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CONTENTS

DOCKET 527

CALENDAR of July 22, 2014
Morning 528

CONTENTS

MINUTES of Regular Meetings,
Tuesday, June 24, 2014

Morning Calendar 530

Affecting Calendar Numbers:

391-80-BZ	2525 Kings Highway, Brooklyn
248-03-BZ	1915 Third Avenue, Manhattan
33-14-A	902 Quentin Road, Brooklyn
304-13-A	517-519 West 19th Street, Manhattan
312-13-A	521-525 West 19th Street, Manhattan
313-13-A	531 West 19th Street, Manhattan
124-13-BZ	95 Grattan Street, Brooklyn
125-13-BZ	97 Grattan Street, Brooklyn
216-13-BZ & 217-13-A	750 Barclay Avenue, Staten Island
279-13-BZ	218-222 West 35th Street, Manhattan
284-13-BZ	168-42 Jamaica Avenue, Queens
286-13-BZ	2904 Voorhies Avenue, Brooklyn
310-13-BZ	459 East 149th Street, Bronx
325-13-BZ	3170 Webster Avenue, Bronx
9-14-BZ	4168 Broadway, Manhattan
18-14-BZ	1245 Fulton Street, Brooklyn
28-12-BZ	13-15 37th Avenue, Queens
214-12-BZ	2784 Coney Island Avenue, Brooklyn
243-12-BZ	236 Richmond Valley Road, Staten Island
65-13-BZ	123 Franklin Avenue, Brooklyn
155-13-BZ	1782-1784 East 28th Street, Brooklyn
188-13-BZ & 189-13-A	20 Dea Court, Staten Island
294-13-BZ	220 Lafayette Street, Manhattan
265-13-BZ	118-27/47 Farmers Boulevard, Queens
311-13-BZ	325 Avenue Y, Brooklyn
317-13-BZ	1146 East 27th Street, Brooklyn
17-14-BZ	600 McDonald Avenue, aka Avenue C, Brooklyn

Correction 563

Affecting Calendar Numbers:

539-65-BZ	971-979 Third Avenue, Manhattan
142-92-BZ	473-541 6th Street, aka 502-522 8th Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Brooklyn
11-93-BZ	46-45 Kissena Boulevard, Queens
239-02-BZ	110 Waverly Place, Manhattan
177-07-BZ	886 Glenmore Avenue, Brooklyn
164-13-A	307 West 79th Street, Manhattan
249-13-BZ	747 Broadway, Manhattan
331-13-BZ	2005 86th Street, aka 2007 86th Street, Brooklyn

DOCKETS

New Case Filed Up to June 24, 2014

143-14-BZ
746 61st Street, 61st Street, between 7th and 8th Avenue, Block 5794, Lot(s) 25, Borough of **Brooklyn, Community Board: 7**. Special Permit (§73-36) to allow for the propose Physical Culture Establishment (99 Health Club Ink.) in the cellar, first and second floor of two story building in an M1-1 zoning district. M1-1 district.

144-14-BZ
1751 Park Avenue, Located on the east side of Park Avenue between East 122nd Street and East 121 Street, Block 1770, Lot(s) 72,4,3,2,1,101, Borough of **Manhattan, Community Board: 11**. Special Permit (§73-19) to request a special permit to allow for a Use Group 3 special education preschool on the second floor of the existing building, located within an M1-4 district. M1-4 district.

145-14-A
136-16 Carlton Place, Cross Streets Linden Place and Leavitt Street, Block 4960, Lot(s) 62, Borough of **Queens, Community Board: 4**. GCL 36 Waiver: Proposed four story building on Carlton Place, which is facing an unmapped street pursuant Article 3 Section 36 of the General City Law. C2-/R6 district.

146-14-BZ
285 Grand Street, Located on the south side of Grand Street approximately 25 feet west of the intersection formed by Grand Street and Eldridge Street, Block 306, Lot(s) 22, Borough of **Manhattan, Community Board: 3**. Special Permit (§73-36) to permit the operation of a physical culture establishemnt in the cellar of an existing building. C6-1G zoning district.

147-14-BZ
4167 Ocean Avenue, East Side of Ocean Avenue between Hampton Avenue and Oriental Boulevard, Block 8748, Lot(s) 227, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to allow the enlargement of an existing single family residence located in a residential R3-1 zoning district. R3-1 district.

148-14-BZ
11 Avenue A, Located on the west side of Avenue A between East 1st Street and East 2nd Street, Block 429, Lot(s) 39, Borough of **Manhattan, Community Board: 3**. Variance (§72-21) to permit multi-family residential use at the Premises within an R8A/C2-5 zoning district R8A/C2-5 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

JULY 22, 2014, 10:00 A.M.

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

SPECIAL ORDER CALENDAR

169-93-BZ
APPLICANT – Law office of Fredrick A. Becker, for 2231 Associates LLC, owner; TSI West 80, LLC dba NY Sports Club, lessee.
SUBJECT – Application May 5, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expired on May 17, 2014. C4-6A/EC-3 zoning district.
PREMISES AFFECTED – 246-248 West 80th Street, southwest corner of West 80th Street and Broadway, Block 1227, Lot 54, Borough of Manhattan.
COMMUNITY BOARD #7M

APPEALS CALENDAR

49-14-A
APPLICANT – Jesse Masyr, Esq of Fox Rothschild LLP, for Archdiocese of New York, owner.
SUBJECT – Application March 25, 2014 – Proposed the construction of an enlargement to an existing community facility contrary to General City Law Section 35. R1-1 zoning district.
PREMISES AFFECTED – 5655 Independence Street, Arlington Avenue to Palisade Avenue between West 256th Street and Sigma Place. Block 5947, Lot 120. Borough of Bronx.
COMMUNITY BOARD #8BX

ZONING CALENDAR

153-11-BZ
APPLICANT – Eric Palatnik, P.C., for Theodoros Parais, owner.
SUBJECT – Application September 21, 2011 – Re-instatement (§§11-411 & 11-412) to permit the continued operation of an automotive repair use (UG 16B) and an amendment to enlarge the existing one story building, an additional 120 sf; Waiver of the Board's Rules. C1-3 zoning district.
PREMISES AFFECTED – 27-11 30th Avenue, between 27th Street and 39th Street. Block 575, Lot 23. Borough of Brooklyn.
COMMUNITY BOARD #4BK

286-12-BZ
APPLICANT – Eric Palatnik, P.C., for People of Destiny Ministries International, Inc., owners.
SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit to permit for a vertical enlargement and conversion of an existing two-story automotive repair facility to a four-story Use Group 4A House of Worship (*The Church*). Variances are required to maintain its existing lawful non-conforming lot coverage ratio (§24-11) and rear yard (§24-391) and waiver the minimum parking spaces (§25-30). R6 zoning district.
PREMISES AFFECTED – 1925 Union Street, north side of Union Street between Portal Street and Ralph Avenue, Block 1399, Lot 82, Borough of Brooklyn.
COMMUNITY BOARD #8BK

298-13-BZ
APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner.
SUBJECT – Application November 1, 2013 – Special Permit (§73-49) to permit voluntary accessory parking on the rear (western) portion, to create a rooftop above the existing upper level parking area of an existing three story and cellar physical culture establishment (*Spa Castle*). M1-1 zoning district.
PREMISES AFFECTED – 11-11 131st Street, 11th Avenue between 131st and 132nd Street, Block 4011, Lot 24, Borough Queens.
COMMUNITY BOARD #1Q

133-14-BZ
APPLICANT – Department of Housing Preservation & Development.
SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.
PREMISES AFFECTED – 175 Father Capodanno

Boulevard, Block 3122, Lot 118, Borough of Staten Island.
COMMUNITY BOARD #2SI

134-14-BZ
APPLICANT – Department of Housing Preservation & Development.
SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.
PREMISES AFFECTED – 53 Doty Avenue, Block 3124, Lot 147, Borough of Staten Island.
COMMUNITY BOARD #2SI

135-14-A
APPLICANT – Department of Housing Preservation and Development.
SUBJECT – Application June 16, 2014 – Requesting Waiver of Section 36 Article 3 of the General City Law, property is located in an unmapped street. R3-1 zoning district.
PREMISES AFFECTED – 19 Sunnymeade Village, Block 3122, Lot 174, Borough of Staten Island.
COMMUNITY BOARD #2SI

136-14-BZ
APPLICANT – Department of Housing Preservation & Development.
SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.
PREMISES AFFECTED – 16 Mapleton Avenue, block 3799, Lot 45, Borough of Staten Island.
COMMUNITY BOARD #2SI

137-14-BZ
APPLICANT – Department of Housing Preservation & Development.
SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.
PREMISES AFFECTED – 174 Kiswick Street, Block 3736, Lot 21, Borough of Staten Island.
COMMUNITY BOARD #2SI

138-14-BZ
APPLICANT – Department of Housing Preservation & Development.
SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.
PREMISES AFFECTED – 1099 Olympia Boulevard Block 3804, Lot 33, Borough of Staten Island.
COMMUNITY BOARD #2SI

139-14-BZ
APPLICANT – Department of Housing Preservation & Development.
SUBJECT – Application June 16, 2014 – Special Permit (ZR 64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 Zoning District.
PREMISES AFFECTED –555 Lincoln Avenue, Block 3804, Lot 8, Borough of Staten Island.
COMMUNITY BOARD #2SI

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JUNE 24, 2014
10:00 A.M.

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

SPECIAL ORDER CALENDAR

391-80-BZ
APPLICANT – Sheldon Lobel, P.C., for The NY Community Hospital of Brooklyn, INK., owner.
SUBJECT – Application April 16, 2014 – Amendment of previously approved variance (§72-21) which permitted enlargement to an existing hospital building (*NY Community Hospital of Brooklyn*), contrary to bulk regulations. The Amendment seeks to enclose a ramp which increases the degree of lot coverage non-compliance. R7A zoning district.
PREMISES AFFECTED – 2525 Kings Highway, south side of Avenue O approximately 175 feet northeast of the intersection formed by Bedford Avenue and Kings Highway, Block 6772, Lot 4, Borough of Brooklyn.
COMMUNITY BOARD #14BK
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 July 22, 2014, at 10 A.M., for decision hearing closed.

248-03-BZ
APPLICANT – Troutman Sanders LLP, for Ross & Ross, owner; Bally Total Fitness of Greater NY., lessee.
SUBJECT – Application April 28, 2004 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (72-21) for the operation of a Physical Culture Establishment (*Bally's Total Fitness*) which expired on May 10, 2014. C1-5/R8A & R7A zoning district.
PREMISES AFFECTED – 1915 Third Avenue, southeast corner of East 106th Street and Third Avenue, Block 1655, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #11M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez……...4
Negative:.....0
Absent: Vice Chair Collins…….....1
ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for decision hearing closed.

APPEALS CALENDAR

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 – Appeal Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 4
Absent: Vice Chair Collins.....1
THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination, dated January 14, 2014, by the Department of Buildings ("DOB") (the "Final Determination"), with respect to DOB Application No. 302205940; and

WHEREAS, the Final Determination states, in pertinent part:

> Demonstrate compliance with ZR 113-00 for the Special Ocean Parkway District, including but not limited to ". . . portions of the building containing community facility uses shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3 (Bulk Regulations for Residential Buildings is Residence District) . . . .";

and

WHEREAS, a public hearing was held on this appeal on April 8, 2014, after due notice by publication in *The City Record*, with a continued hearing on May 20, 2014, and then to decision on June 24, 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

WHERAS, the appeal is filed on behalf of the property owner who contends that DOB's denial was erroneous (the "Appellant"); and

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

WHEREAS, the subject site is located at the southeast corner of the intersection of Quentin Road and East Ninth Street, partially within a C8-2 zoning district and partially within a C4-2 zoning district, within the Special Ocean Parkway District; and

WHEREAS, the site, which comprises Tax Lots 1 and 5, has approximately 131 feet of frontage along Quentin Road, 111 feet of frontage along East Ninth Street, and 13,836 sq. ft.

of lot area; and

WHEREAS, the Appellant states that 12,956 sq. ft. of lot area is within the C8-2 portion of the site and 880 sq. ft. of lot area (the southernmost 11'-0" by 80'-0" rectangle) is within the C4-2 portion of the site; and

WHEREAS, the site is occupied by an eight-story mixed community facility (Use Group 4) and commercial building (Use Group 6) with approximately 60,959 sq. ft. of floor area (4.4 FAR) (approximately 45,737 sq. ft. of community facility floor area (3.3 FAR) and approximately 15,222 sq. ft. of commercial floor area (1.1 FAR)) and 98 accessory parking spaces; and

PROCEDURAL HISTORY

WHEREAS, the Appellant states that on or about November 16, 2006, DOB issued an approval to construct the building under New Building Application No. 302205940 (the "Application"); the applicant states that it obtained permits to construct the building on or about August 18, 2009, and that DOB issued the first of several temporary certificates of occupancy for the building on or about November 28, 2012; and

WHEREAS, the Appellant states that during the course of construction, DOB audited the Application and determined that the proposed community facility floor area was in excess of that permitted under the Special Ocean Parkway District regulations; and

WHEREAS, specifically, the Appellant states that by determination dated October 26, 2012, DOB found that, per ZR § 113-11, the maximum permitted community facility floor area for the C4-2 portion of the site was approximately 686 sq. ft. (0.78 FAR) rather than 4,224 sq. ft. (4.8 FAR), because the C4-2 portion of the site (the 11'-0" by 80'-0" rectangle described above) was limited to the maximum permitted FAR of Article II, Chapter 3 (0.78 FAR) rather than the maximum permitted community facility FAR for a C4-2 zoning district outside the Special Ocean Parkway District (4.8 FAR); and

WHEREAS, subsequently, the Appellant obtained the Final Determination on January 14, 2014 and timely filed this appeal; and

WHEREAS, accordingly, the question on appeal is limited to the determination of the maximum permitted community facility FAR in a C4-2 zoning district within the Special Ocean Parkway District; and

WHEREAS, the Appellant asserts that it is 4.8 FAR; DOB asserts that it is 0.78 FAR; both parties claim support for their position in the text of ZR § 113-11 and its legislative history, as well as the structure of the Zoning Resolution overall; and

WHEREAS, by letter dated June 6, 2014, the Department of City Planning ("DCP") states that it supports DOB's position with respect to ZR § 113-11; and

PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, the primary Zoning Resolution provisions the Appellant and DOB cite are as follows, in pertinent part:

ZR § 23-142

In R6, R7, R8 or R9 Districts

R6 R7 R8 R9

In the districts indicated, the minimum required #open space ratio# and the maximum #floor area ratio# for any #zoning lot# shall be as set forth in the following table for #zoning lots# with the #height factor# indicated in the table.

MINIMUM REQUIRED OPEN SPACE RATIO AND MAXIMUM FLOOR AREA RATIO

R6 through R9 Districts

For #zoning lots# with a #height factor# of	…	In R6 Districts Max. #floor area ratio#	…
1	…	.78	…

* * *

ZR § 34-112

Residential Bulk Regulations in other C1 or C2 Districts or in C3, C4, C5 or C6 District

C1-6 C1-7 C1-8 C1-9 C2-6 C2-7 C2-8 C3 C4 C5 C6

In the districts indicated, the applicable #bulk# regulations are the #bulk# regulations for the #Residence Districts# set forth in the following table:

Districts	Applicable #Residential District#
C3	R3-2
C4-1	R5
C4-2 C4-3 C6-1A	R6
…	…

* * *

ZR § 113-11

Special Bulk Regulations for Community Facilities

All #community facility buildings#, and portions of #buildings# containing #community facility uses#, shall be subject to the applicable underlying district #bulk# regulations of Article II, Chapter 3 (Bulk Regulations for Residential Buildings in Residence Districts), except as provided below:

(a) in R2X Districts, the #residential bulk# regulations of an R3-1 District shall apply to #community facility buildings#;

(b) in R6 or R7 Districts with a letter suffix, the applicable #bulk# regulations set forth in Article II, Chapter 4 (Bulk Regulations for Community Facility Buildings in Residence Districts) shall apply;

(c) in the Subdistrict, the #bulk# regulations of Article II, Chapter 3 shall apply, except as set forth in Section 113-503 (Special bulk regulations); and

(d) in R6 or R7 Districts without a letter suffix, the #community facility bulk# regulations of Article II, Chapter 4, may be made applicable by certification of the City Planning

Commission, pursuant to Section 113-41 (Certification for Community Facility Uses on Certain Corner Lots); and

DISCUSSION

A. THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that the Final Determination is: (1) contrary to the clear, unambiguous language of ZR § 113-11; and (2) inconsistent with the intent of the Special Ocean Parkway District; and

WHEREAS, the Appellant states that the Final Determination is contrary to the clear, unambiguous language of ZR § 113-11; and

WHEREAS, the Appellant observes that where ZR § 113-11 employs the term "underlying" ([a]ll community facility buildings, and portions of buildings containing community facility uses, shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3 . . .") it does so in direct reference to Article II, Chapter 3; therefore, the Appellant asserts that to the extent that Article II, Chapter 3 supplies an "underlying" regulation, such regulation is applicable; and

WHEREAS, however, the Appellant states that there are no "underlying" district bulk regulations in Article II, Chapter 3 for a C4-2 district and that there are only "underlying" district bulk regulations in Article II, Chapter 3 in residence districts and commercial districts mapped within residential district (C1 and C2 districts); and

