, DOB states that, contrary to the Appellant’s assertions, there is no need for the 1958 CPC Resolution to have verbalized the designation of Lincoln Tunnel Expressway/Dyer Avenue or list the roadway by name as had been done in other CPC designations of arterial highways; and

WHEREAS, DOB contends that an express statement was not required because the Master Plan itself was modified to extend the reach of the toll crossing; the extension of the

4 ZR § 42-53 was modified and renumbered as ZR § 42-55 as a result of the February 27, 2001 text amendment. The modification was purely administrative and had no substantive effect on the issues presented in this appeal.

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dots on the Master Plan spoke for itself; and

WHEREAS, DOB also notes that the City Map depicts a widened street at West 30th Street between Ninth and Tenth Avenues, which matches precisely the location of the lengthened toll crossing according to the 1958 CPC Resolution; and

WHEREAS, additionally, DOB asserts that a CPC report need not explicitly declare that a roadway is an arterial highway; ZR § 42-55 and Appendix H, rather than the CPC report, are the operative statutory provisions that impose control over signs proximate to toll crossings on the Master Plan; and

WHEREAS, accordingly, DOB states that Lincoln Tunnel Expressway/Dyer Avenue is both designated as part of the Lincoln Tunnel toll crossing (which is an arterial highway according to Appendix H of the Zoning Resolution) and shown on the Master Plan; and

Approach

WHEREAS, DOB disagrees with the Appellant that Appendix H's listing of Lincoln Tunnel and Approaches implicates Rule 49's definition of "approaches" with respect to Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, DOB contends that because Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan as a toll crossing, the roadway necessarily is not an approach but is, rather, part of the toll crossing; thus, Appendix H's listing of the toll crossing "Lincoln Tunnel" reflects a designation of both the Lincoln Tunnel and Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, thus, DOB asserts that the Rule 49 definition of "approach" has no bearing on whether Lincoln Tunnel Expressway/Dyer Avenue has been designated as an arterial highway; and

WHEREAS, DOB states that the Rule 49 definition of approach is employed only where the Master Plan's schematic framework is too large in scale to ascertain whether a roadway is an approach, as that term is used in Appendix H; thus, the definition is inapplicable to this case because Lincoln Tunnel Expressway/Dyer Avenue is actually depicted as a toll crossing on the Master Plan; and

WHEREAS, accordingly, DOB states that the Sign and Sign Structure Permits were issued in violation of the arterial highway restrictions of ZR § 42-53; as such, the Final Determinations revoking such permits should be upheld; and

CONCLUSION

WHEREAS, the Board finds that: (1) Lincoln Tunnel Expressway/Dyer Avenue is a designated arterial highway, in that it is shown as part of the Lincoln Tunnel toll crossing on the Master Plan and was designated as such by the 1958 CPC Resolution; and (2) Lincoln Tunnel Expressway/Dyer Avenue is not subject to the Rule 49 definition of "approaches"; and Arterial Highway

WHEREAS, the Board finds that Lincoln Tunnel

Expressway/Dyer Avenue is a designated arterial highway, in that it is shown as part of the Lincoln Tunnel toll crossing on the Master Plan and was designated as such by the 1958 CPC Resolution; and

WHEREAS, the Board finds that the Master Plan shows a series of dots that approximate the location of Lincoln Tunnel Expressway/Dyer Avenue; according to the legend for the map, the dots indicate that the toll crossing for the Lincoln Tunnel begins at the tunnel and descends southward between Ninth and Tenth Avenues to West 30th Street; and

WHEREAS, the Board finds that the change in the Master Plan accompanied the adoption of the 1958 CPC Resolution and that such resolution provides a basis for finding that the area shown on the Master Plan was intended to be made part of the toll crossing; and

WHEREAS, the Board agrees with DOB that the 1958 CPC Resolution makes reference to "[n]ew approaches for the Lincoln Tunnel, which have been recently built, [that] extend southerly to 30th Street and this street has been widened between Ninth and Tenth Avenues" and that such reference reflects a designation of Lincoln Tunnel Expressway/Dyer Avenue as a toll crossing; and

WHEREAS, the Board also agrees with DOB that the widened street at West 30th Street between Ninth and Tenth Avenues referenced by CPC can only be Lincoln Tunnel Expressway/Dyer Avenue since no other street matches this description; and

WHEREAS, the Board also finds that, contrary to the Appellant's assertions, there is no need for the 1958 CPC Resolution to have verbalized the designation of Lincoln Tunnel Expressway/Dyer Avenue or list the roadway by name as had been done in other CPC designations of arterial highways; and

WHEREAS, rather, the Board finds that a CPC report need not explicitly declare that a roadway is an arterial highway, and that ZR § 42-55 and Appendix H are the operative statutory provisions; and

WHEREAS, as to the Appellant's assertion that the dots were not placed on the Master Plan to denote an official extension of the Lincoln Tunnel toll crossing but rather as a reference showing the connection to the Mid-Manhattan Expressway, which was relocated pursuant to the 1958 CPC Resolution, the Board disagrees; that the Master Plan was amended at all carries significant weight particularly *because* it is macroscopic and schematic in nature; thus, any change to the Master Plan must be presumed to have been made deliberately; and

WHEREAS, turning to the Appellant's cited case law, the Board disagrees that there is an "ambiguity" that must be resolved in favor of the property owner pursuant to Allen v. Adami, 39 NY2d 275 (1976); and

WHEREAS, rather, as noted above, the Board finds that even a cursory review of the symbols and legend of the Master

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Plan plainly indicates that the Lincoln Tunnel toll crossing extends southward from the tunnel; likewise, mere reference to Appendix H reveals that the Lincoln Tunnel is a “toll crossing” subject to the arterial highway restrictions set forth in ZR § 42-55; thus, to the extent that the precise location of the toll crossing cannot be determined by reference to the Master Plan or Appendix H, it is proper to consult the CPC resolution that created the designation in order to determine where the toll crossing—which is shown on the Master Plan and referenced in Appendix H—begins and ends; and

WHEREAS, thus, the Board observes that while the scope of the 1958 designation may not be readily apparent based solely on the Master Plan, the precise nature of the designation may be ascertained by reference to the 1958 CPC Resolution; thus, the designation—and, consequently, the applicability of the arterial highway restrictions, per ZR § 42-55—is, contrary to the Appellant’s assertions, clear and unambiguous; and

WHEREAS, likewise, the Board finds that there is no discrepancy between the Master Plan and the Zoning Resolution that implicates Parkview Associates v. City of New York, 71 NY2d 274 (1988); in that case, the Court of Appeals held that “discrepancies between the zoning map and enabling resolution are controlled by the specifics of the resolution”; insofar as the Parkview holding applies to a discrepancy between the Zoning Resolution and the Master Plan, here, there is no discrepancy – the Master Plan (and the 1958 CPC Resolution which amended it) merely clarify the requirements of ZR § 42-55 and Appendix H; and

WHEREAS, accordingly, the Board finds that Lincoln Tunnel Expressway/Dyer Avenue is designated as part of the Lincoln Tunnel toll crossing; and Approach;

WHEREAS, the Board agrees with DOB that the Rule 49 definition of “approaches” is not implicated in this appeal; and