WHEREAS, the Appellant also states that ZR § 113-11 uses the term "applicable" as a modifier of "underlying," where use of the term "underlying" would have been sufficient to direct a reader of the section to Article II, Chapter 3; instead, by also using "applicable" the drafters signaled a clear intent to exclude from the Article II, Chapter 3 bulk regulations buildings or portions thereof within districts where there was no *applicable* underlying regulation, which the Appellant states is the case here; and

WHEREAS, thus, the Appellant states that because ZR § 113-11 clearly and unambiguously requires compliance with bulk regulations applicable for a community facility building under Article II, Chapter 3, and there are no such regulations in a C4-2 zoning district, the bulk regulations generally applicable to a community facility in a C4-2 zoning district govern (ZR § 33-123) and provide for a maximum community facility FAR of 4.8 FAR within the C4-2 portion of the site; and

WHEREAS, the Appellant also notes that DOB applied the same principle—that ZR § 33-123 controls where Article II, Chapter 3 has no applicable provision—to determine that the maximum permitted community facility FAR in the C8-2 portion of the site is 4.8 FAR; and

WHEREAS, the Appellant disagrees that the applicable underlying district bulk regulations for a C4-2 district are determined by reference to ZR § 34-112; and

WHEREAS, the Appellant states that nothing in the text of ZR § 113-11 supports reference to ZR § 34-112 and that DOB arbitrarily incorporated that section's provisions despite ZR § 113-11's clear reference to Article II, Chapter 3; and

WHEREAS, further, the Appellant asserts that ZR § 34-112 concerns residential district equivalents to commercial districts rather than "underlying" districts, which is a term that refers to an area where a commercial district is mapped within a residence district; and

WHEREAS, the Appellant also notes that the 2011 Key Terms Amendment to the Zoning Resolution which was intended to clarify ambiguous provisions and bring the text into alignment with long-standing DOB practices and interpretations, altered ZR § 113-11 in many respects but did not alter it to include reference to ZR §34-112; as such, the Appellant asserts that DOB erroneously incorporates ZR § 34-112 in determining the requirements of ZR § 113-11; and

WHEREAS, the Appellant contends that the Final Determination is contrary to the intent of the Special Ocean Parkway District; and

WHEREAS, the Appellant states that, according to the 1976 City Planning Commission Report (the "1976 CPC Report") regarding the creation of the Special Ocean Parkway District, the special district was created in response to community concerns over the growing number and size of community facility buildings and their impacts on residential district, primarily in terms of neighborhood character and appearance, light, air, and privacy; and

WHEREAS, the Appellant states that the 1976 CPC Report included no reference to impacts on purely commercial districts i.e., commercial district not mapped within residence districts, such as C4-2 or C8-2 districts; as such, the Appellant asserts that DOB's interpretation of ZR § 113-11 does nothing to further the intent of the Special Ocean Parkway District; and

WHEREAS, the Appellant also notes that this particular site and block have, according to historic records, a strong history of commercial use and thus no residential character to be preserved by the Special Ocean Parkway District; and

WHEREAS, the Appellant contends that the CPC's clear intent to limit community facility FAR in residence districts—and lack of intent to limit community facility FAR in purely commercial districts—is evidenced by ZR § 113-11(d), which allows higher community facility FARs by CPC certification on corner lots within certain R6 or R7 districts pursuant to ZR § 113-41; and

WHEREAS, the Appellant states that the certification is consistent with the intent of the Special Ocean Parkway District to slow the proliferation of oversized community facilities in areas developed with low-rise residential buildings but to allow larger community facility in denser residence districts on corner lot, where larger buildings are more appropriate; and

WHEREAS, the Appellant also asserts that there is no plausible land use rationale for allowing, albeit by certification, larger community facility buildings in an R6 zoning district (where only residences and community facilities are permitted) than in a C4-2 zoning district (where residences, community facilities, and commercial buildings are permitted), particularly where the CPC noted that the concern was the impact of large community facilities on

residences (rather than on commercial uses or mixed-use portions of the neighborhood); and

WHEREAS, further, the Appellant states that, paradoxically, the site is in a worse position to construct a community facility because it is in C4-2 district (where ZR § 23-00 limits the maximum FAR to 0.78, which is the maximum permitted FAR for a residence in an R6-equvialent district) than it would be if it were *actually* in an R6 district, where ZR §§ 113-41 and 24-00 would permit a maximum FAR of 4.8; thus, applying the text as DOB interprets actually yields the larger community facility building in the residence district – which, the Appellant asserts, is entirely contrary to the intent of the Special Ocean Parkway District regulations; and

WHEREAS, likewise, the Appellant states that if the intent of the special district had been to limit the size of community facility buildings in commercial districts and residence districts alike, CPC's omission of C8-2 districts was both arbitrary and ineffectual, since a significantly greater portion of the Special Ocean Parkway District is zoned C8-2 (where, per DOB, the maximum community facility FAR is 4.8) than is zoned C4-2 (where, per DOB, the maximum community facility FAR is 0.78); and

WHEREAS, the Appellant also notes that general land use and zoning principles dictate that community facilities are favored uses, which should be encouraged; as such, the Appellant states that community facility FARs are almost always equal to or higher (and almost never lower) than the maximum FARs for residences and commercial uses; and

WHEREAS, accordingly, the Appellant requests that the Board grant the appeal, reverse the Final Determination, and declare that the maximum FAR for a community facility building in C4-2 district within the Special Ocean Parkway District is 4.8 FAR; and

B. DOB'S POSITION

WHEREAS, DOB contends that that the Final Determination was properly issued because it is consistent with: (1) plain text of ZR § 113-11; (2) the Zoning Resolution rules of interpretation; and (3) the intent of the Special Ocean Parkway District; and

WHEREAS, DOB states that the plain text of ZR § 113-11 supports its determination that the maximum permitted community facility FAR for the C4-2 portion of the site is 0.78 FAR; and

WHEREAS, DOB contends that ZR § 113-11 imposes the district bulk regulations of Article II, Chapter 3 on portions of the building that contain community facility uses; and

WHEREAS, DOB states that since the building is located in a commercial district, the residence district designation assigned to the commercial district—the residential district equivalent—must be used to determine the applicable residence district bulk regulations, per ZR § 34-112; thus, pursuant to ZR § 34-112, the R6 bulk regulations apply in a C4-2 district, and the maximum residential FAR in an R6 zoning district is 0.78 FAR, per ZR § 23-142; and

WHEREAS, DOB states that ZR § 113-11's use of the phrase "applicable underlying" ([a]ll community facility buildings, and portions of buildings containing community facility uses, shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3 . . .") signals an intent for the provision to apply wherever there is an applicable bulk regulation in Article II, Chapter 3; and

WHEREAS, DOB states that, according to the clear and unambiguous text of ZR § 34-112, R6 district bulk regulations are applicable in a C4-2 district; as such, contrary to the Appellant's assertion, there is an "applicable" residence district bulk regulation to be incorporated by ZR § 113-11 in the C4-2 district; and

WHEREAS, DOB disagrees with the Appellant that ZR § 113-11 imposes Article II, Chapter 3 bulk regulations only on buildings if they are in an "underlying" residential district (or in a commercial overlay, in which a residential district is considered the underlying district) and asserts that this interpretation is contrary to the Zoning Resolution's rules of interpretation; and

WHEREAS, DOB states that, according to the ZR § 12-02 rules for interpretation of district designations,

> [w]hen no district designations are listed for a specific section, the provisions of such section shall be construed to apply to all districts under consideration in the article in which the section appears, or, if specified, only to those districts referred to directly within the section itself; and

WHEREAS, DOB notes that both C4-2 and C8-2 districts remain mapped within the Special Ocean Parkway District and thus concludes that such districts were "under consideration" as that phrase is used in ZR § 12-02; and

WHEREAS, accordingly, DOB asserts that if the drafters of the Special Ocean Parkway District regulations had intended to exclude purely commercial districts from the modification set forth in ZR § 113-11, the text would have included only residence districts within a ruled bar below the number and title of the section; and

WHEREAS, DOB observes that ZR § 113-11 contains no such district designations and, therefore, is not limited solely to residence districts but is applicable anywhere the bulk regulations of Article II, Chapter 3 are applicable, including within a C4-2 district; and

WHEREAS, DOB contrasts the applicability of the R6 bulk regulations in a C4-2 district with the absence of bulk regulations for a residence in a C8-2 district; residences are not permitted as-of-right in a C8-2 district, so ZR § 34-112 need not supply a residence district equivalent; thus, ZR § 113-11 does not modify the bulk regulations for community facilities in a C8-2 district and the general provision applicable in the C8-2 district (ZR § 33-123) governs; and

WHEREAS, DOB also notes that ZR § 113-11 includes four exceptions to the applicability of the bulk regulations of Article II, Chapter 3—the R2X district, contextual R6 and R7 districts, the Subdistrict and non-contextual R6 and R7 districts—but does not include an exception for purely commercial districts; based on this omission, DOB concludes that Article II, Chapter 3 bulk regulations apply to residence

district and their commercial district equivalents; and

WHEREAS, DOB states that the concept of applying residential district regulations in commercial districts appears throughout the Zoning Resolution, but the text does not refer to ZR § 34-112 in every instance; and

WHEREAS, DOB notes that throughout the Zoning Resolution, reference is made to ZR § 34-11 where the bulk regulations of particular residential district equivalents are relevant: ZR §§ 13-242, 28-01, and 36-532 govern particular residential equivalents and identify ZR § 34-112; and

WHEREAS, in contrast, DOB states that where the provisions of Article II, Chapter 3 apply generally, the Zoning Resolution makes inconsistent reference to ZR § 34-112; for example, ZR § 34-221 imposes the bulk regulations of Article II, Chapter 3 on the C1 through C6 districts without reference to ZR § 34-112's listing of residential equivalents of those commercial districts, yet ZR §§ 33-123 and 34-24 apply Article II Chapter 3 broadly to commercial districts and expressly refer to ZR §§ 34-112 and 34-11, respectively; and

WHEREAS, accordingly, DOB concludes that although the Zoning Resolution makes occasional reference to ZR § 34-11 when residential district regulations apply in commercial districts for the sake of clarity, no difference in meaning can be attributed to the provisions that omit such reference; and

WHEREAS, further, DOB contends that it is understood that where special district regulations mandate use of residential district bulk regulations in special districts that include commercial districts, as ZR § 113-11 does, a reference to ZR § 34-112 is not needed because residential equivalents must be employed in order to comply with the mandate; and

WHEREAS, DOB states that for example, in the Special Bay Ridge District, ZR § 114-11 provides that for a building with community facility and residential uses, the bulk regulations of Article II, Chapter 3 apply to all portions of the building except that where certain conditions are met, the bulk regulations of Article II, Chapter 4 may be used for the community facility portion of the building; since a C4-2A district is mapped within the Special Bay Ridge District, by necessity ZR § 34-112 must be used to identify the appropriate residential district equivalent that controls bulk within that underlying commercial district; and

WHEREAS, as to the Appellant's assertion that ZR § 113-11 should have been amended by the 2011 Key Terms Amendment to include ZR § 34-112, if reference to the latter was required, DOB disagrees and notes that while the text of ZR § 113-11 was modified by the Key Terms Amendment, the substantive changes to ZR § 113-11 occurred in 1993 and 1996; further, DOB asserts that using ZR § 34-112 to identify the applicable Article II Chapter 3 regulation in commercial districts with a residential district equivalent does not conflict with the ZR § 113-11 exceptions in either their pre- or post-Key Terms Amendment form; and

WHEREAS, DOB contends that its interpretation of ZR § 113-11 is consistent with the intent of the Special Ocean Parkway District; and

WHEREAS, DOB states that, according to the 1976 CPC Report, the stated goal of the Special Ocean Parkway District is to prevent the greater bulk allowed for community facilities from having an adverse effect on light and air, privacy and livability for adjacent *residences*; and

WHEREAS, DOB asserts that to allow the full community facility FAR in the C4-2 would not be consistent with the special district's goal of keeping schools and houses of worship in scale with adjacent housing development; and

WHEREAS, DOB notes that ZR § 113-11 does not operate to reduce community facility bulk in the C8-2 districts because residences are not allowed in such districts; therefore, there is no need to reduce the bulk of community facilities in the C8-2 where there are no residences requiring protection; and

WHEREAS, DOB also disagrees with the Appellant that it is irrational to interpret ZR § 113-11 to impose R6 bulk regulations on community facilities in a C4-2 district because ZR § 113-11(d) authorizes a CPC certification to permit an increase in FAR on certain sites within R6 and R7 districts but not in the C4-2 district even though R6 is the C4-2 residential equivalent; and

WHEREAS, rather, DOB states that the scheme alleviates the imbalance between large community facilities and other as-of-right uses in the Special Ocean Parkway District; and

WHEREAS, as noted above, DOB states that the Special Ocean Parkway District was expressly enacted to ease impacts associated with the uncontrolled increase of larger community facility buildings on the residential character and appearance of the community; however, nothing in the 1976 CPC Report suggested that commercial development in the few commercial districts of the special district was undesirable; and

WHEREAS, accordingly, DOB contends that ZR § 113-41 allows certifications only for community facilities on a corner lot and fronting on a wide street in R6 and R7 districts, and not their commercial equivalents, so as to avoid any adverse impact on commercial uses that may result from allowing new community facilities with the greater Article II, Chapter 4 bulk in those commercial districts; and

WHEREAS, finally, DOB disagrees with the Appellant's claims that the because the subject block was already developed with large commercial uses by the time the Special Ocean Parkway District was created, the regulations could not possibly function to preserve a residential neighborhood character at the site; DOB also notes that, in enforcing the Zoning Resolution, it is without authority to take into consideration a claim that the purpose of a Zoning Resolution provision is not accomplished within a particular area or that such provision has unintended consequences; and

WHEREAS, accordingly, DOB requests that the Board deny the appeal and affirm the Final Determination; and

C. DCP'S POSITION

WHEREAS, as noted above, by letter dated June 6, 2014, the DCP states that it supports DOB's position; and

WHEREAS, in pertinent part, DCP's letter provides that

> [t]he legislative history surrounding the adoption of the text that created the Special Ocean Parkway

> District reveals that Commission was concerned that the proliferation of community facility buildings throughout the special district, and their size, was having an overwhelming effect on the low scale residential development that generally characterized the area . . . .
>
> The Commission's concerns regarding out-of-scale community facility buildings overwhelming the residential character of the communities surrounding Ocean Parkway is clearly reflected throughout the CPC's reports of approval to adopt the text amendments that established, and thereafter amended, the special district regulations.
>
> * * *
>
> DOB's determination, that, pursuant to Section 113-11 of the Zoning Resolution, the portion of a community facility building located in a C4-2 district within the Special Ocean Parkway District at [902 Quentin Road, Brooklyn] is subject to the applicable underlying district bulk regulations of Article II, Chapter 3, is consistent with the Commission's land use planning concerns surrounding the adoption of the Special Ocean Parkway District text. DOB's determination is also consistent with the plain language of Section 113-11, which clearly sets forth that all community facility buildings shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3.
>
> *In a C4-2 district, the underlying bulk regulations of Article II, Chapter 3 are made applicable to residential use within such district, pursuant to Section 34-10* (Applicability of Residence District Bulk Regulations). *Accordingly, as directed by Section 113-11*, notwithstanding and in lieu of the underlying bulk regulations of Article II, Chapter 4 or Article III, Chapter 3, that may be otherwise generally applicable to community facilities, *all community facility building are subject to the bulk regulations of Article II, Chapter 3*. (emphasis added); and

CONCLUSION

WHEREAS, the Board finds that DOB's interpretation is consistent with text of ZR § 113-11, the Zoning Resolution rules of interpretation, and the intent of the Special Ocean Parkway District; as such, the Final Determination is affirmed and the appeal is denied; and

WHEREAS, the Board agrees with DOB that the text supports its determination that pursuant to the requirements of ZR § 113-11, the maximum permitted community facility FAR for the C4-2 portion of the site is governed by Article II, Chapter 3; and

WHEREAS, the Board finds that where ZR § 113-11 provides that "[a]ll community facility buildings, and portions of buildings containing community facility uses, shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3," the plain meaning of the text is that to the extent that Article II, Chapter 3 provide bulk regulations that are *applicable*, such regulations govern; and

WHEREAS, the Board agrees with DOB that it is appropriate to look to ZR § 34-112 to determine how to apply Article II, Chapter 3 within a C4-2 district, because ZR § 34-112 establishes the corresponding residence district regulations for a C4-2 district; and

WHEREAS, the Board finds that because residences are permitted in a C4-2 district, there are *applicable* bulk regulations in Article II, Chapter 3, which, pursuant to ZR § 113-11, limit the maximum community facility FAR to the maximum permitted in the C4-2 equivalent district (R6); and

WHEREAS, the Board rejects the Appellant's contention that ZR § 113-11 imposes Article II, Chapter 3 bulk regulations only on buildings if they are in an "underlying" residential district (or in a commercial overlay, in which a residential district is considered the underlying district) and agrees with DOB that such an interpretation is contrary to the Zoning Resolution's rules of interpretation; and

WHEREAS, further, the Board finds that, in accordance with the ZR § 12-02 rules of interpretation, the Special Ocean Parkway District regulations govern throughout the special district, including in C4-2 and C8-2 districts; as such, the community facility FAR modification set forth in ZR § 113-11 applies not only in residence districts but also in C4-2 and C8-2 districts; and

WHEREAS, the Board notes the distinction between ZR § 113-11 *applying* in these purely commercial district and *resulting in a modification*—a change in what the Zoning Resolution allows one to construct; ZR § 113-11 applies in a C8-2 district, but does not result in a modification of the community facility bulk regulations because residences are not permitted as-of-right in a C8-2 district; thus, there is no C8-2 residence district equivalent, there are no residential bulk regulations for ZR § 113-11 to incorporate, and, the general provision applicable to community facilities in the C8-2 district (ZR § 33-123) applies; and

WHEREAS, the Board also notes that ZR § 113-11 includes four exceptions to the applicability of the bulk regulations of Article II, Chapter 3—the R2X district, contextual R6 and R7 districts, the Subdistrict and non-contextual R6 and R7 districts—but does not include an exception for purely commercial districts; thus, the Board agrees with DOB that Article II, Chapter 3 bulk regulations apply to residence district and their commercial district equivalents; and

WHEREAS, the Board disagrees with the Appellant that ZR § 34-112 must be specifically incorporated into ZR § 113-11 in order for it to be considered; and

WHEREAS, the Board finds that because the Zoning Resolution makes inconsistent reference to ZR § 34-11 when residential district regulations apply in commercial districts, the absence of any reference to that provision in ZR § 113-11 was not meaningful; and

WHEREAS, rather, the Board finds that where special district regulations (including ZR § 113-11) mandate use of residential district bulk regulations in special districts that

include commercial districts, an explicit reference to ZR § 34-112 is not needed because residential equivalents must be employed in order to comply with that mandate; and

WHEREAS, likewise, the Board disagrees with the Appellant's assertion that ZR § 113-11 should have been amended by the 2011 Key Terms Amendment or by the 1993 or 1996 amendments to the special district provisions to include ZR § 34-112, if reference to the latter was required; and

WHEREAS, the Board finds that, for the reasons detailed above, clarification on the applicability of ZR § 34-112 *vis à vis* ZR § 113-11 was and is unnecessary; thus, there was no reason to amend ZR § 113-11 to include ZR § 34-112; further, as noted above, DCP submitted a letter supporting DOB's interpretation of ZR § 113-11; in the letter, DCP states unequivocally that

> DOB's determination is also consistent with the plain language of Section 113-11, which clearly sets forth that all community facility buildings shall be subject to the applicable underlying district bulk regulations of Article II, Chapter 3; and

WHEREAS, the Board also notes that the 1993 amendment, which clarified the applicability of the CPC certification in certain residence districts, did not alter the portion of the text that created the general requirement to apply Article II, Chapter 3 – that text was preserved in its 1976 version; as to the Key Terms Amendment, the Board finds that it did nothing to alter the substantive requirements of ZR § 113-11; and

WHEREAS, the Board also finds that DOB's interpretation of ZR § 113-11 furthers the intent of the Special Ocean Parkway District; and

WHEREAS, the Board has reviewed the 1976 CPC Report, and agrees with DOB that the Special Ocean Parkway District was created in response to community concerns regarding large community facilities and their potential adverse effects on residences; in pertinent part, the 1976 CPC Report states that

> [t]he Special Ocean Parkway District seeks to alleviate the problems associated with the uncontrolled increase of the larger community facility building to preserve the residential character and appearance of the community.
>
> To achieve these goals the Special Ocean Parkway District regulations provide that: all new community facility developments or enlargements will be limited to the residential bulk regulations of the underlying districts; and

WHEREAS, the Board also notes that DCP confirmed this as the purpose of the Special Ocean Parkway District in its June 6, 2014 letter; and

WHEREAS, the Board finds that ZR § 113-11 rationally accomplishes this goal by limiting the size of community facilities in districts where residences are permitted as-of-right, namely, all residence districts and C4-2 districts, while preserving the ability to develop large community facilities in a C8-2 district, where residences are not permitted as-of-right; and

WHEREAS, as to the Appellant's assertion that it is irrational to interpret ZR § 113-11 to impose R6 bulk regulations on community facilities in a C4-2 district since ZR § 113-11(d) authorizes a CPC certification to permit an increase in FAR on certain sites within R6 and R7 districts (but not in the C4-2 district even though R6 is the C4-2 residential equivalent), the Board disagrees; while the certification has the potential to allow a greater community facility FAR in an R6 district than in a C4-2 district, the possibility of such an outcome does not change the plain meaning of the portion of ZR § 113-11 that makes Article II, Chapter 3 applicable in the C4-2 district; and

WHEREAS, the Board also finds that DOB properly disregarded the Appellant's assertions regarding the actual lack of residential development on the subject block as reason for interpreting ZR § 113-11 differently; as DOB notes, it is limited by the Charter to interpreting the text of the Zoning Resolution; therefore, whether a provision of the Zoning Resolution is ineffectual as to its objectives or, on occasion, has unintended consequences are not bases for DOB to adopt an interpretation that would be contrary to the text of such provision; similarly, the extent to which a block's zoning designation is inconsistent with its history and built character is primarily a concern for the City Planning Commission, as is whether a provision of the text sometimes produces anomalous results; and

WHEREAS, likewise, the Board observes that in reviewing a provision of the Zoning Resolution, the Board is limited to reviewing the text in light of the language it employs and its legislative history; while the Board can consider the effects of the provision—both intended and unintended—the Board cannot disregard the plain language of the text unless applying the plain language produces an absurd result; and

WHEREAS, here, the Board finds that there is nothing absurd about the result of DOB's interpretation of ZR § 113-11; it is consistent with the text and the rules of interpretation for the Zoning Resolution, and it furthers the purpose of the special district (limiting the size of community facilities in districts where residences are permitted); further, it is supported by DCP, which drafted the provision; and

Therefore it is Resolved, that the subject appeal, seeking a reversal of the Final Determination, dated January 14, 2014, is hereby *denied*.

Adopted by the Board of Standards and Appeals, June 24, 2014.

304-13-A

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

SUBJECT – Application November 19, 2013 – Appeals challenging Department of Building'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
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 July 29, 2014, at 10 A.M., for decision hearing closed.

312-13-A
APPLICANT – Simons & Wright, for Lan Chen Corp. 36-36 Prince Street, owner; David Zwirner, lessee.
SUBJECT – Application November 19, 2013 – Appeals challenging Department of Building'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
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 July 29, 2014, at 10 A.M., for decision hearing closed.

313-13-A
APPLICANT – Simons & Wright, for 531 West 19th Street LLC, owner; David Zwirner, lessee.
SUBJECT – Application November 19, 2013 – Appeals challenging Department of Building'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
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 July 29, 2014, at 10 A.M., for decision hearing closed.

ZONING CALENDAR

124-13-BZ
CEQR #13-BSA-132K
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 – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 4
Negative:.....0
Absent: Vice Chair Collins.....1
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 29, 2013, acting on Department of Buildings Application No. 320724490, reads in pertinent part:

Proposed use is not permitted in an M1-1 zoning district as per ZR 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 with seven units (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in the *City Record*, with continued hearings on February 4, 2014, April 8, 2014 and May 20, 2014, and then to decision on June 24, 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, Community Board 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the north side of Grattan Street, between Porter Avenue and Knickerbocker Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 25 feet of frontage along Grattan Avenue, a depth of 100 feet, and approximately 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story temporary frame structure, which appears to have been used for storage but is currently vacant; and

WHEREAS, historic records, including the 1921 Belcher Hyde atlas, reflect that a three-story residential building constructed in the early 1900s occupied the site until its demolition in 1981; 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 seeks a use variance to construct a four-story seven-unit multiple dwelling with 4,838 sq. ft. of floor area (1.94 FAR) in accordance with the bulk regulations applicable in an R6 district (the nearest residential district, located approximately two blocks south of the site) where 2.2 FAR is the maximum permitted FAR; 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 small lot size of 2,500 sq. ft. and narrow lot width of 25 feet; and (3) its location on a narrow one-way street; and

WHEREAS, the applicant states that occupying the site with a conforming use would not be feasible due to the predominance of residential use, the small size, and constrained street access; and

WHEREAS, as to the history of and adjacency of residential use, the applicant notes that from the early 1900s until 1981, the site was occupied by a three-story residential building consistent with the row of such buildings adjacent to the site; and

WHEREAS, the applicant asserts that the former building was one of a series of residential apartment buildings located on the north side of Grattan Street; and

WHEREAS, the applicant asserts that since the 1981 demolition of the building, the site has either been vacant or occupied by the current vacant two-story frame structure, which was not constructed pursuant to DOB approvals as far as can be determined; and

WHEREAS, the applicant asserts that such adjacencies and absence of commercial or industrial presence in the immediate vicinity of this interior lot limits any foot or vehicular traffic to the site and renders retail use infeasible; and

WHEREAS, as to its size, the applicant asserts that almost all conforming manufacturing and commercial use on Grattan Street in the vicinity is on significantly larger lots in the range of 5,000 sq. ft. to 20,304 sq. ft.; and

WHEREAS, the applicant asserts that the floor plate is too small to accommodate loading of the amount of storage required for a conforming use; and

WHEREAS, the applicant states that development of the site with a conforming commercial or manufacturing use would be infeasible due to the small floor plates of 2,500 sq. ft.; and

WHEREAS, the applicant analyzed a complying one-story warehouse building which it concluded was not viable due to the small size and other locational constraints; and

WHEREAS, the applicant identified one similar site used for conforming use - 79 Grattan Street - with 2,500 sq. ft. of lot area, but noted that it is currently vacant, which reflects the absence of a market for smaller sites for conforming use; and

WHEREAS, the applicant asserts that its review of DOB records reflects that there are not any similarly-sized lots in the vicinity of the site that have been developed in the past decade; and

WHEREAS, the applicant notes that a one-story warehouse was constructed on the south side of Grattan Street more recently, but that site has a width of 75 feet and a lot area of 7,500 sq. ft.; and

WHEREAS, the applicant states that the subject site is one of only four vacant lots with street frontage of less than 25 feet that is not in common ownership or used in conjunction with an adjacent lot; and

WHEREAS, the applicant also states that of the undeveloped and vacant sites on the surrounding portion of Grattan Street, the subject site is one of only two not owned in conjunction with an adjacent site; and

WHEREAS, as to the site's location, the applicant notes that it is an interior lot located on a narrow one-way street and is one of 12 vacant lots included in the study area, which is similarly situated; and

WHEREAS, the applicant notes that Grattan Street at this location is a narrow one-way street that would limit the nature of commercial vehicles that can use Grattan Street; 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 2,500 sq. ft., which the applicant represents is substandard for modern manufacturing uses; and

WHEREAS, the Board inquired about (1) whether the subject lot could be viewed separately from the adjacent lot at 97 Grattan Street, which is the subject of a separate use variance application pursuant to BSA Cal. No. 125-13-BZ; and (2) whether the subject site could be distinguished from other vacant lots; and

WHEREAS, the applicant responded that the ownership of the two lots is separate and submitted individual deeds for the two lots and stated that the 1921 Belcher Hyde atlas reflects that the lots were separate at that time and, thus, have been separate for at least 90 years; and

WHEREAS, however, the applicant notes that even if the two adjacent lots were developed as a single lot with a width of 50 feet and depth of 100 feet, the hardship on the lot would still exist; and

WHEREAS, as to the other vacant lots in the vicinity, the applicant performed an initial and then an expanded study of vacant lots within the vicinity and concluded that almost all of the other sites are either larger, have greater width and street frontage or are in common ownership with an adjacent site (or sites); and

WHEREAS, the applicant notes that out of 220 lots in the initial study area, 19 of them are vacant, which is approximately 8.5 percent; and

WHEREAS, the applicant states that of the vacant lots, the subject site is one of only four affected by all of the factors contributing to the unique conditions creating the hardship; and

WHEREAS, the applicant enlarged the study area to include a two-block radius around the site, which represents the manufacturing-zoned districts bordered by the railroad to the north and east of the site, water to the north of the site (English Kills), and the residential districts to the south and west and includes 335 lots; and

WHEREAS, the applicant found that within the enlarged study area, there are 40 sites consisting of either individual lots or assemblages of adjacent lots under common ownership and are vacant or include vacant lots; and

WHEREAS, the applicant asserts that the subject site is one of five (1.5 percent of those within the study area) affected by all the factors contributing to the unique conditions creating hardship on the site including a lot width of 25 feet, an interior lot located on a one-way street, and a history of being used exclusively for residential purposes; and

WHEREAS, the applicant states that two vacant sites of similar size to 95 and 97 Grattan Street have both been vacant for many years – 110 Harrison Street since at least 1940 and 145 Thames since at least 1997; and

WHEREAS, based upon the above, the Board finds that there are unique conditions which 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 side of Grattan Street has historically been and is currently primarily developed with residential buildings; and

WHEREAS, specifically, the adjacent use to the west and north (rear) are three-story residential buildings similar to what is proposed and the adjacent lot to the east is vacant and the subject of a use variance application pursuant to BSA Cal. No. 125-13-BZ decided on the same date; 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 notes that the building, although four stories, lines up with the height of the adjacent three-story with basement building and complies with all R6 zoning district bulk regulations; and

WHEREAS, the applicant also notes that the site was occupied by a residential building from at least 1921 until 1981; thus, the applicant asserts that the site—and the subject stretch of Grattan Street—have a long-standing residential character despite the site's M1-1 designation; and

WHEREAS, in response to the Board's question about whether the proposal complies with light and air regulations, the applicant states that all proposed windows satisfy all light and air regulations including that they open either directly upon a street or upon a yard with a minimum dimension to the lot line of 30 feet; and

WHEREAS, specifically, the applicant notes that front apartments have windows opening directly upon Grattan Street and rear apartments open upon rear yards with distances of 46 feet to the rear lot line; and

WHEREAS, accordingly, the layout does not require light wells or courts to satisfy the light and air requirements; and

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

WHEREAS, 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 conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13-BSA-132K, dated April 25, 2013; and

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

Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, 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 with seven units (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 June 23, 2014" – five (5) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum floor area of 4,838 sq. ft. (1.94 FAR), a maximum lot coverage of 54 percent, seven dwelling units, a minimum rear yard depth of 30'-0", and a maximum building height of 40'-0", as indicated on the BSA-approved plans;

THAT the applicant must submit to DEP a Remedial Closure Report consistent with the requirements identified in DEP's June 23, 2014 letter, and

THAT DEP must approve the Remedial Closure Report prior to obtaining a Certificate of Occupancy.

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, June 24, 2014.

125-13-BZ
CEQR #13-BSA-132K

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 – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 29, 2013, acting on Department of Buildings Application No. 320724506, reads in pertinent part:

> Proposed use is not permitted in an M1-1 zoning district as per ZR 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 with seven units (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in the *City Record*, with continued hearings on February 4, 2014, April 8, 2014 and May 20, 2014, and then to decision on June 24, 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, Community Board 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the north side of Grattan Street, between Porter Avenue and Knickerbocker Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 25 feet of frontage along Grattan Avenue, a depth of 100 feet, and approximately 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story temporary frame structure, which appears to have been used for storage but is currently vacant; and

WHEREAS, historic records, including the 1921 Belcher Hyde atlas, reflect that a three-story residential building constructed in the early 1900s occupied the site until its demolition in 1981; 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 seeks a use variance to construct a four-story seven-unit
multiple dwelling with 4,740 sq. ft. of floor area (1.9 FAR) in accordance with the bulk regulations applicable in an R6 district (the nearest residential district, located approximately two blocks south of the site) where 2.2 FAR is the maximum permitted FAR; 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 small lot size of 2,500 sq. ft. and narrow lot width of 25 feet; and (3) its location on a narrow one-way street; and

WHEREAS, the applicant states that occupying the site with a conforming use would not be feasible due to the predominance of residential use, the small size, and constrained street access; and

WHEREAS, as to the history of and adjacency of residential use, the applicant notes that from the early 1900s until 1981, the site was occupied by a three-story residential building consistent with the row of such buildings adjacent to the site; and

WHEREAS, the applicant asserts that the former building was one of a series of residential apartment buildings located on the north side of Grattan Street; and

WHEREAS, the applicant asserts that since the 1981 demolition of the building, the site has either been vacant or occupied by the current vacant two-story frame structure, which was not constructed pursuant to DOB approvals as far as can be determined; and

WHEREAS, the applicant asserts that such adjacencies and absence of commercial or industrial presence in the immediate vicinity of this interior lot limits any foot or vehicular traffic to the site and renders retail use infeasible; and

WHEREAS, as to its size, the applicant asserts that almost all conforming manufacturing and commercial use on Grattan Street in the vicinity is on significantly larger lots in the range of 5,000 sq. ft. to 20,304 sq. ft.; and

WHEREAS, the applicant asserts that the floor plate is too small to accommodate loading or the amount of storage required for a conforming use; and

WHEREAS, the applicant states that development of the site with a conforming commercial or manufacturing use would be infeasible due to the small floor plates of 2,500 sq. ft.; and

WHEREAS, the applicant analyzed a complying one-story warehouse building which it concluded was not viable due to the small size and other locational constraints; and

WHEREAS, the applicant identified one similar site used for conforming use - 79 Grattan Street - with 2,500 sq. ft. of lot area, but noted that it is currently vacant, which reflects the absence of a market for smaller sites for conforming use; and

WHEREAS, the applicant asserts that its review of DOB records reflects that there are not any similarly-sized lots in the vicinity of the site that have been developed in the past decade; and

WHEREAS, the applicant notes that a one-story warehouse was constructed on the south side of Grattan Street more recently, but that site has a width of 75 feet and a lot area of 7,500 sq. ft.; and