WHEREAS, the Board finds that because Lincoln Tunnel Expressway/Dyer Avenue is shown on the Master Plan as a toll crossing, the roadway necessarily is not an approach but is, rather, part of the toll crossing; thus, Appendix H’s listing of the toll crossing “Lincoln Tunnel” reflects a designation of both the Lincoln Tunnel and Lincoln Tunnel Expressway/Dyer Avenue; and

WHEREAS, the Board also finds that, irrespective of the nomenclature employed, there was a clear intent in the 1958 CPC Resolution and in the amendment to the Master Plan to designate newly built roadways as part of the Lincoln Tunnel toll crossing arterial highway; where the CPC Resolution makes reference to the “approaches” it does so to distinguish the newly designated portions of the toll crossing from the actual tunnel; thus, the “approaches” portion of “Lincoln Tunnel and Approaches” is a historical use of the term—and one that is not subject to Rule 49’s definition of “approaches,” which came into effect decades later; and

WHEREAS, likewise, the Board observes that the Appellant’s interpretation of Rule 49 would impose *less* restrictive requirements than the statute being implemented by the rule; in effect, this would result in a legislative act being overruled by executive rule-making; accordingly, the Board declines to adopt the Appellant’s interpretation of Rule 49 in this case because doing so would permit that which the 1958 CPC Resolution intended to prohibit – advertising signs along the Lincoln Tunnel toll crossing; and

WHEREAS, thus, contrary to the Appellant’s assertions, DOB did not decide this case when it promulgated Rule 49; rather, CPC decided it when it made Lincoln Tunnel Expressway/Dyer Avenue part of the Lincoln Tunnel toll crossing; and

WHEREAS, accordingly, the Board finds that the Sign is within view of an arterial highway and that DOB properly revoked the Sign Permit and the Sign Structure Permit; and

Therefore it is Resolved, that this appeal, challenging the Final Determinations issued on April 17, 2013 and on May 1, 2013, is denied.

Adopted by the Board of Standards and Appeals, April 8, 2014.

307-13-A & 308-13-A

APPLICANT – Joseph M. Morace, R.A., for Jake Rock, LLC, owner.

SUBJECT – Application November 21, 2013 – Proposed construction of two detached, two-family residences not fronting on a mapped street, contrary to Section 36 of the General City Law. R3A zoning district.

PREMISES AFFECTED – 96 & 100 Bell Street, Block 2989, Lot 24 & 26, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated October 24, 2013, acting on Department of Buildings Application Nos. 520149777 and 520149786, reads in pertinent part:

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

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

B) Proposed construction does not have at least 8% of the total perimeter of the building

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fronting directly upon a legally mapped street or frontage space contrary to Section 502.1 of the 2008 NYC Building Code; and

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

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision April 8, 2014; and

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

WHEREAS, the subject site is located on the east side of Bell Street beginning at a point approximately 72 feet south of Reynolds Street within an R3A zoning district; and

WHEREAS, the applicant states that the site has 5,844 sq. ft. of lot area and has been subdivided into two zoning lots (Tentative Tax Lots 24 and 26); and

WHEREAS, the applicant proposes to construct a two-story, two-family home with approximately 1,995 sq. ft. of floor area (0.59 FAR) and three accessory parking spaces on Tentative Lot 24, and a two-story, single-family home with approximately 1,440 sq. ft. of floor area (0.59 FAR) and two accessory parking spaces on Tentative Lot 26; and

WHEREAS, the applicant notes that Bell Street is paved and traveled, intersecting Reynolds Street to the north of the property, and that utilities, mail delivery and Sanitation Department services are provided for residents along the street; and

WHEREAS, the applicant states that a proposed eight-inch water main and fire hydrant are to be installed in Bell Street, in accordance with the Fire Department’s approval; in addition, onsite drywells are proposed for storm water runoff, and a connection will be made to an existing eight-inch sanitary sewer for sewage disposal; the sanitary sewer is maintained pursuant to a homeowners’ association agreement; and

WHEREAS, by letter dated January 29, 2014, the Fire Department states that it has reviewed the project and offers no objections provided the applicant complies with the following requirements: (1) the applicant submits to the Fire Department a variance request for construction on a substandard street; (2) all proposed homes are to be fully sprinklered; (3) that no parking anytime be permitted in front of the proposed homes with signs posted in accordance with Fire Code regulations; and (4) that any parking violations will be considered a violation of the Fire Commissioner’s Order and enforceable against the owner(s) of the property; and

WHEREAS, the applicant states that it submitted a variance application and revised plans to the Fire Department by letter dated February 20, 2014; and

WHEREAS, the applicant represents that, consistent with the Fire Department’s requirements, the width of the paved road is to be increased to 25 feet, a water main and fire hydrant are to be installed, both homes will be fully-sprinklered, and “No Parking” signs will be posted in front of both homes; and

WHEREAS, by letter dated March 24, 2014 the Fire Department states that it has reviewed and approved the revised site plan, subject to the following conditions: (1) both homes are fully-sprinklered, (2) “No Parking” are posted along the dead-end portion of Bell Street, in accordance with NYC Fire Code 503.7; and (3) hydrants are installed, as indicated on site plan, and in compliance with Department of Environmental Protection standards; and

WHEREAS, at hearing, the Board directed the applicant to provide a new sidewalk along Bell Street and to confirm that the proposed street trees are in accordance with the R3A district regulations; and

WHEREAS, in response, the applicant submitted an amended site plan showing a sidewalk with a width of three feet along Bell Street in front of the proposed homes; and

WHEREAS, as to the street trees, the applicant submitted approval letters from the Parks and Recreation Department; and

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

Therefore it is Resolved, that the decision of the Staten Island Borough Commissioner, dated October 24, 2014, acting on Department of Buildings Application Nos. 520149777 and 520149786, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received March 5, 2014”-(1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT the Builder’s Pavement Plan for the site will be as reviewed and approved by DOB;

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

THAT both homes will be fully-sprinklered;

THAT signs stating “No Parking” will be posted along the dead end portion of Bell Street;

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

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

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

Adopted by the Board of Standards and Appeals April 8, 2014.

123-13-A

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

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

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

COMMUNITY BOARD #2M

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

33-14-A

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

SUBJECT – Application February 13, 2014 – Appeal challenging the Department of Building’s determination regarded permitted community facility FAR, per §113-11 (Special Bulk Regulations for Community Facilities) C4-2 zoning district, C8-2 (OP). C4-2 (OP) zoning district.