WHEREAS, the applicant states that the subject site is one of only four vacant lots with street frontage of less than 25 feet that is not in common ownership or used in conjunction with an adjacent lot; and

WHEREAS, the applicant also states that of the undeveloped and vacant sites on the surrounding portion of Grattan Street, the subject site is one of only two not owned in conjunction with an adjacent site; and

WHEREAS, as to the site's location, the applicant notes that it is an interior lot located on a narrow one-way street and is one of 12 vacant lots included in the study area, which is similarly situated; and

WHEREAS, the applicant notes that Grattan Street at this location is a narrow one-way street that would limit the nature of commercial vehicles that can use Grattan Street; 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 2,500 sq. ft., which the applicant represents is substandard for modern manufacturing uses; and

WHEREAS, the Board inquired about (1) whether the subject lot could be viewed separately from the adjacent lot at 95 Grattan Street, which is the subject of a separate use variance application pursuant to BSA Cal. No. 124-13-BZ; and (2) whether the subject site could be distinguished from other vacant lots; and

WHEREAS, the applicant responded that the ownership of the two lots is separate and submitted individual deeds for the two lots and stated that the 1921 Belcher Hyde atlas reflects that the lots were separate at that time and, thus, have been separate for at least 90 years; and

WHEREAS, however, the applicant notes that even if the two adjacent lots were developed as a single lot with a width of 50 feet and depth of 100 feet, the hardship on the lot would still exist; and

WHEREAS, as to the other vacant lots in the vicinity, the applicant performed an initial and then an expanded study of vacant lots within the vicinity and concluded that almost all of the other sites are either larger, have greater width and street frontage or are in common ownership with an adjacent site (or sites); and

WHEREAS, the applicant notes that out of 220 lots in the initial study area, 19 of them are vacant, which is approximately 8.5 percent; and

WHEREAS, the applicant states that of the vacant lots, the subject site is one of only four affected by all of the factors

contributing to the unique conditions creating the hardship; and

WHEREAS, the applicant enlarged the study area to include a two-block radius around the site, which represents the manufacturing-zoned districts bordered by the railroad to the north and east of the site, water to the north of the site (English Kills), and the residential districts to the south and west and includes 335 lots; and

WHEREAS, the applicant found that within the enlarged study area, there are 40 sites consisting of either individual lots or assemblages of adjacent lots under common ownership and are vacant or include vacant lots; and

WHEREAS, the applicant asserts that the subject site is one of five (1.5 percent of those within the study area) affected by all the factors contributing to the unique conditions creating hardship on the site including a lot width of 25 feet, an interior lot located on a one-way street, and a history of being used exclusively for residential purposes; and

WHEREAS, the applicant states that two vacant sites of similar size to 95 and 97 Grattan Street have both been vacant for many years – 110 Harrison Street since at least 1940 and 145 Thames since at least 1997; and

WHEREAS, based upon the above, the Board finds that there are unique conditions which 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 side of Grattan Street has historically been and is currently primarily developed with residential buildings; and

WHEREAS, specifically, the adjacent use to the west and north (rear) are three-story residential buildings similar to what is proposed and the adjacent lot to the west is vacant and the subject of a use variance application pursuant to BSA Cal. No. 124-13-BZ decided on the same date; 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 notes that the building, although four stories, lines up with the height of the adjacent three-story with basement building and complies with all R6 zoning district bulk regulations; and

WHEREAS, the applicant also notes that the site was occupied by a residential building from at least 1921 until 1981; thus, the applicant asserts that the site—and the subject stretch of Grattan Street—have a long-standing residential character despite the site's M1-1 designation; and

WHEREAS, in response to the Board's question about whether the proposal complies with light and air regulations, the applicant states that all proposed windows satisfy all light and air regulations including that they open either directly upon a street or upon a yard with a minimum dimension to the lot line of 30 feet; and

WHEREAS, specifically, the applicant notes that front apartments have windows opening directly upon Grattan Street and rear apartments open upon rear yards with distances of 46 feet to the rear lot line; and

WHEREAS, accordingly, the layout does not require light wells or courts to satisfy the light and air requirements; and

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

WHEREAS, 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 conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13-BSA-132K, dated April 25, 2013; and

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

WHEREAS, 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 with seven units (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 June 23, 2014" – five (5) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a maximum floor area of 4,740 sq. ft. (1.9 FAR), seven dwelling units, a minimum rear yard depth of 30'-0", and a maximum building height of 40'-0", as indicated on the BSA-approved plans;

THAT the applicant must submit to DEP a Remedial Closure Report consistent with the requirements identified in DEP's June 23, 2014 letter, and

THAT DEP must approve the Remedial Closure Report prior to obtaining a Certificate of Occupancy.

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, June 24, 2014.

216-13-BZ
CEQR #14-BSA-010R

APPLICANT – Rampulla Associates Architects, for 750 LAM Realty, LLC c/o Benjamin Mancuso, owners; Puglia By The Sea, Inc. c/o Benjamin Mancuso, lessees.

SUBJECT – Application July 17, 2013 – Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the mapped street, (*Boardwalk Avenue*), contrary to General City law Section 35. R3X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, west side of Barclay Avenue, 0' north of the corner of Boardwalk Avenue, Block 6354, Lot 40, 7, 9 & 12, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 4
Negative:.....0
Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 9, 2013, acting on Department of Buildings Application No. 520146128, reads in pertinent part:

> Proposed detached two-story Eating and Drinking Establishment with roof deck, in Zoning Use Group 6, is not permitted as-of-right in R3X zoning district. (ZR 22-00)
>
> Proposed detached two-story Eating and Drinking Establishment with an open roof deck constitutes an increase in the degree of non-conformance and non-compliance. (ZR 52-34)
>
> Proposed separate accessory open parking lot for eight parking spaces on Block 6397/Lot 12 on the southwest corner of Barclay Avenue and Boardwalk Avenue is not permitted use in an R3X zoning district; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3X zoning district within the Special South Richmond District (SRD), construction of a one-story building occupied by a restaurant (Use Group 6), which does not conform to district use regulations, contrary to ZR §§ 22-00 and 52-34; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, with continued hearings on May 13, 2014 and June 10, 2014, and then to decision on June 24, 2014; and

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

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

WHEREAS, Borough President James Oddo recommends approval of the application on the condition that it is not larger in scale than the existing restaurant; and

WHEREAS, certain members of the community provided testimony in support of the application; and

WHEREAS, certain members of the community provided testimony in opposition to the application, citing concerns about noise and insufficient parking; and

WHEREAS, the site is at the dead end of Barclay

Avenue and has frontage on three streets: Barclay Avenue, Boardwalk Avenue and First Court within an R3X zoning district within the Special South Richmond District and has a total lot area of 17,029 sq. ft.; and

WHEREAS, the site is across Boardwalk Avenue from Raritan Bay; and

WHEREAS, due to the location of a mapped street within the site, the applicant has filed a companion application for a waiver of General City Law § 35, pursuant to BSA Cal. No. 217-13-A, which was decided on the same date; and

WHEREAS, the site is currently occupied by (1) a two-story commercial building formerly used for a restaurant use (Use Group 6) and (2) a one-story single-family detached home; and

WHEREAS, the applicant proposes to demolish both buildings and build the new restaurant and an accessory on-site parking lot; and

WHEREAS, the applicant also proposes to merge the four existing tax lots and zoning lots (7, 9, 12, and 18) into one zoning lot to accommodate 24 self or 43 attended parking spaces; and

WHEREAS, the applicant initially proposed to construct a building with a floor area of 10,176 sq. ft. (0.6 FAR) with restaurant use on two floors, and a height of 39'-6", which would include eight parking spaces across Barclay Avenue (Block 6354, Lot 40) and 25 parking spaces to the north of the site; and

WHEREAS, at the Board's direction, the applicant first reduced the floor area to 7,208 sq. ft. and a height of 34'-8" and eliminated the lot across Barclay Avenue from its proposal; ultimately, the applicant reduced the size of the building to one-story (with an attic) and a floor area of 4,890 sq. ft.; and

WHEREAS, the applicant states that the restaurant was established on the site in 1941 and is reflected on Certificate of Occupancy #2706; and

WHEREAS, on January 9, 1979, pursuant to BSA Cal. No. 72-78-BZ, the Board granted a variance to permit in what was then an R3-2 zoning district the enlargement of the restaurant; the 1987 Certificate of Occupancy reflects a restaurant with a one-family apartment on the first floor and another on the second floor; and

WHEREAS, the approved building allowed for two stories with 4,896 sq. ft. of floor area; and

WHEREAS, the applicant states that there is no required on-site parking for the existing restaurant however, there is an existing parking lot for approximately 20 cars; and

WHEREAS, the applicant acknowledges that it enlarged the lot area and the building subsequent to the Board's prior variance approval, without requesting an amendment; and

WHEREAS, at the Board's request, the applicant provided the following information about the site conditions: (1) the approved lot area is 10,261 sq. ft. and the existing/proposed is 17,029 sq. ft.; (2) the approved floor area is 4,896 sq. ft. (for residential and commercial), the existing is 7,457.64 sq. ft. (commercial), and the proposed is 4,890 sq. ft. (commercial); and (3) the approved site plan did not include any parking, the existing includes 20 spaces, and the proposed is 24 unattended or 43 attended spaces; and

WHEREAS, accordingly, the applicant notes that the proposal reflects an enlarged lot area but a floor area that is consistent with the prior approval; and

WHEREAS, because the restaurant use is not permitted in the subject zoning district, the applicant seeks a use variance to permit the enlargement of the Use Group 6 use; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the history of the site for restaurant use; (2) the storm-damaged condition of the building and location within a flood zone; and (3) the location of the site within mapped unbuilt streets; and

WHEREAS, as to the history of use and the existing building, the applicant states that the site has been occupied by restaurant use from at least 1941 to the present; and

WHEREAS, the applicant states that the restaurant was established on the site in 1941 and is reflected on Certificate of Occupancy #2706; subsequent alteration applications were filed in 1949 and 1950; and

WHEREAS, as noted, on January 9, 1979, the Board granted a variance to permit in what was then an R3-2 zoning district the enlargement of a two-story building occupied by the restaurant, pursuant to BSA Cal. No. 72-78-BZ; the 1987 Certificate of Occupancy reflects a restaurant with a one-family apartment on the first floor and another on the second floor; and

WHEREAS, the applicant represents that a restaurant has operated without interruption from 1941 until October 29, 2012 when it was damaged by Superstorm Sandy; and

WHEREAS, as to the storm damage and flooding potential for the site, the applicant cites to the Mayoral Executive Order No. 230 – Emergency Order to Suspend Zoning Provisions to Facilitate Reconstruction in Accordance with Enhanced Flood Resistant Requirements – for the City's policy that if reconstruction of an existing flood-damaged building is proposed that was substantially damaged, the building must be elevated to fully comply with the flood zone regulations in the Building Code's Appendix G; and

WHEREAS, the applicant notes that "substantially damaged" had been defined as exceeding 50 percent of the market value of the building; and

WHEREAS, the applicant asserts that the restaurant suffered damage in excess of 50 percent of the market value of the building so now must be elevated to a height which exceeds the new flood hazard elevations; and

WHEREAS, accordingly, the applicant states that it cannot simply repair the existing established restaurant building, but must elevate it, which is not possible due to its wood frame construction; and

WHEREAS¸ the applicant states that on October 29, 2012, when Superstorm Sandy hit the Staten Island Shoreline, the site was not deemed to be in a flood hazard zone; the flood maps at that time reflect that the seawall that borders the site's

southeast property line as the limit of Flood Zone AE; and

WHEREAS, however, the applicant notes that on June 10, 2013, the Federal Emergency Management Agency (FEMA) revised the flood maps to include the site to be within a Zone VE with a minimum first floor elevation of 21 feet; and

WHEREAS, the applicant notes that Zone VE is subject to more stringent building requirements than other zones because it is exposed to a higher level of flood risk; and

WHEREAS, the applicant states that after calculating the Richmond Datum conversion factor, the design flood elevation is required to be 18.91 feet, which dictates a new first floor elevation of 20.41 feet; and

WHEREAS, the applicant notes that the elevation of the existing first floor is 16.41 feet, which is four feet below the required flood elevation; and

WHEREAS, the applicant notes that within Zone VE, a building subject to High Velocity Wave Action (a breaking wave with a height of three feet) is required to comply with additional construction measures, which the existing damaged building does not; and

WHEREAS, the applicant notes that specific conditions include that cellars are not permitted, the first floor elevation must be above the minimum Flood Hazard Elevation, and two additional feet of freeboard must be added to the minimum first floor elevation; and

WHEREAS, the applicant notes that premium construction costs are associated with constructing a building in a Zone VE and in compliance with the Building Code's Appendix G which mandates that new buildings be on concrete or wood piles that are elevated above natural existing grade and that the piling system and its connection to the first floor living space must be designed to withstand wave velocity; and

WHEREAS, the applicant notes that the City, State, and Federal government have instituted financial programs to aid homeowners rebuild after Superstorm Sandy, but there are no such programs available to rebuild commercial businesses; and

WHEREAS, the applicant states that the portion of the site (Block 6396, Lots 7, 9, and 18) currently used for accessory parking for the restaurant is one of the few vacant parcels in the area and any new construction there would have to follow FEMA regulations; and

WHEREAS, thus the proposed parking use is more feasible than new construction which must comply with FEMA regulations that prohibit cellars and must be elevated above the flood plain on concrete piles; and

WHEREAS, the applicant asserts that residential construction in full compliance with all flood-related regulations would be subject to significant construction premiums yet would be less marketable due to the absence of a cellar which is typical in the area; and

WHEREAS, as to the presence of the mapped unbuilt streets on the site, the applicant states that Barclay Avenue is a final mapped street with a width of 70 feet; Boardwalk Avenue is a final mapped street owned by the City, with a width of 20 feet and a widening line mapped to 60 feet within the site; and First Court is an un-built mapped street; and

WHEREAS, the applicant notes that the widening line with a width of 40 feet on Boardwalk Avenue is owned by the applicant and that the portion of the zoning lot within the widening line is 4,014 sq. ft., or 24 percent of the site which requires waiver from the Board to allow construction; and

WHEREAS, further, the applicant notes that First Court is not open or improved and, thus, access to the site is constrained on that frontage; and

WHEREAS¸ the applicant notes that within the subject R3-X (SRD) zoning district, construction is limited to one- or two-family detached homes on zoning lots with at least 3,800 sq. ft. of lot area and, thus, this zoning lot would allow four buildable lots with two-family homes but, due to the presence of the widening line, only three buildable lots can be realized instead of four; and

WHEREAS, further, the applicant states that, due to the odd shape of the lot, development is limited to three two-family homes and one one-family home rather than four two-family homes; and

WHEREAS, the applicant asserts that the presence of the widening lot is a unique condition in the area; and

WHEREAS, the applicant further asserts that because Lots 7, 9, and 18 create a partial through lot with a truncated L-shape with the short dimension of 50 feet, when a front yard of 18 feet and a rear yard of 20 feet is included, only two feet of depth remains, rendering the lot unbuildable; and

WHEREAS, the applicant asserts that the truncated part of the L shape is unbuildable due to the narrow depth; and

WHEREAS, the applicant asserts that a lawfully pre-existing commercial building located in a residential zoning district with the encroachment of a 40-ft. widening line depth is a unique physical condition that is not shared by other sites in the area; and

WHEREAS, finally, the applicant asserts that the existing building does not meet City requirements for flood resiliency thereby creating a practical difficulty in bringing it up to current flood hazard standards; and

WHEREAS, based upon the above, the Board finds that the history of the site, and the inability to reconstruct the existing building due to new flood regulations are unique conditions which create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board is not persuaded that the presence of the mapped unbuilt streets creates hardship since the Board has waived that restriction under the companion application; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) three detached two-family homes and one detached one-family home; (2) three detached two-family homes and one detached one-family home built outside of the widening line; and (3) the proposal; and

WHEREAS, the study concluded that based on the premium costs associated with the new flood resistant construction regulations and the subsurface conditions, the conforming alternatives are infeasible and only the proposal

would realize a reasonable return; and

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

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

WHEREAS, the applicant notes that restaurant use has occupied the site since at least 1941, more than 20 years before the Zoning Resolution was adopted, and has existed continuously since that time; and

WHEREAS, accordingly, the applicant notes that the restaurant is an established use in the area; and

WHEREAS, the applicant states that Puglia by the Sea restaurant was originally known as Carmen's restaurant when it was established in 1941 in a business use district, which was rezoned to R3-2 in 1961; and

WHEREAS, additionally, the applicant notes that in 1979, the Board approved the enlargement of the historic restaurant to a size that is identical to the current proposal but which represents a lower FAR due to the enlargement of the zoning lot; and

WHEREAS, the applicant notes that, although the parking was not part of the 1979 approval, it has been a compatible and appropriate addition to the site if permitted to confirm; and

WHEREAS, the applicant asserts that the parking lot will help address concerns about traffic and insufficient parking in the area; and

WHEREAS, the applicant notes that the neighborhood is now occupied by large single-family detached homes and other forms of single-family homes included those converted from seasonal to year round bungalows; and

WHEREAS, the applicant notes that during the early 1900s through the 1960s, there were very few homes in the area and most of them were seasonal bungalows; and

WHEREAS, the applicant states that after 1961, construction of homes began to occur in the surrounding area with the restaurant as the only commercial use in the immediate vicinity; and