PREMISES AFFECTED – 902 Quentin Road, Southeast corner of intersection of Quentin Road and East 9th Street. Block 6666, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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

Jeff Mulligan, Executive Director

ZONING CALENDAR

62-12-BZ

CEQR #12-BSA-094X

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

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

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner of the Department of Buildings (“DOB”), dated November 30, 2011, acting on DOB Application No. 220142441, reads, in pertinent part:

Proposed commercial use (retail Use Group 6) in an R7-1 zoning district is contrary to ZR 22-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R7-1 zoning district, the construction of a one-story mixed commercial and community facility building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on July 23, 2013, after due notice by publication in the *City Record*, with a continued hearing on March 25, 2013, and then to decision on April 8, 2014; and

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

WHEREAS, Community Board 1, Bronx, recommends approval of the application, on condition that certain uses not be permitted within the building, including shelters, SROs, halfway houses, special needs or mental health facilities, domestic violence facilities, drug or alcohol rehabilitation centers, clubs, bars, cabarets, hotels or motels; and

WHEREAS, Bronx Borough President Ruben Diaz, Jr. and City Councilperson Maria del Carmen Arroyo provided testimony in support of the application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Morris Avenue and East 151st Street, within an R7-1 zoning district; and

WHEREAS, the site has 58.79 feet of frontage along Morris Avenue, 70.25 feet of frontage along East 151st Street,

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and 4,130 sq. ft. of lot area; and

WHEREAS, the applicant states that the site is vacant; and

WHEREAS, the applicant proposes to construct a two-story mixed commercial and community facility building with 8,260 sq. ft. of floor area (2.0 FAR); the first story would have 4,130 sq. ft. of floor area and be occupied by retail stores (Use Group 6); the second story would also have 4,130 sq. ft. of floor area and it would be occupied by a use within Use Group 4; and

WHEREAS, because Use Group 6 is not permitted within the subject R7-1 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: its small lot size, shallow lot depth, and vacancy; and

WHEREAS, the applicant states that the site's small lot size (4,130 sq. ft. of lot area) and shallow lot depth (approximately 70 feet) make it unsuitable for conforming uses; and

WHEREAS, specifically, the applicant states it is financially infeasible to develop a site this small in this neighborhood for residential use without some commercial use, because residential uses of this scale require commercial use to offset the comparatively low residential rent, and

WHEREAS, in support of this statement, the applicant states that along Morris Avenue, small sites (with lot depths similar to the site and average lot areas of 2,000 sq. ft.) are occupied by approximately 100-year-old two- and three-story mixed residential and commercial buildings with commercial use at the ground floor; indeed, the applicant notes that the entire west side of Morris Avenue between East 149th Street and East 153rd Street is occupied by mixed residential and commercial buildings with ground floor retail use; and

WHEREAS, in addition, the applicant notes that residential developments without a commercial component in the neighborhood are much larger in scale than the site and can qualify for government assistance programs; and

WHEREAS, specifically, the applicant represents that nearby sites without a commercial component are significantly larger than the site, with average lot areas of 150,000 sq. ft.; such sites are developed as high-rise subsidized/low-income/affordable housing by the New York City Housing Authority, the New York State Division of Housing and Community Renewal, and the New York City Housing Development Corporation, which is not available to a site as small as the subject site; and

WHEREAS, the applicant also notes that the large sites were developed between 1961 and 1985; thus, new housing has not been developed in the vicinity for nearly 30 years; and

WHEREAS, the applicant states that the site's vacancy

makes it unique within the surrounding community, and submitted an area study, which reflects that there are only two other vacant sites within 400 feet of the site, both of which are owned by the New York City Department of Housing Preservation and Development and used in conjunction with the nearby Governor Smith Playground; and

WHEREAS, the Board finds that the cited conditions create an unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, in addition to the proposal, the applicant examined the economic feasibility of a four-story multiple dwelling with 14,207 sq. ft. of floor area (3.44 FAR) and 14 dwelling units; and

WHEREAS, the applicant concluded that the as-of-right scenario resulted in a negative rate of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return, making it economically viable; and

WHEREAS, at hearing, the Board requested additional information regarding the types of housing that surround the site; and

WHEREAS, in response, the applicant provided charts detailing the two types of housing in the area: low-rise multiple dwellings with ground floor commercial; and higher-density (between six- and 25-stories) subsidized housing; and

WHEREAS, based on the information provided in these charts and on the applicant's economic analysis, the Board agrees that because of the site'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 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the immediate area is characterized by a mix of low- to medium-density residential, commercial and community facility uses; the subject block is predominantly occupied by a school, an athletic field, and, as noted above, the Governor Smith Playground; the playground is directly south of the site, four- and three-story mixed residential and commercial buildings are located, respectively, directly north and south (across East 151st Street) of the site, and across Morris Avenue is a six-story multiple dwelling; and

WHEREAS, the applicant notes that the section of

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Morris Avenue where the site is located is a two-way, heavily-trafficked thoroughfare, with street parking on both sides, and retail uses at the ground floor for the full length of the subject block and the block directly south of East 151st Street; and

WHEREAS, accordingly, the proposed commercial use at the ground floor will be compatible with the surrounding neighborhood; and

WHEREAS, turning to bulk, the applicant represents that the following are the bulk parameters of the proposal: two stories; 8,260 sq. ft. of floor area (2.0 FAR); 100 percent lot coverage; and a maximum building height of 37'-6"; and

WHEREAS, the applicant notes that the proposed FAR of 2.0 is less than half of the maximum FAR permitted for a community facility building in the subject R7-1 district (4.8 FAR) and that the proposed building height is well-below the maximum permitted (60'-0"); and

WHEREAS, as for the lot coverage, the applicant notes that although it is non-complying—the maximum lot coverage for a community facility building is 70 percent with the first story being a permitted obstruction within lot coverage up to 23 feet for certain community facilities—the site's location on a corner mitigates the impact of such lot coverage; additionally, due to the site's shallow depth, full lot coverage is necessary in order to provide a building with marketable floorplates; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the proposal is consistent with the neighborhood in terms of use and bulk and will not negatively impact nearby conforming uses; and

WHEREAS, the Board also notes that Community Board 1 approved the application on condition that certain uses not be permitted at the site; and

WHEREAS, the Board observes that many of the uses opposed by Community Board 1 are community facility uses permitted as-of-right in the subject R7-1 zoning district; as such, the Board declines to impose a restriction that would prohibit uses that are permitted as-of-right; and

WHEREAS, as for the commercial uses that Community Board 1 identified as objectionable (clubs, bars, cabarets, hotels and motels), the Board agrees that they are not appropriate within this building and will not be permitted under this grant, and the Board notes that hotels and motels are neither physically possible, nor financially feasible within the proposed building; and

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

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's

unique physical conditions; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, 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. 12-BSA-094X, dated March 5, 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, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

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, within an R7-1 zoning district, the construction of a one-story mixed commercial and community facility building, contrary to ZR § 22-00, *on condition* that any and all work will substantially conform to drawings filed with this application marked "Received April 2, 2014"—(7) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of two stories; a maximum of 8,260 sq. ft. of floor area (2.0 FAR) (4,130 sq. ft. of commercial floor area and 4,130 sq. ft. of community facility floor area); 100 percent lot coverage; and a maximum building height of 37'-6";

THAT signage will comply with C1 regulations;

THAT the following uses will not be permitted at the site: clubs, bars, cabarets, hotels or motels;

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

THAT substantial construction will be completed in accordance with ZR § 72-23;

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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 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, April 8, 2014.