WHEREAS, the applicant notes that the site is separated from residential uses by the width of Barclay Avenue and First Court and only directly abuts residential use on one side and that is where the new parking lot with screening will be located after the demolition of the existing bungalow; and

WHEREAS, the applicant states that the demolition of the one-story bungalow in the middle of the existing parking lot will allow for 24 off-street self-parking spaces or 41 attended spaces, as necessary; and

WHEREAS, the applicant states that the parking lot will include planting islands, buffer planting areas around the perimeter of the parking lot and parking lot trees as well as new curbs and sidewalks along the Barclay Avenue frontage; and

WHEREAS, the applicant asserts that the proposed inclusion of the additional lots to allow for parking will increase the compatibility of the non-conforming use on the surrounding neighborhood, without enlarging or extending the actual use; and

WHEREAS, the applicant notes that the building will actually be reduced from its current size and will accommodate approximately 187 patrons; and

WHEREAS, as noted, the new building will also comply with all current flood-related construction requirements in contrast to the existing frame construction which would be vulnerable to future damage; and

WHEREAS, as to bulk, the applicant notes that the building at a height of 31'-4" and with 4,890 sq. ft. of floor area (0.28 FAR) is well within the underlying bulk regulations for a conforming use; and

WHEREAS, the applicant proposes hours of operation that are consistent with its current hours; and

WHEREAS, specifically, the applicant proposes the following hours of operation for the indoor restaurant: Monday through Thursday, 12:00 p.m. to 11:00 p.m.; Friday and Saturday, 12:00 p.m. to 2:00 a.m.; and Sunday, 10:00 a.m. to 11:00 p.m.; and

WHEREAS, the applicant proposes the following hours of operation for the outdoor seating area, seasonally: Monday through Thursday, 12:00 p.m. to 11:00 p.m.; Friday and Saturday, 12:00 p.m. to 12:00 a.m.; and Sunday, 10:00 a.m. to 11:00 p.m.; and

WHEREAS the applicant submitted a copy of its revocable license agreement with the City to allow for the outdoor café use along Boardwalk Avenue, which is renewable annually; and

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

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

WHEREAS, the Board notes that the revised proposal reduced the initial proposal by more than half and is consistent with the 1979 Board variance for restaurant use and, thus, finds that this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the project is classified as Unlisted 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. 14-BSA-010R dated November 18, 2013; and

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

WHEREAS, 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 under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a to permit, within an R3X zoning district within the Special South Richmond District (SRD), construction of a one-story building occupied by a restaurant (Use Group 6), which does not conform to district use regulations, contrary to ZR §§ 22-00 and 52-34; *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 June 23, 2014" – six (6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the enlarged building: a total floor area of 4,890 sq. ft. (0.28 FAR); a total height of 31'-4", and a minimum of 24 unattended parking spaces or 41 attended spaces, as illustrated on the Board-approved plans;

THAT the hours of operation will be limited to Monday to Thursday, 9:00 a.m. to 9:00 p.m.; Friday and Saturday, 9:00 a.m. to 6:00 p.m.; and Sunday, 11:00 a.m. to 6:00 p.m.;

THAT attended parking is required on Fridays and Saturdays;

THAT signage on the site will comply with C1 district regulations, as reflected on the BSA-approved plans;

THAT all fencing and landscaping be installed and maintained as reflected on the BSA-approved plans;

THAT the parking layout be as reflected 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 objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, June 24, 2014.

217-13-A

APPLICANT – Rampulla Associates Architects, for 750 LAM Realty, LLC c/o Benjamin Mancuso, owners; Puglia By The Sea, Inc. c/o Benjamin Mancuso, lessees.

SUBJECT – Application July 17, 2013 – Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the mapped street, (*Boardwalk Avenue*), contrary to General City law Section 35. R3X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, west side of Barclay Avenue, 0' north of the corner of Boardwalk Avenue, Block 6354, Lot 40, 7, 9 & 12, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Vice Chair Collins.....1

WHEREAS, the decision of the Department of Buildings ("DOB"), dated July 19, 2013, acting on DOB Application No. 520146128, reads in pertinent part:

> Proposed new Building construction is located within the bed of a mapped street is contrary to Section 35 of the General City Law.; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, with continued hearings on May 13, 2014, and June10, 2014, and then to decision on June 24, 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, this is an application to allow the reconstruction of an existing restaurant which will be located partially in the bed of Boardwalk Avenue, a mapped street; and

WHEREAS, this application is a companion application, pursuant to BSA Cal. No. 216-13-BZ for a variance allow the reconstruction of the restaurant at the site; and

WHEREAS, the subject site lies at the west side of Barclay Avenue, north of the corner of Boardwalk Avenue, within an R3X (SRD) zoning district; and

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

WHEREAS, by letter dated January 15, 2014, the Fire Department states that it has reviewed the proposal and offers no objections provided the reconstruction conforms with the current NYC Fire and Building Department codes; and

WHEREAS, by letter dated August 22, 2013, the Department of Environmental Protection ("DEP") states that: (1) there are no existing sewers or water mains in the Boardwalk Avenue between Ryan Place And First Court; and (2) Amended Drainage Plan No. D-111(S2) Sheet 1of 1, dated April 2, 2012, for the above-referenced location, calls for a future a 10-inch diameter sanitary sewer, and a 15-inch diameter storm sewer in the bed of Boardwalk Avenue between Ryan Place and First Court; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing: (1) the width of the mapped street portion of Boardwalk Avenue and the width of the widening portion of the street at the above location; (2) a 32-foot wide sewer corridor in the bed of Boardwalk Avenue along the proposed development for the installation, maintenance and/or reconstruction of the future 10-inch diameter sanitary sewer and the 15-inch diameter storm sewer; (3) the location of the hydrant on tentative Lot 7 and the distance from the hydrant to the lot line; and (4) to clarify if Lots 40 and 42, which show parking are included as part of the application; and

WHEREAS, in response to DEP's request, by letter dated May 20, 2013, the applicant submitted a survey for Block 6397, Lots 7, 9, 12, and 18, which shows a 60-foot width of the mapped Boardwalk Avenue and a 20-foot wide traveled portion of the street in front of the Tentative Lot 7; the existing footprint of the building on the lot line abutting the traveled portion; and noted that the 20-foot wide record street will be available for the installation and/or reconstruction of the future 10-inch diameter sanitary sewer and the 15-inch diameter storm sewer; and

WHEREAS, the applicant also submitted a survey dated December 4, 2013 for the Block 6354, Lots 40 and 42 which reflects a 60-foot width of the mapped Boardwalk Avenue and 20-foot wide traveled portion of the street and the survey shows the 12-foot wide sewer corridor inside of the Lots 40 and 42 along the southerly lot line for a width of 32 feet width, which will be available for the installation and/or reconstruction of the future 10-inch diameter sanitary sewer and the 15-inch diameter storm sewer at the above referenced location; and

WHEREAS, DEP has no further objections; and

WHEREAS, by correspondence dated September 6, 2013, the Department of Transportation ("DOT") states that it has reviewed the project and has no objections; and

WHEREAS, DOT notes that according to the Staten Island Borough President's Topographical Bureau: (1) Boardwalk Avenue from Second Court to Barclay Avenue has a record width of 20 feet and is mapped at a 60-foot width, and (2) the City does not have title to Boardwalk Avenue; and

WHEREAS, DOT also notes that the improvement of Boardwalk is not presently included in DOT's Capital Improvement Program; and

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

Therefore it is Resolved, that the Board modifies the decision of the DOB, dated July 19, 2013, acting on DOB Application No. 520146128 by the power vested in it by Section 35 of the General City Law, limited to the decision noted above, *on condition* that construction will substantially conform to the drawing filed with the application marked "Received June 23, 2014" – six (6) sheets; and *on further condition*:

THAT DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt street were not mapped;

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

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 on June 24, 2014.

279-13-BZ
CEQR #14-BSA-049M
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 (*Planet Fitness*) on the cellar, first through third floors of a new building to be constructed. C6-4M and M1-6 zoning districts.
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
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 4
Negative:.....0
Absent: Vice Chair Collins.....1
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated April 14, 2014, acting on DOB Application No. 121092744, reads, in pertinent part:

> Proposed physical culture establishment located on zoning lot in C6-4 and M1-6 zoning districts is not permitted as-of-right pursuant to ZR Sections 32-10 and 42-10; and

WHEREAS, this is an application under ZR §§ 73-36

and 73-03, to permit, on a site partially within a C6-4M zoning district and partially within an M1-6 zoning district, within the Special Garment Center District, the operation of a physical culture establishment ("PCE") in portions of the cellar, and first through third stories of a proposed 38-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, and then to decision on June 24, 2014; and

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

WHEREAS, Community Board 5, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is a through lot with frontage on West 34th Street and West 35th Street, between Seventh Avenue and Eighth Avenue, partially within a C6-4M zoning district and partially within an M1-6 zoning district within the Special Garment Center District; and

WHEREAS, the applicant confirmed that there are not any restrictions against the use within the subject M1-6 zoning district within the Special Garment Center District; and

WHEREAS, a 38-story commercial building is being constructed on the site and will have a total of 184,495 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy portions of the cellar, and first through third floors; the remainder of the cellar and first floor will be occupied by Use Group 10 retail; and

WHEREAS, the PCE will occupy 14,542 sq. ft. of floor area and will have its main entrance on West 35th Street within the M1-6 zoning district portion of the site; and

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

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

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

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

WHEREAS, the 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. 14BSA049M dated October 2, 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- to permit, on a site partially within a C6-4M zoning district and partially within an M1-6 zoning district, within the Special Garment Center District, the operation of a physical culture establishment ("PCE") in portions of the cellar, and first through third stories of a proposed 38-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 30, 2014" – Eight (8) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 24, 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 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, June 24, 2014.

284-13-BZ
CEQR #14-BSA-054Q
APPLICANT – Warshaw Burstein, LLP, for 168-42 Jamaica LLC, owner; 168 Jamaica Avenue Fitness Group, LLC, lessee.
SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar and the first floor of the building. R6-A/C2-4 (Downtown Jamaica) zoning district.
PREMISES AFFECTED – 168-42 Jamaica Avenue, south side of Jamaica Avenue approximately 180 feet east of the intersection formed by 168th Place and Jamaica Avenue, Block 10210, Lot 22, 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 Montanez ….....4
Negative:.....0
Absent: Vice Chair Collins.....1
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated September 4, 2013, acting on DOB Application No. 420048629, reads, in pertinent part:

> Proposed physical culture establishment is not permitted as-of-right in a C2-4 zoning district per ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-4(R6A) zoning district and partially within an R5 zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and first story of a proposed one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 13, 2014, after due notice by publication in the *City Record*, with a continued hearing on June 10, 2104 and then to decision on June 24, 2014; and

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

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

WHEREAS, the subject site is on the south side of Jamaica Avenue between 168th Place and 170th Street, partially within a C2-4(R6A) zoning district and partially within an R5 zoning district; and

WHEREAS, a one-story commercial building is being constructed on the site and will have a total of 47,309 sq. ft. of floor area entirely within the C2-4(R6A) zoning district; and

WHEREAS, the proposed PCE will occupy portions of the cellar, and first floor; and

WHEREAS, the PCE will occupy 24,698 sq. ft. of floor area and will have its main entrance on Jamaica Avenue within the C2-4(R6A) zoning district portion of the site; and

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

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

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

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

WHEREAS, the 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. 14BSA054Q dated October 9, 2013; and

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

Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals 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 C2-4(R6A) zoning district and partially within an R5 zoning district, the operation of a physical culture establishment ("PCE") in portions of the cellar and first story of a proposed one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 27, 2014" – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 24, 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 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, June 24, 2014.

286-13-BZ

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

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

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

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated September 16, 2013, acting on DOB Application No. 320718309, reads in pertinent part:

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

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

ZR 23-141 – proposed floor area is greater than maximum (permitted), proposed FAR is greater than maximum (permitted), proposed lot coverage is greater than required maximum; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R4 zoning district, the enlargement of an existing single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), lot coverage, front yard, and side yards, contrary to ZR §§ 23-141, 23-45, and 23-461; and

WHEREAS, a public hearing was held on this application April 1, 2014, after due notice by publication in *The City Record*, with continued hearings on May 6, 2014, and June 10, 2014, and then to decision on June 24, 2014; and

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

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

WHEREAS, the subject site is located on the southeast corner of the intersection of Voorhies Avenue and East 29th Street, within an R4 zoning district; and

WHEREAS, the site has 18 feet of frontage along Voorhies Avenue, 100 feet of frontage along East 29th Street, and 1,800 sq. ft. of lot area; the applicant notes that East 29th Street dead-ends near the southern boundary of the site, forming a cul-de-sac; and

WHEREAS, the site is occupied by a one-story, single-family home with 708 sq. ft. of floor area (0.40 FAR); and

WHEREAS, the applicant proposes to vertically and horizontally enlarge the home contrary to the FAR, lot coverage, front yard, and side yards, and increase the floor area from 708 sq. ft. (0.4 FAR) to 1,980 sq. ft. (1.1 FAR) (the maximum permitted floor area is 1,350 sq. ft. (0.75 FAR); and

WHEREAS, the applicant states that the proposed enlargement will: (1) increase in lot coverage from 39.5 percent to 60 percent (a maximum lot coverage of 45 percent is permitted); (2) provide one front yard with a depth of 36'-2½" along Voorhies Road (two front yards with a minimum depth of 10'-0" are required, one along Voorhies Road and one along East 29th Street); and (3) maintain the existing non-complying side yard depth of 3'-9½" along the southern boundary of the site (two side yards—one along the eastern boundary and one along the southern boundary—are required with minimum depths of 5'-0"); and

WHEREAS, the applicant notes that, initially, it also sought a waiver for a parking space contrary to ZR § 25-621; however, in response to the Board's concerns, the parking space was excluded from the proposal; and

WHEREAS, accordingly, the applicant seeks a variance to permit the proposed FAR, lot coverage, and front and side yard non-compliances pursuant to ZR § 72-21; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in compliance with underlying zoning regulations: (1) the site's narrow width in combination with its location on a corner; (2) the location of the existing building on the site; and (3) the underdevelopment of the site; and

WHEREAS, the applicant states that the site's narrow width (18'-0") and location on a corner combined, make complying development of the site infeasible; and

WHEREAS, the applicant notes that because the site is on a corner, it must provide yards for the full length and width of the site; as such, the maximum width of a home on a narrow lot within an R4 district is 3'-0"; and

WHEREAS, the applicant represents that the yard requirements alone result in a home that is not even wide enough for one habitable room under the building code; thus, as-of-right, the site cannot be used to construct a dwelling, absent some relief from the Board; and

WHEREAS, as to the uniqueness of this practical difficulty, the applicant identified 13 sites located on corners within the subject R4 district and concluded the subject site is the narrowest, with the other sites ranging in width from 19'-0" to 60'-0"; and

WHEREAS, the applicant states that the location of the existing home at the site also produces unique practical difficulties in further developing the site; and

WHEREAS, the applicant states that the existing home's walls are contiguous with the southern, western, and eastern boundaries of the site, resulting in a front yard depth along Voorhies Avenue of 56'-8½"; as such, and given the R4 yard regulations described above, the home could be enlarged by a maximum of 176 sq. ft.; none of which would be habitable or even practically useful for storage space, because its maximum width would be 2'-0"; similarly, it is not feasible to maintain the existing 708 sq. ft. home as-is, because the applicant represents that it is too small to marketable as a single-family home in this neighborhood; and

WHEREAS, finally, the applicant asserts that the site is significantly underdeveloped (the existing FAR is 0.4; the maximum FAR is 0.75) as compared to sites with similar lot areas in the surrounding neighborhood; and

WHEREAS, in support of this assertion, the applicant submitted a study of the 83 sites within 400 feet of the site; based on the study, the average FAR is 1.63; the applicant notes that four particularly large buildings on average-sized sites are skewing the average; however, when the outliers are removed (along with one parking lot and one vacant site), the average floor area is 2,184 sq. ft. (0.96 FAR); when only single-family homes are considered, there are 47 sites, with an average floor area of 1,914 sq. ft. (0.86 FAR), which the applicant notes is more than twice the existing 0.4 FAR at the subject site; and

WHEREAS, the applicant explored the feasibility of an as-of-right enlargement of the home; however, as noted above, such an enlargement results in an additional 176 sq. ft. of virtually unusable floor area; and

WHEREAS, based upon the above, the Board finds that, pursuant to ZR § 72-21(a), the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

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

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding area is characterized by low-density, attached, detached or semi-detached, two- or three-story homes, with varying rear and side yard depths, and, typically, shallower front yard depths than are provided at the site; as to floor area, as noted above, the proposed floor area of 1,980 sq. ft. is well within the average size of homes in the vicinity; as such, the proposal is consistent with the use, bulk, and appearance of the neighborhood; and

WHEREAS, the applicant also notes that the proposal will maintain the historic yard non-compliances, which, along with the site's location adjacent to the East 29th Street cul-de-sac, mitigates the impact of such non-compliances upon the surrounding neighborhood; and

WHEREAS, as to adjacent uses, the applicant states that there is a single-family home directly east of the site, a single-family home west of the site across the East 29th Street cul-de-sac, a six-story multiple dwelling directly south of the site, and north across Voorhies Avenue, P.S. 52 (Sheepshead Bay Elementary School); and

WHEREAS, the applicant states that since the enlargement vertically extends three of the existing four walls,

the impact of the home upon adjacent uses is minimal; where the building will expand horizontally and vertically, it will be nearer to the existing home directly east of the site; however, in a typical situation, both homes would occupy the portion of the lot nearest the street frontage they share; here, the home on the site will have a front yard depth of 36'-2½" and be pulled towards the rear of the site and the adjacent home will have a rear yard depth in excess of 40'-0" and a front yard depth of approximately 10'-0"; thus, the minor decrease in the distance between these buildings is mitigated by the fact that they are still significantly more separated than most adjacent homes in the surrounding neighborhood; and

WHEREAS, at hearing, the Board directed the applicant to: (1) submit clearer photographs showing the surrounding area; (2) revise its land use studies to justify its FAR waiver; (3) examine the feasibility of reducing the size of the enlargement; and (4) amend its plans to include a note that the porch will be as approved by DOB; and

WHEREAS, in response, the applicant provided clearer photographs and submitted revised land use studies and amended plans as directed; and

WHEREAS, as to the feasibility of reducing the size of the enlargement, the applicant submitted plans showing that any reduction in the size of the enlargement will result in the loss of an entire bedroom, which it represents makes the entire proposal infeasible for the owner; and

WHEREAS, therefore, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant asserts that the above-noted hardships were not created by the owner but are inherent in the site's narrowness and existing, underdeveloped building; and

WHEREAS, the Board also finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the unique conditions at the site, per ZR § 72-21(d); and

WHEREAS, the applicant asserts and the Board finds that this proposal is the minimum necessary to afford the owner relief, ZR § 72-21(e); and

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

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, to permit, on a site within an R4 zoning district, the enlargement of an existing single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR"), lot coverage, front yard, and side yards, contrary to ZR §§ 23-141, 23-45, and 23-461; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 23, 2014"- (8) sheets; and *on further condition*:

THAT the parameters of the proposed building will be limited to: two stories and an attic, a maximum floor area of 1,980 sq. ft. (1.1 FAR), a front yard along Voorhies Avenue with a minimum depth of 36'-2½", and a maximum lot coverage of 60 percent, 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

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, June 24, 2014.

310-13-BZ

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

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

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

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated November 14, 2013, acting on DOB Application No. 220150869, reads in pertinent part:

> Proposed college, UG 3A, within the M1-1 district portion of the zoning lot is not permitted; contrary to ZR 42-10; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site partially within a C4-4 zoning district and partially within an M1-1 zoning district, the construction of a two-story mixed commercial (Use Group 6) and community facility (Use Group 3) building, contrary to the use regulations set forth in ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 1, 2014, after due notice by publication in *The City Record*, with continued hearings on May 6,

2014, May 20, 2014, and June 10, 2014, and then to decision on June 24, 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, Community Board 1, Bronx, recommends approval of the application; and

WHEREAS, this application is being brought on behalf of Metropolitan College of New York ("MCNY"), a non-profit educational institution, which will occupy the proposed building; and

WHEREAS, the subject site is triangular lot located on the northwest corner of the intersection of East 149th Street and Brook Avenue, partially within a C4-4 zoning district and partially within an M1-1 zoning district; and

WHEREAS, the site has approximately 291 feet of frontage along East 149th Street, approximately 319 feet of frontage along Brook Avenue, and 67,881 sq. ft. of lot area; and

WHEREAS, the site's triangular shaped is thus formed by the intersection of East 149th Street and Brook Avenue, and the diagonal site boundary connecting these streets (the hypotenuse of the triangle), which abuts an MTA right-of-way where railroad tracks for the 2 and 5 subway lines emerge from underground; and

WHEREAS, the applicant notes that the C4-4/M1-1 district boundary runs roughly parallel to East 149th Street and divides a small portion of the northeast corner of the site; thus, 12 percent of the lot area (8,358 sq. ft.) is within the M1-1 portion of the site and 88 percent of the lot area (59,523 sq. ft.) is within the C4-4 portion of the site; and

WHEREAS, the applicant states that the site is currently used as a parking lot for motor vehicles; and

WHEREAS, the applicant proposes to construct a two-story mixed commercial and community facility building with 85,220 sq. ft. of floor area (1.4 FAR), including 61,697 sq. ft. of commercial floor area (Use Group 6) and 23,523 sq. ft. of community facility floor area (Use Group 3); and

WHEREAS, in addition, the applicant notes that, on June 18, 2013, under BSA Cal. No. 73-13-BZ, the Board granted a special permit pursuant to ZR § 73-49 to permit accessory parking for 87 automobiles on the rooftop of the proposed building; and

WHEREAS, the applicant states that the majority of the first story of the building and a portion of the second story will be occupied by a supermarket, a restaurant, retail space, and offices; MCNY will occupy a small portion of the first story (2,528 sq. ft.) and the remainder of the second story (22,715 sq. ft. of floor area), including a 808 sq.-ft. portion within the M1-1 portion of the site; and

WHEREAS, the applicant states that MCNY will use a small portion of the first story as an entrance lobby with administrative offices, and the second story to accommodate classroom space for up to 410 students and assembly space for up to 590 students, with a total simultaneous maximum occupancy of 927 persons; the space will include folding walls to allow flexibility in classroom size and configuration, which will enable MCNY to host guest speakers and hold conferences, internship fairs, and job fairs; the second story will also include three computer classrooms, 17 regular classrooms, one media lab, and student and faculty lounges; and

WHEREAS, because Use Group 3 is not permitted as-of-right in an M1-1 district, the applicant seeks a use variance for the 808 sq.-ft. portion of the building on the second story; and

WHEREAS, the applicant states that the triangular shape of the site and the location of the district boundary line are a unique physical conditions, which create practical difficulties and unnecessary hardships in developing the site in conformance with underlying zoning regulations in manner that satisfies MCNY's programmatic needs as an educational institution; and

WHEREAS, the applicant states, as noted above, that the site triangular in shape due to the MTA right-of-way that forms the northwest boundary of the site; and

WHEREAS, as such, the applicant asserts that, a triangular building is the most efficient design to develop the site; and

WHEREAS, in addition, as described above, the location of the district boundary between the C4-4 portion of the site and the M1-1 portion of the site serves to isolate a small portion of the site and, thus, the building, in the M1-1 district; and

WHEREAS, nevertheless, the applicant states that MCNY requires use of the portion of the building within the M1-1 district in order to satisfy its programmatic needs; and

WHEREAS, in particular, the applicant represents that in order for the second story to have complying egress under the Building Code for the number of occupants MCNY proposes (more than 499 students), it must have three means of egress with a maximum travel distance of 250'-0" or less, and locate one of the means of egress within the M1-1 portion of the building; and

WHEREAS, the applicant examined the following as-of-right scenarios, in which MCNY did not use the M1-1 portion of the building: (1) removing the third means of egress entirely, which reduces the simultaneous classroom occupancy from 410 students to 263, prevents the usage of assembly space by more than 499 students when the classrooms are not in use and usage of the assembly space at all when classrooms are in use, and eliminates seven classrooms; (2) placing all three means of egress within the C4-4 portion of the building, which reduces the simultaneous classroom occupancy to 360 students, renders the M1-1 portion of the second story unusable, due to its lack of ADA accessibility and second means of egress, and results in a loss of three classrooms and eight computer terminals within the media lab; and (3) aligning the second-story MCNY space with the East 149th Street side of the building; and

WHEREAS, the applicant states that this third scenario carries the most disadvantages, in addition to being impractical since MCNY does not hold a lease for this portion

of the building; first, this scenario will allow for only two means of egress, which reduces the simultaneous classroom occupancy from 410 students to 263, and prevents the usage of assembly space by more than 499 students when the classrooms are not in use and usage of the assembly space at all when classrooms are in use; second, this portion of the building is not suitable for classroom space due to the shortage of windows and the practical difficulties created by constructing classroom space along an curving building wall (rectangular floorplates are preferable for classroom layouts); third, using this portion of the building will result in the creation of two unusable areas (a total of 17,269 sq. ft. of floor area) of the second story due to a lack of ADA accessibility; and

WHEREAS, thus, the applicant states that none of the as-of-right scenarios enables MCNY to fulfill its programmatic needs to allow sufficient space for its students, faculty, and staff; and

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

WHEREAS, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, accordingly, based upon the above, the Board finds that, consistent with ZR § 72-21(a), the triangular shape of the site and location of the C4-4/M1-1 district boundary, when considered in conjunction with the programmatic needs of MCNY, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

WHEREAS, the applicant represents that, per ZR § 72-21(c), the proposed use of 808 sq. ft. of floor area in the M1-1 portion of the site by MCNY will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area is characterized by its diversity; and includes industrial and commercial uses, such as the nearby regional retail and business district known as "The Hub", multiple dwellings, and large community facilities; thus, the introduction of MCNY will complement the neighborhood varied character; and

WHEREAS, likewise, the applicant asserts that the placement of 808 sq. ft. of community facility floor area within the M1-1 district will be compatible with the nearest conforming use, which is the large community facility across Brook Avenue; the applicant also notes that the majority of nearby land within the subject M1-1 district is either occupied by the railroad or undeveloped; and

WHEREAS, the applicant notes that the proposal has garnered the support of numerous elected officials and community groups, including the community board and the Bronx Overall Economic Development Corporation, and is an important component of the Bronxchester Urban Renewal Plan and the South Bronx Initiative Plan; and

WHEREAS, the applicant notes that, aside from the requested use variance and the rooftop parking authorized by the Board under BSA Cal. No. 73-13-BZ, the proposal complies in all respects with the applicable bulk regulations; and

WHEREAS, accordingly, the Board finds that, per ZR § 72-21(c), this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, per ZR § 72-21(d), the hardships of the site were not self-created and that a conforming development of the site would not satisfy the programmatic needs of MCNY; and

WHEREAS, the Board also finds that, consistent with ZR § 72-21(e), the requested use waiver is the minimum necessary to afford MCNY the relief it needs to satisfy its programmatic needs; and

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

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

WHEREAS, the Mayor's Office of Environmental Coordination ("MOEC") has conducted an environmental review of the proposed action to determine if the proposal would result in any significant adverse environmental impacts that were not previously identified in the January 2012 Triangle Plaza Hub Environmental Assessment Statement (CEQR No. 11DME011X) or in the subsequent Technical Memorandum issued on May 17, 2013; and

WHEREAS, MOEC recommends in a May 6, 2014 Technical Memorandum that the developer provide a staff person (i.e. flag person) at the project's Brook Avenue driveways to ensure safety for pedestrians, cyclists and motorists; and

WHEREAS, MOEC also recommends in the Technical Memorandum that the proposed building be required to meet an increase in attenuation requirements of 45 dBA or lower, rather than the 50 dBA previously required; and

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

Therefore it is Resolved, that the Board of Standards and Appeals adopted the findings of the May 6, 2014 Technical Memorandum 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 partially within a C4-4 zoning district and partially within an M1-1 zoning district, the construction of a two-story mixed commercial (Use Group 6) and community facility (Use Group 3) building, contrary to the use regulations set forth in ZR § 42-10; *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 May 28, 2014" – Fifteen (15) sheets; and *on further condition*:

THAT the building parameters will be: two stories; a maximum floor area of 85,220 sq. ft. (1.4 FAR); a maximum of 61,697 sq. ft. of commercial floor area and a maximum of 23,523 sq. ft. of community facility floor area, as illustrated on the BSA-approved plans;

THAT a staff person (i.e. flag person) be provided at the building's Brook Avenue driveways to ensure safety for pedestrians, cyclists and motorists;

THAT the proposed community facility uses in the building be required to provide attenuation levels of 31 dBA along the East 149th Street and Brook Avenue façades, and attenuation measures of 33 dBA along the rear facades of the building, which face the subway tracks, to maintain interior noise levels of 45 dBA or lower;

THAT the proposed commercial uses in the building be required to provide attenuation levels to ensure an interior noise environment of 50 dBA;

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 construction will proceed in accordance with ZR § 72-23; 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, June 24, 2014.

325-13-BZ
CEQR #14-BSA-087X

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

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

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

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated November 22, 2013, acting on DOB Application No. 220329357, reads, in pertinent part:

> Proposed physical culture establishment in a C2-4 (R7D) zoning district is contrary to ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-4 (R7D) zoning district, legalization of an existing physical culture establishment ("PCE") on portions of the first and second story of an existing four-story mixed commercial and community facility building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, with a continued hearing on May 20, 2014, and then to decision on June 24, 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 7, Bronx, recommends conditional approval of the application; and

WHEREAS, the subject site is located on the east side of Webster Avenue near the terminus of East 205th Street, within a C2-4 (R7D) zoning district; and

WHEREAS, the site has approximately 200 feet of frontage along Webster Avenue and 19,542 sq. ft. of lot area; and

WHEREAS, the site is occupied by a four-story mixed commercial and community facility building with 61,633 sq. ft. of floor area (3.15 FAR); and

WHEREAS, the PCE occupies 448 sq. ft. of floor area on the first story and 14,521 sq. ft. of floor area on the second story, for a total PCE floor area of 14,969 sq. ft.; and

WHEREAS, the PCE is operated as Crunch; and

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

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

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

WHEREAS, the 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; however, the Board notes that the term of this grant has been reduced to reflect the operation of the PCE without the special permit; and

WHEREAS, at hearing, the Board requested clarification regarding the required number of accessory parking spaces for the building; and

WHEREAS, in response, the applicant submitted an analysis confirming that the proposed parking complies with the applicable provisions of the Zoning Resolution; 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. 14BSA087X dated December 14, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals 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 C2-4 (R7D) zoning district, legalization of an existing physical culture establishment ("PCE") on portions of the first and second story of an existing four-story mixed commercial and community facility building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 7, 2014" – Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on March 17, 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 Local Law 58/87 and parking 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, June 24, 2014.

9-14-BZ
CEQR #14-BSA-101M

APPLICANT – Warshaw Burstein, LLP, for 177th Upper Broadway Holdings LLC, owner; 4168 Broadway Fitness Group LLC, lessee.

SUBJECT – Application January 17, 2014 – Special Permits (§§73-36, 73-52) to allow the operation of a physical culture establishment (*Planet Fitness*) within the existing building and to permit the fitness center use to extend 25 feet into the R7-2 zoning district. C8-3 and R7-2 zoning district.

PREMISES AFFECTED – 4168 Broadway, southeast corner of the intersection formed by West 177th Street and Broadway, Block 2145, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated January 9, 2014, acting on DOB

Application No. 121852094 reads in pertinent part:

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

Proposed extension of physical culture establishment use into R72 portion of zoning lot is contrary to ZR 22-10 and 77-11; and

WHEREAS, this is an application under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C8-3 zoning district and partially within an R7-2 zoning district, the operation of a physical culture establishment ("PCE") in portions of the first, second and third stories of an existing six-story commercial building, contrary to ZR § 32-10, and to permit the extension of the proposed PCE use within the existing building into the R7-2 portion of the zoning lot, contrary to ZR § 77-11; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in *The City Record*, and then to decision on June 24, 2014; and

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

WHEREAS, Community Board 12, Manhattan, recommends approval of the application; and

WHEREAS, Councilmember Ydanis Rodriguez submitted testimony in opposition to the application, citing concerns about an "oversaturation of gyms in the immediate vicinity"; and

WHEREAS, the subject site is a trapezoid-shaped zoning lot located on southeast corner of the intersection of West 177th Street and Broadway, partially within a C8-3 zoning district and partially within an R7-2 zoning district; and

WHEREAS, the site has approximately 156 feet of frontage along Broadway, approximately 102 feet of frontage along West 177th Street, and 14,196 sq. ft. of lot area; 12,295 sq. ft. of lot area (87 percent of the lot area) is within the C8-3 portion of the site and 1,901 sq. ft. of lot area (13 percent of the lot area) is within the R7-2 portion of the site; and

WHEREAS, the site is occupied by a six-story commercial building with 84,771 sq. ft. of floor area (5.97 FAR); and

WHEREAS, the proposed PCE will occupy 1,496 sq. ft. of floor area on the first story and 14,115 sq. ft. of floor area on both the second and third stories, for a total PCE floor area of 29,726 sq. ft.; and

WHEREAS, the applicant states that the proposed PCE will operate as a Planet Fitness; and

WHEREAS, the applicant proposes to: (1) pursuant to ZR § 73-52, extend the use regulations applicable in the C8-3 portion of the site 25 feet into the R7-2 portion of the site; and (2) pursuant to ZR § 73-36, obtain a special permit for the operation of the PCE; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided that: (1) without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (2) such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold issue of single ownership, the applicant submitted documents reflecting the history of ownership of the subject site and adjoining sites showing that the zoning lot was in single ownership prior to December 15, 1961; and

WHEREAS, as to the 50-percent lot area requirement, the applicant submitted a site plan indicating that approximately 12,295 sq. ft. of the site's 14,196 sq. ft. of lot area (87 percent) is located within a C8-3 zoning district; and

WHEREAS, accordingly, the Board finds that the site meets the threshold requirements for ZR § 73-52; and

WHEREAS, as to economic feasibility, the applicant represents that it would not be economically feasible to use or develop the R7-2 portion of the site for a permitted use; specifically, the applicant states that the residential portion of the site is occupied with a portion of the existing building that lacks street frontage and is too small to accommodate an independent, viable residential or community facility tenant; and

WHEREAS, in addition, the applicant states that the portion of the site and the building within the R7-2 district is partially obstructed by a fire stair, which further limits its ability to accommodate a conforming use; and

WHEREAS, accordingly, absent the requested extension of the PCE into the residential space, a substantial portion of the building would be unusable and remain vacant; and

WHEREAS, the Board agrees that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R7-2, for a permitted use; and

WHEREAS, as to the extension's effect on the surrounding area, the applicant states that the proposed extension is consistent with existing land use conditions and anticipated projects in the immediate area, in that the area surrounding the site is predominated by high-density commercial and residential uses; further, the proposed PCE will be entirely within the existing building; and

WHEREAS, the applicant also notes that the building has been primarily used for parking since at least 1961 and that the proposed PCE is a less intense commercial use, which will be more compatible with the nearby conforming uses; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C8-3 zoning district portion of the lot into the R7-2 portion will not cause impairment of the essential character or the future use or development of the

surrounding area, nor will it be detrimental to the public welfare; and

WHEREAS, the Board, therefore, has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-52; and

WHEREAS, turning to the findings for ZR § 73-36, the applicant represents that the services at the PCE include facilities for group training, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

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

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

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

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

WHEREAS, at hearing, the Board questioned whether the mezzanine was required to be made accessible for persons with certain physical disabilities; and

WHEREAS, in response, the applicant represented that the mezzanine level was not required to be made accessible because the amenities offered on that level are available on one or more accessible levels of the PCE; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, 14BSA101M, dated January 18, 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; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C8-3 zoning district and partially within an R7-2 zoning district, the operation of a physical culture establishment ("PCE") in portions of the first, second and third stories of an existing six-story commercial building, contrary to ZR § 32-10, and to permit the extension of the proposed PCE use within the existing building into the R7-2 portion of the zoning lot, contrary to ZR § 77-11; *on condition* that all work will substantially conform to drawings filed with this application marked "March 27, 2014" – Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 24, 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, June 24, 2014.