77-12-BZ

CEQR #12-BSA-108K

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

SUBJECT – Application April 3, 2012 – Variance (§72-21) to permit a new residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 91 Franklin Ave, 82’-3” south side corner of Franklin Avenue and Park Avenue, Block 1899, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 13, 2012, acting on Department of Buildings Application No. 320384026, reads in pertinent part:

Proposed five-story residential building in an M1-1 zoning district is contrary to 42-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on October 8, 2013, after due notice by publication in the *City Record*, with continued hearings on January 14, 2014, February 25, 2014, and March 25, 2014, and then to decision on April 8, 2014; and

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

WHEREAS, Community Board 4, Brooklyn,

recommends approval of this application; and

WHEREAS, Councilmember Steven Levin and former Councilmember Letitia James provided testimony in support of this application; and

WHEREAS, the subject site is located on the east side of Franklin Avenue, between Park Avenue and Myrtle Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 50 feet of frontage along Franklin Avenue, a depth of 100 feet, and approximately 5,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by two buildings: a vacant, three-story frame residential building, which, according to the Sanborn map, existed as of 1887; and an accessory garage; and

WHEREAS, the applicant notes that residential use became non-conforming at the site as of December 15, 1961, when the M1-1 designation took effect; and

WHEREAS, the applicant states that the building is structurally unsound and was vacated in 2009; consequently, residential use has been discontinued at the site for more than two consecutive years and, per ZR § 52-61, cannot be resumed; and

WHEREAS, accordingly, the applicant seeks a use variance to maintain the site’s historic residential use by constructing a new four-story multiple dwelling in accordance with the bulk regulations applicable in an R6A district; and

WHEREAS, initially, the applicant proposed a five-story multiple dwelling with 14,840 sq. ft. of floor area (2.97 FAR), 60 percent lot coverage, ten dwelling units, a rear yard depth of 34’-2”, and a total building height of 60 feet; and

WHEREAS, at the Board’s direction, through the hearing process, the proposal was reduced in height, number of stories, number of dwelling units, and FAR; and

WHEREAS, the applicant now proposes a four-story building multiple dwelling with 12,610 sq. ft. of floor area (2.52 FAR), 63 percent lot coverage, eight dwelling units, a rear yard depth of 30’-4”, and a total building height of 36’-0”; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site’s history of residential use and adjacency to residential buildings on all sides, and across the street; (2) its contaminated soil; and (3) its small lot size of 5,000 sq. ft. and narrow lot width of 50 feet; and

WHEREAS, the applicant states that a residential building has occupied the site for approximately 125 years, and that there are residential buildings directly adjacent to the lot on all sides and across the street; and

WHEREAS, in addition, the applicant notes that the site borders an MX-4 zoning district, where residences are permitted as-of-right; and

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WHEREAS, as to the building itself, the applicant provided an engineer's report that indicates that the building—with its awkward layouts, low ceilings, and lack of energy efficiency due to improper insulation—is obsolete for modern residential living and that, more importantly, it is structurally compromised in a manner that makes reconstruction infeasible; and

WHEREAS, moreover, the applicant states that even if the building could be restored to a habitable condition, residential use has been discontinued for more than two consecutive years and may not be resumed; and

WHEREAS, the applicant also represents that the site suffers from soil contamination; and

WHEREAS, specifically, the applicant provided a report that indicates the presence of unacceptable levels of lead and mercury within the soil; as such, soil management, transportation, and disposal in accordance with New York State Department of Environmental Conservation ("DEC") regulations is required, at significant cost; and

WHEREAS, finally, the applicant represents that the site's narrowness and small lot size would result in a conforming manufacturing or commercial building with inefficient, narrow floor plates that would be inadequate space for providing a loading dock; further, the applicant states that based on the small lot size, a conforming development would provide a maximum floor plate of 5,000 sq. ft., which the applicant represents is substandard for modern manufacturing uses; and

WHEREAS, in support of its claim that the site—with its narrow lot width and small lot size—is not feasible for modern manufacturing use, the applicant conducted a study of all vacant sites within the subject M1-1 district; the applicant notes that vacant sites are comparable because the existing buildings at the site are in disrepair and must be demolished; and

WHEREAS, based on the study, the applicant concludes that, except two other sites on Franklin Avenue, vacant sites within the M1-1 district are either: (1) occupied by existing commercial or industrial uses; (2) adjacent to existing commercial or industrial uses; (3) located on streets where conforming uses predominate; or (4) located adjacent to other vacant sites, which could allow for a possible assemblage; and

WHEREAS, thus, the applicant concludes that only the subject site is too small to be developed independent of its neighboring sites, unable to develop in conjunction with adjacent sites (because it is surrounded by residences on all sides), and located on a predominantly residential street; and

WHEREAS, the Board disagrees with the applicant that a 5,000-sq.ft. site is particularly unique or prohibitively small to develop; however, the Board agrees with the applicant that the site's historic residential use, adjacency to other residential uses (indeed, the predominance of residential use on the block), and soil contamination, are unique physical

conditions, which, in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant submitted a feasibility study which analyzed the rate of return on an as-of-right industrial building at the site and the proposal; and

WHEREAS, according to the study, a one-story building with approximately 5,000 sq. ft. of floor area occupied by a manufacturing use would yield a negative rate of return; the proposed residential building, on the other hand, would realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict conformance with applicable use 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, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the subject block is primarily developed with residential buildings; the applicant notes that directly behind the site—the eastern half of the subject block—is an MX-4 zoning district, where the proposed use would be as-of-right; and

WHEREAS, as to adjacent uses, as noted above, there are residential uses on all adjacent lots and across the street; and

WHEREAS, the applicant also notes that the site was occupied by a residential building from at least 1887 until 2009; thus, the applicant asserts that the site—and the subject stretch of Franklin Avenue—have a long-standing residential character despite the site's M1-1 designation; and

WHEREAS, accordingly, the applicant contends that the proposal is more consistent with the neighborhood character than a conforming use would be; and

WHEREAS, as to bulk, the applicant states that the building complies in all respects with the R6A bulk regulations; and

WHEREAS, at hearing, the Board expressed concerns regarding the compatibility of the originally-proposed building height and number of stories with the surrounding residential buildings; and

WHEREAS, in response, the applicant reduced the height from 60'-0" to 36'-0" and the number of stories from five to four, and provided a streetscape, which demonstrates that the proposal is consistent with the height of the surrounding residential buildings; and

WHEREAS, accordingly, the Board finds that this

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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, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's unique physical conditions; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, 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 conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 12BSA108K, dated March 19, 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, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed and accepted the November 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, 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, and grants a variance to permit, on a site within an M1-1 zoning district, the construction of a four-story multiple dwelling (Use Group 2), contrary to ZR § 42-00; *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 April 3, 2014" – (11) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum floor area of 12,610 sq. ft. (2.52 FAR), a maximum lot coverage of 63 percent, eight dwelling units, a minimum rear yard depth of 30'-4", and a maximum building height of 36'-0", as indicated on the BSA-approved plans;

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

THAT substantial construction shall be completed 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);

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, April 8, 2014.

160-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Yitzchok and Hindy Blumenkrantz, owners.