18-14-BZ
CEQR #14-BSA-106K
APPLICANT – Warshaw Burstein, LLP, for Infinity Fulton Street, LLC, owner; 1245 Fulton Fitness Group, LLC, lessee.
SUBJECT – Application January 29, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within an existing building. C4-5 zoning district.
PREMISES AFFECTED – 1245 Fulton Street, north side of Fulton Street between Bedford Avenue and Arlington Place, Block 1842, Lot 47, 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 Montanez.....4
Negative:.....0
Absent: Vice Chair Collins.....1
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated January 14, 2014, acting on DOB Application No. 320851306, reads, in pertinent part:

> Proposed physical culture establishment is not permitted as-of-right in a C4-5D zoning district, per ZR Section 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-5D zoning district, the operation of a physical culture establishment ("PCE") in the cellar and first story of a proposed one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in the *City Record*, and then to decision on June 24, 2014; and

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

WHEREAS, Community Board 3, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the north side of Fulton Street between Bedford Avenue and Arlington Place, within a C4-5D zoning district; and

WHEREAS, the site has approximately 54 feet of frontage along Fulton Street and 7,957 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a one-story building, which is proposed to be demolished and replaced with a one-story building with 7,836 sq. ft. of floor area and 5,500 sq. ft. of floor space in the cellar; and

WHEREAS, the proposed PCE will occupy the entire building, for a total PCE size of 13,336 sq. ft.; and

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

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

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

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

WHEREAS, the 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 a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the Type II proposed action discussed in the CEQR Checklist (CEQR No. 14BSA106K) dated January 29, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type II determination 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 C4-5D zoning district, the operation of a physical culture establishment ("PCE") in the cellar and first story of a proposed one-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 25, 2014" – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 24, 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 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, June 24, 2014.

28-12-BZ
APPLICANT – Eric Palatnik, P.C., for Gusmar Enterprises, LLC, owner.
SUBJECT – Application February 6, 2012 – Special Permit (§73-49) to legalize the required accessory off street rooftop parking on the roof of an existing two-story office building, contrary to ZR 44-11, and Special Permit (§73-44) to reduce required accessory off street parking for office use, contrary to ZR 44-20. M1-1 zoning district.
PREMISES AFFECTED – 13-15 37th Avenue, 13th Street and 14th Street, bound by 37th Avenue to the southwest, Block 350, Lot 36, Borough of Queens.
COMMUNITY BOARD #1Q
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 July 29, 2014, at 10 A.M., for decision hearing closed.

214-12-BZ
APPLICANT – Phillips Nizer, LLP, for Shea Max Harris, LLC, owner.
SUBJECT – Application July 10, 2012 – Variance (§72-21) to permit the operation of an auto laundry (UG 16B), contrary to use regulations. C2-2/R5 zoning district.
PREMISES AFFECTED – 2784 Coney Island Avenue, between Gerald Court and Kathleen Court, Block 7224, Lot 70, Borough of Brooklyn.
COMMUNITY BOARD #13BK

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

243-12-BZ
APPLICANT – EPDSCO, Inc., for Best Equities LLC, owner; Page Fit Inc. d/b/a Intoxx Fitness, lessee.
SUBJECT – Application August 7, 2012 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Intoxx Fitness*). M3-1 zoning district.
PREMISES AFFECTED – 236 Richmond Valley Road, southern side of Richmond Valley Road between Page Avenue and Arthur Kill Road, Block 7971, Lot 200, Borough of Staten Island.
COMMUNITY BOARD #3SI
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 July 29, 2014, at 10 A.M., for decision hearing closed.

65-13-BZ
APPLICANT – Eric Palatnik, Esq., for Israel Rosenberg, owner.
SUBJECT – Application February 12, 2013 – Variance (§72-21) to permit a residential development, contrary to use regulations (§42-00). M1-1 zoning district.
PREMISES AFFECTED – 123 Franklin Avenue, between Park and Myrtle Avenues, Block 1899, Lot 108, Borough of Brooklyn.
COMMUNITY BOARD #3BK
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 August 12, 2014, at 10 A.M., for decision hearing closed.

155-13-BZ
APPLICANT – Law Office of Fredrick A. Becker, for Cong Kozover Zichron Chaim Shloime, owners.
SUBJECT – Application May 15, 2013 – Variance (§72-21) to permit the enlargement of an existing synagogue (*Congregation Kozover Sichron Chaim Shloime*) and rabbi's residence (UG 4) and the legalization of a Mikvah, contrary to floor area (§24-11), lot coverage (§24-11), wall height and setbacks (§24-521), front yard (§24-34), side yard (§24-35), rear yard (§24-36), and parking (§25-18, 25-31) requirements. R3-2 zoning district.
PREMISES AFFECTED – 1782-1784 East 28th Street, west side of East 28th Street between Quentin road and Avenue R, Block 06810, Lots 40 & 41, Borough of Brooklyn.
COMMUNITY BOARD #15BK

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

188-13-BZ & 189-13-A
APPLICANT – Rothkrug Rothkrug & Spector, for Linwood Avenue Building Corp., owner.
SUBJECT – Application June 25, 2013 – Special Permit (§73-125) to permit an ambulatory diagnostic or treatment health care facility.

Proposed building does not front on legally mapped street, contrary to Section 36 of the General City Law. R3-1 zoning district.
PREMISES AFFECTED – 20 Dea Court, south side of Dea Court, 101' West of intersection of Dea Court and Madison Avenue, Block 3377, Lot 100, Borough of Staten Island.
COMMUNITY BOARD #2SI
ACTION OF THE BOARD – Laid over to August 12, 2014, at 10 A.M., for continued hearing.

265-13-BZ
APPLICANT – Eric Palatnik P.C., for St. Albans Presbyterian Church, owner.
SUBJECT – Application September 6, 2013 – Variance (§72-21) to permit a proposed community facility and residential building (*St. Albans Presbyterian Church*), contrary to floor area (§§23-141, 24-161), maximum dwelling unit (§§23-22, 24-20), maximum building height (§23-631), and minimum parking (§25-25e) regulations. R3A zoning district.
PREMISES AFFECTED – 118-27/47 Farmers Boulevard, east side of Farmers Boulevard, 217.39 feet north of intersection of Farmers Boulevard and 119th Avenue, Block 12603, Lot(s) 58 & 63, Borough of Queens.
COMMUNITY BOARD #12Q
ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

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 enlargement and conversion of a commercial building for residential use (UG 2) with ground floor commercial UG6), contrary to use regulations (§43-17, 42-141). 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
ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for continued hearing.

311-13-BZ
APPLICANT – Francis R. Angelino, Esq., for Midyan Gate Realty No 3 LLC, owner; for Global Health Clubs, LLC, lessee.
SUBJECT – Application November 25, 2013 – Special Permit (§73-36) to allow physical culture establishment (*Retro Fitness*). M1-1 zoning district.
PREMISES AFFECTED – 325 Avenue Y, northeast corner of Shell Road and Avenue Y, Block 7192, Lot 45, Borough of Brooklyn.
COMMUNITY BOARD #15BK
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 July 29, 2014, at 10 A.M., for decision hearing closed.

317-13-BZ
APPLICANT – Law office of Lyra J. Altman, for Michelle Schonfeld & Abraham Schonfeld, owners.
SUBJECT – Application December 10, 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 and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R2 zoning district.
PREMISES AFFECTED – 1146 East 27th Street, west side of 27th Street between Avenue K and Avenue L, Block 7626, Lot 63, Borough of Brooklyn.
COMMUNITY BOARD #14BK
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 July 29, 2014, at 10 A.M., for decision hearing closed.

17-14-BZ
APPLICANT – Moshe M. Friedman, PE, for Cong Chasdei Belz Beth Malka, owner.
SUBJECT – Application January 28, 2014 – Variance (§72-21) to add a third and fourth floor to an existing school building (*Congregation Chasidei Belz Beth Malka*), contrary to floor area (§24-11) lot coverage, maximum wall height (§24-521), side yard (§24-35), front yard (§24-34) and rear yard (§24-361) regulations. R5 zoning district.
PREMISES AFFECTED – 600 McDonald Avenue aka 14 Avenue C, aka 377 Dahill Road, south west corner of Avenue C and McDonald Avenue 655', 140'W, 15'N, 100'E, 586'N, 4"E, 54'N, 39.67'East, Block 5369, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #12BK
ACTION OF THE BOARD – Laid over to July 29, 2014, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

***CORRECTION**

The resolution adopted on September 21, 1965, under Calendar No. 539-65-BZ and printed in Volume L, Bulletin No. 39, is hereby corrected to read as follows:

539-65-BZ
APPLICANT – Paul F. Pellicoro for Lowell Harwood, owner; Diriro, Inc., lessee.
SUBJECT- Application May 11, 1965 – Decision of the Borough Superintendent, under Section 72-21 of the Zoning Resolution and Section 666 (7) of the New York City Charter, to permit in a C2-5 and R8 district, the erection of a seventeen story enlargement to an existing seventeen story office and show-room building that exceeds the permitted floor area ratio, encroaches on the required rear yard with a public garage.
PREMISES AFFECTED – 971-979 Third Avenue, northeast corner of 58th Street, 206-216 East 59th Street, Block 1332, Lots 1, 3, 4, 5, 7, 8, 9, 40, 41, 42, 43 and 44, Borough of Manhattan.
APPEARANCES –
For Applicant: Paul F. Pellicoro.
For Opposition: John J. Cavaliere and Ethel C. Cramer.
ACTION OF BOARD – Application granted on condition.
THE VOTE –
Affirmative: Chairman Foley, Commissioner Fox, Commissioner Becker and Commissioner Klein……..…4
Negative……..……0
Absent: Vice-Chairman Kleinert……..……1
THE RESOLUTION –

WHEREAS, a public hearing was held on this application on July 13, 1965, after due notice by publication in the Bul¬letin; laid over to July 20, 1965; then to September 8, 1965; hearing closed; then to September 21, 1965; and

WHEREAS, the decision of the Borough Superintendent, dated April 28, 1965, acting on Alt. Applic. 696/1965, reads:

"2. F.A.R. contrary to Sec. 33-121 of Z.R.
3. Provide rear yard as req'd. by Sec. 33-26
4. Commercial use above 2nd Fl contra to Sec. 32-42 and Sec. 33-431 of Z.R.
5. Proposed Garage contrary to Sec. 32-17 of Z.R. if 150 spaces or less or contrary to Sec. 74-52 if in excess of 150 spaces."

and

WHEREAS, the premises and surrounding area were inspected by a committee of the Board; and

WHEREAS, the Board finds that the entire property is L-shaped; that the applicant has submitted data to show that he cannot make a reasonable return on the building unless a variance is granted; that the variance will not impair the character of the neighborhood; that the hardship has not been self-created; and that this is a minimum variance necessary to the applicant; and

WHEREAS, the Board finds that the applicant has substantiated a basis to warrant exercise of discretion to grant under Section 72-21 of the Zoning Resolution, and is therefore entitled to relief on the grounds of practical difficulty and or unnecessary hardship.

Resolved, that the Board of Standards and Appeal does hereby make a variation in the application of the Zoning Resolution and that the application be and it hereby is granted under Section 72-21, to permit in a C2-5 and R8 district, the erection of a 17-story enlargement to an existing 17-story office and showroom building that exceeds the permitted floor area ratio, encroaches on the required rear yard and has a commercial use above the 2nd floor, on condition that the building shall conform to drawings filed with this application marked "Received May 11, 1965", 7 sheets, "June 9, 1965", one sheet and "September 16, 1965", 2 sheets; that the accessory garage in the building shall be as approved by the Department of Buildings with no public garage facility; that there shall be no advertising signs above the second floor; that all laws, rules and regulations applicable shall be complied with; and that permit shall be obtained, work completed and a Certificate of Occupancy obtained within one year from the date of this resolution.

The resolution has been amended in the part of the PREMISES AFFECTED which read: "…... Lots 1, 3, 4, 5, 7, 8, 9, 40, 41, 42, 43 and 45, Borough of Manhattan."
Now reads: "…Lots 1, 3, 4, 5, 7, 8, 9, 40, 41, 42, 43 and 44, Borough of Manhattan."

Corrected in Bulletin No. 26, Vol. 99, dated July 2, 2014.

***CORRECTION**

The resolution adopted on June 17, 2014, under Calendar No. 142-92-BZ and printed in Volume 99, Bulletin No. 25, is hereby corrected to read as follows:

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 (BSA Cal #142-92-BZ)
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 – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment of a previous approval, which, pursuant to ZR § 73-48, allowed the construction of 518 parking spaces contrary to ZR §§ 25-31 and 36-21; the proposed amendment seeks to: (1) enlarge the subject zoning lot; (2) reduce and reclassify certain parking spaces authorized under the special permit; and (3) permit other alterations related to the redevelopment of the site; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in *The City Record*, with a continued hearing on April 29, 2014, and then to decision on June 17, 2014; and

WHEREAS, at the April 29, 2014 public hearing, the Board set a May 20, 2014 decision date; and

WHEREAS, however, subsequent to the April 29, 2014 hearing, a representative of Preserve Park Slope communicated with Board staff and NYM about its request for supplemental documents from NYM; the Board declined to request the documents and NYM declined to provide the documents directly; and

WHEREAS, Preserve Park Slope then sought judicial relief to obtain the documents in New York State Supreme Court by Order to Show Cause; and

WHEREAS, the court issued a stay which prohibited the Board from closing the hearing and rendering a decision as scheduled on May 20, 2014; on June 4, 2014, the court lifted the stay but did not issue a ruling on the subpoena request, which is pending; and

WHEREAS, a companion application for a variance pursuant to ZR § 72-21 required for development of the site was filed under BSA Cal. No. 289-13-BZ and decided at the same hearing; and

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

WHEREAS, this application is brought on behalf of New York Methodist Hospital ("NYM"), a non-profit hospital, research, and educational facility; and

WHEREAS, the subject site comprises the majority of Block 1084; it includes Tax Lots 164, 1001, and 1002, and has frontages along Fifth Street, Sixth Street, Seventh Avenue, and Eighth Avenue; the applicant notes that when the subject special permit was granted, the site comprised Lots 164, 1001, and 1002, however, at the time the lots were designated as Lots 1, 17, and 64; as for Lot 39, it was formed by the merger of former Lots 25, 26, 28, 40-44, 46, 48, and 50-59; and

WHEREAS, the site is located partially within an R6 (C1-3) zoning district, partially within an R6 zoning district, and partially within an R7B zoning district; and

WHEREAS, the site has approximately 510 feet of frontage along Fifth Street, approximately 696 feet of frontage along Sixth Street, 200 feet of frontage along Seventh Avenue, 200 feet of frontage along Eighth Avenue, and 120,569 sq. ft. of lot area; and

WHEREAS, the Board has exercised jurisdiction over the site since January 11, 1994, when, under the subject calendar number, the Board granted, pursuant to ZR §§ 72-21, 73-481, and 73-482, a variance and special permit to allow the construction of a five-story mixed commercial and medical office building ("MOB") and a parking garage for 518 automobiles, contrary to ZR § 33-431 (height and setback), ZR §§ 22-10, 77-12, and 77-332 (location of entrance to a group parking facility accessory to commercial uses, ZR § 36-63 (required number of loading berths), ZR §§ 22-10, 36-683, 77-12, and 77-332 (enclosure of and location of entrance to loading berths), and ZR §§ 25-31 and 36-21 (maximum number of parking spaces); and

WHEREAS, the site is occupied by the MOB, a 12-story hospital building containing hospital-related facilities and staff dwellings (the "Wesley House"), the subject parking garage, which consists of three-below grade parking levels and surface parking, a surface parking lot on the southeast corner of the site, and a series of townhouses; and

WHEREAS, the applicant notes that, under the special permit, the parking spaces are designated required accessory spaces for retail uses (76 spaces), required accessory to the Wesley House (49 spaces), and permitted accessory spaces to hospital-related uses (393 spaces); and

WHEREAS, the applicant states that NYM seeks a variance to construct a new seven-story ambulatory care facility (the "Center for Community Health" or the "Center") on adjacent Lot 39; the applicant states that, in connection with that proposal, it requests an amendment to the prior approval to allow: (1) enlargement of the subject zoning lot; (2) reduction and reclassification of parking spaces authorized

under the special permit; and (3) other alterations to the site plan and to the existing garage related to the construction of the Center for Community Health; and

WHEREAS, as to the enlargement of the zoning lot, the applicant states that Lot 39 will be combined with the lots that are the subject of the prior variance and special permit (Lots 164, 1001, 1002) and the Center will be built on that portion of the new zoning lot; and

WHEREAS, as to the reduction and reclassification of parking spaces, the applicant states that 60 of the 393 permitted accessory parking spaces will be reclassified as required accessory parking for the Center, 49 of the 393 permitted accessory parking spaces will be reclassified as accessory to existing hospital uses within the MOB, and 38 of the 393 permitted accessory spaces will be eliminated to allow the construction of the Center's loading area; the result will be a decrease in the total number of permitted accessory parking spaces within the garage from 393 to 246 and an increase in the total number of required accessory spaces for new and existing hospital and ambulatory care facility uses from 0 to 109; the designations for the required accessory parking for the retail (76 spaces) and the Wesley House (49 spaces) will not change; accordingly, the proposal reflects a net reduction in the total number of spaces authorized under the special permit from 518 to 480; and

WHEREAS, the applicant also notes that an additional parking garage will be constructed on the site to accommodate the 350 accessory spaces required in connection with the Center; and

WHEREAS, finally, as to the alterations to the site plan, the applicant states that portions of the existing garage must be demolished in order to accommodate the loading areas for the Center; and

WHEREAS, as addressed in BSA Cal. No. 289-13-BZ, the Board agrees with the applicant that the proposed changes to the existing parking garage and the proposed development of the Center for Community Health are in furtherance of NYM's programmatic needs as a non-profit teaching hospital and will not alter the essential character of the neighborhood, substantially impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; 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 June 13, 2014'– eight (8) sheets; and *on further condition*:

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

THAT 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, June 17, 2014.