SUBJECT – Application May 28, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1171-1175 East 28th Street, east side of East 28th Street between Avenue K and Avenue L, Block 7628, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

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WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings (“DOB”), dated May 7, 2013, acting on DOB Application No. 320712001, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141, in that the proposed floor area ratio exceeds the maximum permitted
2. Proposed plans are contrary to ZR 23-141, in that the proposed open space ratio is less than the minimum required
3. Proposed plans are contrary to ZR 23-461, in that the proposed side yard is less than the minimum required
4. Proposed plans are contrary to ZR 23-47, in that the proposed rear yard is less than the minimum required; and

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

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on April 8, 2014; and

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

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

WHEREAS, the subject site is located on the east side of East 28th Street, between Avenue K and Avenue L, within an R2 zoning district; and

WHEREAS, the site, which is three tax lots (Lots 14, 15, and 16) that are to be combined into a single tax and zoning lot, has approximately 67 feet of frontage along East 28th Street and approximately 6,667 sq. ft. of lot area; and

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

WHEREAS, the applicant notes that Lot 14 is occupied by a detached single-family home with approximately 1,320 sq. ft. of floor area (0.5 FAR), Lot 15 is occupied by a semi-detached two-family home with approximately 1,429 sq. ft. (0.72 FAR), and Lot 16 is occupied by semi-detached two-family home with approximately 1,429 sq. ft. (0.72 FAR); and

WHEREAS, the applicant proposes to demolish the buildings on Lots 14 and 15 and enlarge the building on Lot 16; and

WHEREAS, specifically, the applicant seeks an increase in the floor area from of 1,429 sq. ft. (0.72 FAR) (as measured only with respect to the lot area of Lot 16) to 6,696 sq. ft. (1.0 FAR) (as measured with respect to the combined lot area of Lots 14, 15, and 16, which, as noted above, is approximately 6,667 sq. ft.); the maximum permitted floor area is 3,333 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to reduce the existing, non-complying open space ratio (as measured only with respect to Lot 16) from 85 percent to 66 percent (as measured with respect to the combined lot area of Lots 14, 15, and 16); the minimum required open space ratio is 150 percent; and

WHEREAS, the applicant seeks to maintain one existing, non-complying side yard (on Lot 16) with a width of 3’-10” and increase the width of the other existing non-complying side yard (on Lot 16) from 0’-0” to 9’-8” (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each); and

WHEREAS, the applicant also seeks to decrease its rear yard depth (on Lot 16) from 38’-1” to 20’-0”; a minimum rear yard depth of 30’-0” is required; and

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

WHEREAS, in particular, the applicant represents that there are five other nearby sites (on the subject block or on the adjacent block) with similar lot area to the site’s 6,667 sq. ft.; and

WHEREAS, in addition, the applicant represents that the proposed 1.0 FAR is consistent with the bulk in the surrounding area and notes that there are 11 homes within the subject R2 district with FARs ranging from 1.0 to 1.14, eight of which were enlarged pursuant to a special permit from the Board; and

WHEREAS, at hearing, the Board directed the applicant to: (1) remove the parking space from the front of the building; and (2) include paths to each entrance at the front of the building; and

WHEREAS, in response, the applicant submitted amended plans showing a complying parking space and paths leading to each front entrance; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6

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N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a detached, single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received March 12, 2014”-(11) sheets and “April 2, 2014”-(2) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 6,696 sq. ft. (1.0 FAR), a minimum open space ratio of 66 percent, side yards with minimum widths of 3’-10” and 9’-8”, and a minimum rear yard depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

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

THAT 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

177-13-BZ

APPLICANT – Eric Palatnik, P.C., for Dmitriy Ratsenbg, owner.

SUBJECT – Application June 18, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, to be converted to a two-family home, contrary to floor area, lot coverage and open space (§ZR 23-141) and less than the required rear yard (§ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 134 Langham Street, west side of Langham Street between Shore Boulevard and Oriental Boulevard, Block 8754, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
 Negative:.....0

Absent: Vice Chair Collins.....1
 THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the New York City Department of Buildings (“DOB”), dated November 18, 2013, acting on DOB Application No. 320513592, reads in pertinent part:

1. Proposed floor area is contrary to ZR 23-141(b)
2. Proposed open space is contrary to ZR 23-141
3. Proposed lot coverage is contrary to ZR 23-461
4. Proposed rear yard is contrary to ZR 23-47; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-1 zoning district, the conversion (from a single-family home to a two-family home) and enlargement of an existing residential building, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on April 8, 2014; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Langham Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the site has 60 feet of frontage along Langham Street and 6,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 1,913 sq. ft. of floor area (0.32 FAR); and

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

WHEREAS, the applicant seeks to convert the single-family home to a two-family home and increase the size of the residence, as set forth below; and

WHEREAS, the applicant seeks an increase in the floor area from of 1,913 sq. ft. (0.32 FAR) to 5,911 sq. ft. (0.99 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.5 FAR), however, a 20 percent increase in FAR pursuant to ZR § 23-141(b)(1) is available, resulting in a maximum permitted floor area of 3,600 sq. ft. (0.6 FAR); and

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WHEREAS, the applicant seeks to reduce its open space from 83 percent to 59 percent; the minimum required open space is 65 percent; and

WHEREAS, likewise, the applicant seeks to increase its lot coverage from 17 percent to 41 percent; the maximum lot coverage permitted is 35 percent; and

WHEREAS, the applicant also seeks to decrease its non-complying rear yard depth from 22'-7" to 20'-0"; a minimum rear yard depth of 30'-0" is required; and

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

WHEREAS, the applicant states that the proposed 0.99 FAR is consistent with the bulk in the surrounding area; in support of this statement, the applicant submitted a land use study, which reflects that of the 109 homes within 400 feet of the site, 22 homes (20 percent) are occupied by homes with an FAR of 0.8 or greater; and

WHEREAS, the applicant also notes that three homes across Langham Street have FARs of 0.99 or greater; and

WHEREAS, at hearing, the Board directed the applicant to verify that the proposal is in compliance with the flood zone regulations; and

WHEREAS, in response, the applicant represented that the proposal was in full compliance with the flood zone regulations; and

WHEREAS, finally, the Board notes that while a conversion from an existing single-family home to a two-family home is rare under ZR § 73-622, such conversion is consistent with the text of the special permit; in addition, the subject R3-1 zoning regulations permit the resulting density; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-1 zoning district, the conversion (from a single-family home to a two-family home) and enlargement of an existing residential building, which does not comply with the zoning requirements for FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to

the objections above-noted, filed with this application and marked "Received March 20, 2014"- (11) sheets; and *on further condition:*

THAT the following will be the bulk parameters of the building: a maximum floor area of 5,911 sq. ft. (0.99 FAR), a minimum open space of 59 percent, a maximum lot coverage of 41 percent, and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB will verify the proposal's compliance with the flood zone regulations of the Zoning Resolution;

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

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

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

THAT 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

207-13-BZ

APPLICANT – Harold Weinberg, P.E., for Harold Shamah, owner.

SUBJECT – Application July 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 177 Hastings Street, east side of Hastings Street, between Oriental Boulevard and Hampton Avenue, Block 8751, Lot 456, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the New York City Department of Buildings ("DOB"), dated March 14, 2014, acting on DOB Application No. 320864695, reads in pertinent part:

The proposed enlargement creates new non-compliances, as follows:

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1. Increases the existing degree of non-compliance with reference to floor area and is contrary to sections 23-141;
2. Increases the existing degree of non-compliance for floor area ratio and is contrary to sections 23-141;
3. Increases the existing non-compliance for wall height contrary to sections 23-631;
4. Increase the existing non-compliance for rear yard and is contrary to sections 24-37; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), perimeter wall height, and rear yard, contrary to ZR §§ 23-141, 23-47, and 23-631; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on April 8, 2014; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Hastings Street, between Oriental Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the site has a lot area of 4,000 sq. ft. and is occupied by a single-family home with a floor area of 3,612 sq. ft. (0.9 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from of 3,612 sq. ft. (0.9 FAR) to 3,910 sq. ft. (0.98 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.5 FAR), however, a 20 percent increase in FAR pursuant to ZR § 23-141(b)(1) is available, resulting in a maximum permitted floor area of 2,400 sq. ft. (0.6 FAR); and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 25'-9" to 20'-0"; a minimum rear yard depth of 30'-0" is required; and

WHEREAS, finally, the applicant seeks to maintain and extend its existing, non-complying perimeter wall height of 24'-0"; the maximum permitted perimeter wall height is 21'-0"; and

WHEREAS, the Board notes that ZR § 73-622(3) allows the Board to waive the perimeter wall height only in instances where the proposed perimeter wall height is equal

to or less than the height of the adjacent building's non-complying perimeter wall facing the street; and

WHEREAS, the applicant represents that the proposed perimeter wall height (24'-0") is equal to the height of both adjacent buildings' non-complying perimeter walls facing the street 24'-0"); the applicant submitted the adjacent buildings' certificates of occupancy, which indicate that they and the subject building are substantially identical and were constructed at the same time with the same perimeter wall height facing the street; and

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

WHEREAS, in particular, the applicant represents that the proposed 0.98 FAR is consistent with the bulk in the surrounding area and that, within a 200-ft. radius of the site, every home has been enlarged in recent years; and

WHEREAS, accordingly, the Board agrees with the applicant that the proposed bulk is compatible with the character of the neighborhood; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”) and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received April 1, 2014”-(9) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,910 sq. ft. (0.98 FAR), a maximum perimeter wall height of 24'-0", and a minimum rear yard depth of 20'-0", as illustrated on the BSA-approved plans;

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

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

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

THAT 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

268-13-BZ

APPLICANT – Belkin Burden Wenig & Goldman, LLP, for Rachel H.Opland, Adrienne & Maurice Hayon, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-621) to permit legalize an enlargement to a three-story mixed use building, contrary to lot coverage regulations (§23-141). R5 zoning district.

PREMISES AFFECTED – 2849 Cropsey Avenue, north east side of Cropsey Avenue, approximately 25.9 feet northwest from the corner formed by the intersection of Bay 50th St. and Cropsey Avenue, Block 6917, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated July 16, 2013, acting on DOB Application No. 302287200, reads in pertinent part:

Proposed lot coverage of 58.5 percent . . . [is] an increase in lot coverage of 3.3 percent; and

WHEREAS, this is an application under ZR § 73-621, to permit, within an R5 (C2-2) zoning district, legalization of an enlargement of an existing two-family home, which does not comply with the zoning requirements for lot coverage, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application February 25, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on April 8, 2014; and

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

WHEREAS, Community Board 13, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped lot located on the east side of Cropsey Avenue, between Bay 49th Street and Bay 50th Street, within an R5 (C2-2) zoning district; and

WHEREAS, the site has 20 feet of frontage along Cropsey Avenue, approximately 31 feet of frontage along Bay 50th Street, and 1,845 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a three-story, two-family home with 3,240 sq. ft. of floor area (1.75 FAR); and

WHEREAS, the applicant represents that, in 2009, DOB approved plans for the redevelopment of the building under Application No. 302287200; the redevelopment included the construction of a third story, the relocation of the dwelling unit on the first story to the third story, and the conversion of commercial space on the first story to a community facility; and

WHEREAS, the applicant states that permits were issued in 2009, and construction proceeded; in 2011, DOB determined that the approval was erroneous, in that it permitted the filling-in of an existing courtyard, which increased the non-complying lot coverage for the building from 55.28 percent to 58.53 percent, which is not permitted under ZR §§ 23-141 and 54-31; and

WHEREAS, accordingly, the applicant now seeks to legalize the increase in lot coverage; and

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

WHEREAS, the applicant submitted excerpts from the 1968, 1987, and 1989 Sanborn Maps to demonstrate that the building existed as a residence well before June 20, 1989, which is the operative date within the subject R5 (C2-2) district; the applicant also submitted an affidavit from one of the owners of the building and photographs from 1988 and 1989 to further support its representation that the building existed as a residence before June 20, 1989; and

WHEREAS, accordingly, the Board acknowledges that the special permit under ZR § 73-621 is available to enlarge the building; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building, provided that the proposed lot coverage does not exceed 110 percent of the maximum permitted (55 percent); and

WHEREAS, the applicant represents that the proposed lot coverage (58.53 percent) is 106 percent of the maximum permitted (55 percent); and

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

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

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings ZR §§ 72-21 and 73-621, to permit, within an R5 (C2-2) zoning district, legalization of an enlargement of an existing two-family home, which does not comply with the zoning requirements for lot coverage, contrary to ZR § 23-141; *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 12, 2013"- (1) sheet and "January 14, 2014"-(6) sheets; and *on further condition*:

THAT the parameters of the proposed building will be limited to: three stories, two dwelling units, a maximum floor area of 3,240 sq. ft. (1.75 FAR), a maximum building height of 33'-6", 58.53 percent lot coverage, and a minimum rear yard depth of 46'-0", as per the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, April 8, 2014.

276-13-BZ

APPLICANT – Francis R. Angelino, Esq., for Adams Tower Limited Partnership, owner; Fastbreak, owner.

SUBJECT – Application September 27, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fastbreak*). C1-9 zoning district.

PREMISES AFFECTED – 1629 First Avenue aka 1617 First Avenue and 341 East 84th Street, west side First Avenue between East 84th & East 85th Street, Block 1547, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the Department of Buildings ("DOB"), dated August 28, 2013, acting on DOB Application No. 121332851, reads, in pertinent part:

Proposed physical culture establishment is not permitted as-of-right; contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C1-9 zoning district and partially within an R8B zoning district, the operation of a physical culture establishment ("PCE") on the ground floor, cellar, and sub-cellar of a 32-story mixed residential and commercial building, contrary to ZR § 32-10; 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 8, 2014; and

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

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

WHEREAS, the subject site is located on the west side of First Avenue, between East 84th Street and East 85th Street, partially within a C1-9 zoning district and partially within an R8B zoning district; and

WHEREAS, the site has approximately 120 feet of frontage along East 84th Street, 204 feet of frontage along First Avenue, 75 feet of frontage along East 85th Street, and 19,992 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 32-story mixed residential and commercial building; and

WHEREAS, the proposed PCE will occupy 1,098 sq. ft. of floor area on the ground floor, 1,632 sq. ft. of floor space in

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the cellar, and 4,161 sq. ft. of floor space in the sub-cellar, for a total PCE size of 6,891 sq. ft.; and

WHEREAS, the applicant represents that no portion of the PCE will operate within the R8B portion of the site; and

WHEREAS, the PCE will be operated as Fastbreak; 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, from 8:00 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 Fire Department states that it has no objection to the proposal; and

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

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

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

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

WHEREAS, the project is classified as 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. 14BSA047M dated September 24, 2013; and

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

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

WHEREAS, the Board has determined that the proposed

action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued 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 partially within a C1-9 zoning district and partially within an R8B zoning district, the operation of a physical culture establishment (“PCE”) in the ground floor, cellar, and sub-cellar of a 32-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 14, 2014” – Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 8, 2024;

THAT the PCE use is limited to the C1-9 portion of the lot; and

THAT the hours of operation for the PCE will be limited to seven days per week, from 8:00 a.m. to 9:00 p.m.;

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 8, 2014.

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290-13-BZ

CEQR #14-BSA-058K

APPLICANT – Herrick, Feinstein LLP, by Arthur Huh, for Church Avenue Development LLC, owner; New Fitness Holdings LLC, lessee.

SUBJECT – Application October 21, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Retro Fitness*) located on the second floor of a four-story building, C4-4A zoning district.

PREMISES AFFECTED – 2244 Church Avenue, south side of Church Avenue between Flatbush Avenue and Bedford Avenue, Block 5103, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated October 15, 2013, acting on DOB Application No. 320302016, reads, in pertinent part:

Proposed physical culture establishment is not permitted in a C4-4A zoning district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-4A zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second stories of a four-story commercial building, contrary to ZR § 32-10; 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 8, 2014; and

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

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

WHEREAS, the subject site is located on the south side of Church Avenue, between Flatbush Avenue and Bedford Avenue, within a C4-4A zoning district; and

WHEREAS, the site has approximately 171 feet of frontage along Church Street and 22,153 sq. ft. of lot area; and

WHEREAS, under construction at the site is a four-story commercial building, with office and retail space and approximately 73,683 sq. ft. of floor area (3.3 FAR); and

WHEREAS, the proposed PCE will occupy approximately 599 sq. ft. of floor area on the first story and approximately 17,687 sq. ft. of floor area on the second story, for a total PCE floor area of approximately 18,286 sq. ft.; and

WHEREAS, the PCE will be operated as Retro 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 Monday through Friday, from 5:00 a.m. to 11:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 7:00 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 Fire Department states that it has no objection to the proposal; 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, at hearing, the Board directed the applicant to confirm that there is no parking required for the PCE use and that the proposed signage is in accordance with the C4 district regulations; and

WHEREAS, in response, the applicant provided a zoning analysis confirming that the proposed parking and signage are in compliance; 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 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. 14BSA058K dated January 29, 2014; 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;

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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 issued 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 within a C4-4A zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second stories of a four-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 7, 2014” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 8, 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 8, 2014.

306-13-BZ

APPLICANT – Lewis E. Garfinkel for Howard Berglas, owner.

SUBJECT – Application November 20, 2013 – Special Permit (§73-622) for the enlargement of an existing two-family home to be converted to a single-family home, contrary to floor area, lot coverage and open space (§23-141); and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 3766 Bedford Avenue, west side of Bedford Avenue, 350’ south of corner of Bedford Avenue and Avenue P, Block 6787, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist of the New York City Department of Buildings (“DOB”), dated February 25, 2014, acting on DOB Application No. 320590473, reads in pertinent part:

1. ZR 23-141(b) - Proposed floor area exceeds permitted floor area;
2. ZR 23-141(b) - Proposed open space is less than permitted;
3. ZR 23-141(b) - Proposed enlargement exceeds permitted lot coverage;
4. ZR 23-47 - Proposed rear yard is less than required; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R3-2 zoning district, the conversion (from a two-family home to a single-family home) and enlargement of an existing residential building, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on March 11, 2013, after due notice by publication in *The City Record*, and then to decision on April 8, 2014; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Bedford Avenue, between Avenue P and Quentin Road, within an R3-2 zoning district; and

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WHEREAS, the site has 50 feet of frontage along Bedford Avenue and 5,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-family home with 3,528 sq. ft. of floor area (0.71 FAR); and

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

WHEREAS, the applicant seeks to convert the two-family home to a single-family home and increase the size of the residence, as set forth below; and

WHEREAS, the applicant seeks an increase in the floor area from of 3,528 sq. ft. (0.71 FAR) to 3,664 sq. ft. (0.73 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to reduce its open space from 63 percent to 62 percent; the minimum required open space is 65 percent; and

WHEREAS, likewise, the applicant seeks to increase its lot coverage from 37 percent to 38 percent; the maximum lot coverage permitted is 35 percent; and

WHEREAS, the applicant also seeks to decrease its non-complying rear yard depth from 29'-6" to 27'-4"; a minimum rear yard depth of 30'-0" is required; and

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

WHEREAS, the applicant states that the proposed 0.73 FAR is a modest increase from the existing, non-complying 0.71 FAR, and that the building is consistent with the setback, appearance, and height of the existing streetscape; and

WHEREAS, at hearing, the Board directed the applicant to verify that the proposed turret is within the required building envelope; and

WHEREAS, in response, the applicant submitted revised drawings showing that the turret is in compliance; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-622.

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-2 zoning district, the conversion (from a two-family home to a single-family home) and enlargement of an existing residential building, which does not comply with the zoning requirements for

FAR, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 25, 2013"- (12) sheets; and *on further condition:*

THAT the following will be the bulk parameters of the building: a maximum floor area of 3,664 sq. ft. (0.73 FAR), a minimum open space of 62 percent, a maximum lot coverage of 38 percent, and a minimum rear yard depth of 27'-4", as illustrated on the BSA-approved plans;

THAT DOB will verify the proposal's compliance with the flood zone regulations of the Zoning Resolution;

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

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

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

THAT 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 8, 2014.

34-14-BZ & 498-83-BZ

CEQR #14-BSA-079R

APPLICANT – Rampulla Associates Architects, for Anthony Vasaturo, owner; MS Fitness, LLC, lessee.

SUBJECT – Application February 19, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Club Metro USA*) within an existing building.

Amendment of a previously approved variance (§72-21) to permit the change of use from a banquet hall (UG9 & 12), reduce building size and retain accessory parking in residential district. C8-1/R3X zoning district.

PREMISES AFFECTED – 2131 Hylan Boulevard, north side of Hylan Boulevard, corner formed by the intersection of Hylan Boulevard and Bedford Avenue, Block 3589, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown,

Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

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WHEREAS, the decision of the Staten Island Borough Commissioner of the Department of Buildings (“DOB”), dated November 21, 2013, acting on DOB Application No. 520167809, reads, in pertinent part:

Proposed conversion of an existing banquet hall to a physical culture establishment located in a C8-1 and R3X zoning district requires a special permit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C8-1 zoning district and partially within an R3X zoning district, the operation of a physical culture establishment within an existing three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 25, after due notice by publication in the *City Record*, and then to decision on April 8, 2014; and

WHEREAS, a companion application to permit an amendment to a previously-granted variance under BSA Cal. No. 498-83-BZ (which authorized the operation of a banquet hall and accessory parking lot within a residence district) was decided at the same hearing; and

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

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

WHEREAS, the subject site is on the southwest corner of the intersection of Hylan Boulevard and Bedford Avenue, partially within a C8-1 zoning district and partially within an R3X zoning district; and

WHEREAS, the site has approximately 131 feet of frontage along Hylan Boulevard, approximately 228 feet of frontage along Bedford Avenue, and 29,819 sq. ft. of lot area; and

WHEREAS, the site is divided by a district boundary, with the first 100 feet of depth west of Hylan Boulevard within a C8-1 zoning district, and the remaining 128 feet of depth within an R3X zoning district; and

WHEREAS, the site is occupied by a three-story commercial building with 22,878 sq. ft. of floor area (0.79 FAR) and 37 accessory parking spaces; and

WHEREAS, the applicant proposes to remove the portion of the building within the R3X portion of the site, which will reduce the floor area of the building from 22,878 sq. ft. of floor area (0.79 FAR) to 15,661 sq. ft. (0.52 FAR), convert the remaining portions of the building to a PCE, and increase the number of accessory parking spaces from 37 to 51; and

WHEREAS, the PCE will be operated as Club Metro USA; and

WHEREAS, the applicant represents that, aside from its accessory parking, the PCE will operate entirely within the

C8-1 portion of the site; 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 Thursday, from 4:30 a.m. to 12:00 a.m., Friday, from 4:30 a.m. to 10:00 p.m., Saturday, from 6:00 a.m. to 10:00 p.m., and Sunday, from 6:00 a.m. to 7:00 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 Fire Department states that it has no objection to the proposal; and

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

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

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

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

WHEREAS, the project is classified as 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. 14-BSA-079R dated December 11, 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

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environment.

Therefore it is Resolved, that the Board of Standards and Appeals issued 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 partially within a C8-1 zoning district and partially within an R3X zoning district, the operation of a physical culture establishment within an existing 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 March 28, 2014’ – (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on April 8, 2024;

THAT the parking lot will be limited to 51 spaces and will be used only by patrons and employees of the PCE;

THAT signage and landscaping/buffering of the parking lot will be in accordance with the BSA-approved plans;

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

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 an amended certificate of occupancy will be obtained by April 8, 2015;

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 8, 2014.

299-12-BZ

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

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

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

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for decision, hearing closed.

303-12-BZ

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, Inc., owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a sub-cellar, cellar and three story church, with accessory educational and social facilities (*Tabernacle of Praise*), contrary to rear yard setback (§33-292), sky exposure plane and wall height (§34-432), and parking (§36-21) regulations. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly Road and Clarendon Road, Block 4760, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #17BK

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

311-12-BZ

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

SUBJECT – Application November 19, 2013 – Variance (§72-21) to permit the residential conversion of an existing factory building, contrary to use regulations (§42-00). M1-1 zoning district.

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

COMMUNITY BOARD #8BK

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

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124-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 95 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 95 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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

125-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 97 Grattan Street, LLC, owner.

SUBJECT – Application April 29, 2013 – Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 97 Grattan Street, north side of Grattan Street, 200' west of intersection of Grattan Street and Porter Avenue, Block 3004, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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

163-13-BZ

APPLICANT – Eric Palatnik, P.C., for 39th Avenue Realty Management, LLC, owner.

SUBJECT – Application May 30, 2013 – Special Permit (§73-44) to allow the reduction of parking spaces for the enlargement of a building containing Use Group 6 professional offices. C4-2 zoning district.

PREMISES AFFECTED – 133-10 39th Avenue, 39th Avenue, east of College Pt. Boulevard, Block 4973, Lot 12, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

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

210-13-BZ

APPLICANT – Sheldon Lobel, P.C., for MDL+S LLC, owner; Richard Bundy, lessee.

SUBJECT – Application July 8, 2013 – Variance (§72-21) to legalize the operation of a physical culture establishment (*The Physique*). C1-4/R7A zoning district.

PREMISES AFFECTED – 43-12 50th Street, Located on the west side of 50th Street between 43rd Avenue and Queens Boulevard. Block 138, Lot 25, Borough Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for continued hearing.

233-13-BZ

APPLICANT – Law office of Fredrick A. Becker, for Kayvan Shadrour, owner.

SUBJECT – Application August 12, 2013 – Special Permit (§73-622) for an enlargement of an existing single family residence, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2413 Avenue R, North side of Avenue R between East 24th Street and Bedford Avenue. Block 6807, Lot 48. Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for continued hearing.

246-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lutheran Medical Center, owner.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit the enlargement of an existing ambulatory diagnostic treatment health facility (UG4), contrary to floor area (§24-11) and rear yard (§24-36) regulations. R6B/C4-3A zoning districts.

PREMISES AFFECTED – 514 55th Street, south side of 49th Street, 90' east of intersection of 5th Avenue and 49th Street, Block 784, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

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

MINUTES

269-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for Robert Malta, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-42) to permit the expansion of UG6 restaurant (*Arte Café*) across zoning district boundary lines. R8B zoning district.

PREMISES AFFECTED – 110 West 73rd Street, south side of 73rd Street between Columbus Avenue and Amsterdam Avenue, Block 1144, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

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

289-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application October 16, 2013 – Variance (§72-21) to allow the development of a new, 304,000 s.f. ambulatory care facility on the campus of New York Methodist Hospital, contrary to floor area (§§24-11, 24-17 and 77-02), lot coverage (§24-11), rear yard (§24-382), height and setback (§24-522), rear yard setback (§24-552), and sign (§22-321) regulations. R6, C1-3/R6, and R6B zoning district.

PREMISES AFFECTED – 473-541 6th Street aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block bounded by 7th Avenue, 6th Street, 8th Avenue and 5th Street, Block 1084, Lot 25, 26, 28, 39-44, 46, 48, Borough of Brooklyn.

COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

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

297-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 308 Cooper LLC, owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a three-story, six-unit residential building, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 308 Cooper Street, east side of Cooper Street at the corner of Cooper Street and Irving Avenue, Block 3442, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #4BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to May 13, 2014, at 10 A.M., for decision, hearing closed.

302-13-BZ

APPLICANT – Francis R. Angelino, Esq., for Claret Commons Condominium, owner; Peloton, lessee.

SUBJECT – Application November 15, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Peloton Fitness*). C6-3X zoning district.

PREMISES AFFECTED – 140 West 23rd Street, S/S West 23rd Street between 6th and 7th Avenues. Block 798, Lot 7503. Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

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

305-13-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza, LLC, owner; Whitestone Fitness D/B/A Dolphin Fitness, lessee.

SUBJECT – Application November 20, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Dolphin Fitness*). M1-1 zoning district.

PREMISES AFFECTED – 30-50 Whitestone Expressway, Bounded by Ulmer Street to the north, Whitestone Expressway to the East and 31st Avenue to the south. Block 4363, Lot 100. Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

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

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318-13-BZ

APPLICANT – Bryan Cave LLP, for TJD 21 LLC, owners.
SUBJECT – Application December 13, 2013 – Variance (§72-21) to permit a five-story building containing retail and residential use, contrary to use regulations (§44-00). M1-5B zoning district.

PREMISES AFFECTED – 74 Grand Street, North side of Grand Street, 25 feet east of Wooster Street. Block 425, Lot 60, Borough of Manhattan.

COMMUNITY BOARD # 2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

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

Jeff Mulligan, Executive Director

Adjourned: P.M.