The resolution has been amended to add "and ambulatory care facility uses" t**o the 18th WHEREAS**.

Corrected in Bulletin No. 26, Vol. 99, dated July 2, 2014.

***CORRECTION**

The resolution adopted on June 17, 2014, under Calendar No. 11-93-BZ and printed in Volume 99, Bulletin No. 25, is hereby corrected to read as follows:

11-93-BZ
APPLICANT – Sheldon Lobel, P.C. for Joy Kiss Management, LLC, owner; Chen Qiao Huang (Good fortune Restaurant), lessee.
SUBJECT – Application December 18, 2013 – Extension of Time to obtain a Certificate of Occupancy for a previously approved variance (§72-21), which expired on March 20, 2013; Waiver of the Rules. R3-2/C2-2 and R3-2 zoning districts.
PREMISES AFFECTED – 46-45 Kissena Boulevard aka 140-01 Laburnum Avenue, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.
COMMUNITY BOARD #7Q
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, reopening, an extension of term for the operation of an eating and drinking establishment, which expired on March 15, 2014, and an extension of time to obtain a certificate of occupancy, which expired on March 20, 2013; 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 May 20, 2014, and then to decision on June 17, 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 7, Queens, recommends disapproval of the application, citing the following concerns regarding the eating and drinking establishment at the site: (1) that the establishment is serving alcohol with an expired liquor license; (2) that it is being operated as a catering facility without a public assembly certificate of operation ("PA") or an amended certificate of occupancy ("CO"); and (3) that it has open violations from the Department of Buildings ("DOB"); and

WHEREAS, the subject site is located on the northeast corner of the intersection of Kissena Boulevard and Laburnum Avenue, within a C2-2 (R3-2) and R3-2 zoning districts; and

WHEREAS, the site has 40,830 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building operated as a restaurant (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 6, 1958 when, under BSA Cal. No. 788-57-BZ, the Board granted a variance to permit the construction of a one-story storage garage and motor vehicle repair shop, with two gasoline dispensing pumps, for a term of 20 years; and

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

WHEREAS, on March 15, 1994, under the subject calendar number, the Board granted a special permit under ZR § 11-413 to permit the change of use from motor vehicle storage and repair to an eating and drinking establishment with accessory parking, for a term of ten years, which expired on March 15, 2004; and

WHEREAS, on October 5, 2010, the Board granted a ten-year extension of term from the expiration of the prior grant, to expire on March 15, 2014, and an amendment pursuant to ZR § 11-412 to permit certain modifications to the building; a condition of the grant was that a CO be obtained by October 5, 2011; and

WHEREAS, most recently, on March 20, 2012, the Board granted an extension of time to obtain a CO, to expire on March 20, 2013; and

WHEREAS, the applicant now requests an extension of term and an extension of time to obtain a CO; and

WHEREAS, at hearing, the Board directed the applicant to: (1) respond the concerns of the community board; (2) remove the food storage trucks from the site; and (3) clarify the location and screening of the proposed garbage storage area; and

WHEREAS, in response, the applicant confirmed that: (1) alcohol is not available for purchase at the establishment; (2) it will be seeking a PA and a CO for a Use Group 6 eating and drinking establishment; (3) there is no catering (Use Group 9) at the site; and (4) the nine remaining open DOB violations are related to the lack of PA and CO for Use Group 6; and

WHEREAS, as to the food storage trucks, the applicant submitted photographs demonstrating that such trucks had been removed; and

WHEREAS, as to the garbage storage area, the applicant provided an amended plot plan, which details the location and screening of the area; the applicant also represents that there is a drain in the area and that the dumpster will be cleaned twice per day; and

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

Therefore it is Resolved, that the Board of application marked 'Received June 3, 2014'– (3) sheets; Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on March 15, 1994, to grant a one-year extension of time to obtain a certificate of occupancy, to expire on June 17, 2015 and to grant a ten-year extension of term, to expire on March 15, 2024; *on condition*

that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this and *on further condition*:

THAT use of the site shall be limited to a restaurant (Use Group 6) with accessory parking for 61 automobiles;

THAT all signage shall comply with C2 zoning district regulations;

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

THAT a new certificate of occupancy will be obtained by June 17, 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 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 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, June 17, 2014.

The resolution has been amended. Corrected in Bulletin No. 26, Vo. 99, dated July 2, 2014.

***CORRECTION**

The resolution adopted on February 11, 2014, under Calendar No. 239-02-BZ and printed in Volume 99, Bulletin No. 7, is hereby corrected to read as follows:

239-02-BZ
APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Babbo Realty LLC, owner.
SUBJECT – Application November 9, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a Use Group 6A eating and drinking establishment (*Babbo*) located at the cellar level, ground floor, and second floor of the subject premises, which expired on December 17, 2012. R7-2 zoning district.
PREMISES AFFECTED – 110 Waverly Place, south side of Waverly Place, between Sixth Avenue and Washington Square West/MacDougal Street, Block 552, Lot 53, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a reopening, a waiver of the Rules of Practice and Procedure, an amendment, and an extension of term for an eating and drinking establishment (Use Group 6), which expired on December 12, 2012; and

WHEREAS, a public hearing was held on this application on February 26, 1013, after due notice by publication in the *City Record*, with continued hearings on March 23, 2013, June 11, 2013, September 24, 2013, December 10, 2013, and January 14, 2014, and then to decision on February 11, 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, Community Board 2, Manhattan, recommends denial of the requested extension of term until (1) the impacts on conforming uses are mitigated and (2) the noise and vibration from the HVAC and exhaust equipment are addressed and that the term be limited to two years; and

WHEREAS, certain members of the community provided testimony in support of the application; and

WHEREAS, the adjacent neighbor, represented by counsel, provided testimony in opposition to the operation of the restaurant, citing the following primary concerns: (1) the rooftop mechanicals create noise and vibration that can be heard in the adjacent building and were installed contrary to plan and without permits; (2) the kitchen exhaust is contrary to Code and emits excessive sound, vibration, and odors; (3) garbage collection is disruptive as it occurs at late and early hours; (4) the use of the cellar is contrary to the Certificate of Occupancy and egress and ventilation requirements; and (5) the use of upper floors for commercial use is contrary to the terms of the variance; and

WHEREAS, certain other members of the community provided testimony in opposition to the operation of the restaurant, noting that the variance is limited to the cellar, first floor, and rear portion of the second floor, but commercial use also occupies the remainder of the building; and

WHEREAS, the subject site is on the south side of Waverly Place between Sixth Avenue and Washington Square West/MacDougal Street, within an R7-2 zoning district within the Greenwich Village Historic District; and

WHEREAS, the site is occupied by a four-story townhouse building occupied on the first floor and cellar by a Use Group 6A restaurant, Babbo; the occupancy of the front portion of the second floor and the entire third and fourth floors is limited to conforming use; and

WHEREAS, on December 17, 2002, under the subject calendar number, the Board granted an application under ZR § 72-21, to permit the re-establishment of a Use Group 6A eating and drinking establishment, without music or entertainment, located at the cellar level, ground floor, and second floor of the subject premises, and to permit the continuation of a non-conforming accessory business sign; and

WHEREAS, on December 14, 2004, the Board granted an amendment to permit the enlargement of the cellar for use as a wine storage area for the existing restaurant; and

WHEREAS, in response to the neighbor's concerns related to the HVAC units, the applicant agreed to adjust the HVAC equipment mounted on the dunnages of the building's fourth-floor roof, extend the kitchen exhaust up the building, as per new plans filed with and approved by DOB and LPC, and enclose the fan equipment of the kitchen exhaust within an acoustical enclosure; and

WHEREAS, the applicant also states that (1) the installation of all HVAC units has been approved and it is resolving any inconsistencies between the plans and the built conditions with DOB and ECB; (2) new, more effective, and quieter mechanical units have been installed, which include a low noise fan rotor, low speed fan motor, a compressor sound attenuation blanket and new vibration pads between the unit and dunnage for each unit; and (3) its acoustic engineer has studied the sound of the new system and concludes that the noise levels in the adjacent building are reduced and now match the ambient noise level, thus not exceeding any Noise Code limits; and

WHEREAS, as to the exhaust duct, the applicant states that it submitted DOB and LPC permits for the installation work and notes that the current applications and approvals supersede all prior ones and includes a custom-designed enclosure for the exhaust duct fan apparatus and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC, dated September 9, 2013, which permits the changes to the rooftop mechanicals; and

WHEREAS, as to the garbage collection and bottle-crushing, the applicant states that it employs a service that is restricted to pickup after 8:00 a.m. and that it has installed a camera to monitor collections which reflects that collection has occurred after 8:00 a.m. and is therefore in compliance; and

WHEREAS, as to the occupancy of the cellar, the applicant states that it has removed a prep table and oven from the cellar and is in the process of obtaining a permit to remove a sink at which time it will be able to file a revised Certification of Correction and have the cellar use violation closed; and

WHEREAS, as to the use of the upper floors, the applicant represents that the second floor apartment is used as a pied a terre for one of the owners and that the third/fourth floor duplex was under lease until vacated in September 2012; and

WHEREAS, the applicant submitted photographs of the vacant duplex residential unit; and

WHEREAS, the applicant represents that office use has ceased and the duplex apartment is currently listed with a real estate broker to find a new tenant; and

WHEREAS, the Board finds that, in response to the neighbor's concerns, the applicant has undertaken significant improvements to its HVAC and exhaust fan duct systems, completed work while its application was in the hearing public process, and also addressed concerns related to the garbage collection hours and use of the cellar and the upper floors; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports a grant of the requested ten-year extension of term.

Therefore it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, so that as amended this portion of the resolution will read: "to extend the term of the variance for ten years from the prior expiration on December 12, 2012 to December 12, 2022; *on condition* that all work shall substantially conform to drawings as filed with this application, marked 'Received April 19, 2013' – one (1) sheet; and *on further condition*;

THAT the term will expire on December 12, 2022;

THAT a new Certificate of Occupancy be obtained by February 11, 2015;

THAT all rooftop mechanicals and associated sound attenuation measures be installed and maintained pursuant to the BSA-approved plans;

THAT the rooftop mechanicals and all other use of the building comply with Noise Code regulations;

THAT garbage collection hours are restricted to 8:00 a.m. to 8:00 p.m.;

THAT the use of the cellar must comply with all relevant regulations;

THAT the use of the front portion of the second and the entire third and fourth floors is restricted to residential occupancy;

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

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

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

(DOB Permit No. 102702522)

Adopted by the Board of Standards and Appeals, February 11, 2014.

The resolution has been amended. Corrected in Bulletin No. 26, Vo. 99, dated July 2, 2014.

***CORRECTION**

The resolution adopted on May 13, 2014, under Calendar No. 177-07-BZ and printed in Volume 99, Bulletin No. 20, is hereby corrected to read as follows:

177-07-BZ
APPLICANT – Sheldon Lobel, P.C., for Dankov Corporation, owner.
SUBJECT – Application January 2, 2014 – Amendment of an approved Variance (§72-21) which permitted construction of a two-story and mezzanine, two-family residential building, contrary to front yard regulations (§23-45(a)); the amendment seeks to permit construction of a three-story, three-family residential building. R5 zoning district.
PREMISES AFFECTED – 886 Glenmore Avenue, southeast corner of the intersection of Glenmore Avenue and Milford Street. Block 4208, Lot 17. Borough of Brooklyn.
COMMUNITY BOARD #5BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson……..4
Negative:.....0
Absent: Commissioner Montanez …….....1
THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to an existing variance, to allow certain modifications to a residential building that does not comply with the front yard requirements; and

WHEREAS, a public hearing was held on this application on April 1, 2014, after due notice by publication in The City Record, with a continued hearing on April 29, 2014, and then to decision on May 13, 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, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Glenmore Avenue and Milford Street, within an R5 zoning district; and

WHEREAS, the site has approximately 20 feet of frontage along Glenmore Avenue, 90 feet of frontage along Milford Street, and 1,800 sq. ft. of lot area; and

WHEREAS, the site is vacant; and

WHEREAS, on June 23, 2009, under the subject calendar number, the Board granted a variance to permit the construction of a two-story, two-family residential building at the site that did not comply with the front yard requirements of ZR § 23-45(a) (the "Original Building"); and

WHEREAS, the Original Building was proposed to have two stories and a mezzanine, 2,241 sq. ft. of floor area (1.24 FAR), a wall height of 30'-0", a building height of 32'-9", two dwelling units, two parking spaces in the side yard, a front yard with a depth of 10'-0" along Glenmore Avenue, no front yard along Milford Street, and a side yard with a width of 30'-6"; and

WHEREAS, pursuant to the grant, substantial construction was to be completed by June 23, 2013; however, as of that date, substantial construction had not been completed; accordingly, on October 29, 2013, the Board granted an extension of time to complete construction for two years, to expire on October 29, 2015; and

WHEREAS, the applicant now seeks to amend the grant to allow three stories, 2,660.61 sq. ft. of floor area (1.48 FAR), a wall height of 28'-4", a building height of 31'-10", three dwelling units, two parking spaces in the side yard, no front yards along Milford Street and Glenmore Avenue frontages, and a side yard along the southern lot line with a width of 45'-0" (the "Proposed Building"); and the proposed building will be built up to the lot line on Glenmore Avenue; and

WHEREAS, the applicant notes that the Proposed Building deviates from the Original Building as follows: (1) an increase in floor area of 419.61 sq. ft.; (2) an FAR increase of 0.24; (3) a 1'-8" decrease in wall height; (4) a 1'-1" decrease in building height; and (5) a 14'-6" increase in the proposed side yard; and

WHEREAS, the applicant notes that, as with the Original Building, the Proposed Building complies in all respects with the R5 bulk regulations, except that, like the Original Building, it does not provide a front yard with a depth of 10'-0" along Milford Street; thus, the scope of the waiver requested has not changed; and

WHEREAS, further, the applicant states that although the Proposed Building includes a modest increase in floor area, its wall and building height are decreased, and the width of its side yard is increased by nearly 50 percent; and

WHEREAS, in addition, the applicant contends that the Proposed Building is consistent with the character of the surrounding community, which, in the original grant, the Board recognized as including mostly two- and three-story homes and multiple dwellings; and

WHEREAS, the applicant also notes that, in response the Board's comments at hearing, it revised the Proposed Building to provide a wider side yard and to align with the street wall location and height of the adjacent building along Glenmore Avenue; and

WHEREAS, based upon its review of the record, the Board finds that the proposed modification is appropriate, with certain conditions, as noted below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 23, 2009, to permit the noted modifications, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received April 11, 2014'- (11) sheets; and *on further condition*:

THAT bulk parameters of the building will be as follows: a maximum of three stories, a maximum of 2,660.61 sq. ft. of floor area (1.48 FAR), a maximum wall height of 28'-4", a maximum building height of 31'-10", three dwelling units, two parking spaces in the side yard, and a minimum side yard width of 45'-0";

THAT substantial construction will be completed by October 29, 2015;

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

THAT DOB must ensure compliance with all 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. 302233189)

Adopted by the Board of Standards and Appeals, May 13, 2014.

The resolution has been amended. Corrected in Bulletin No. 26, Vo. 99, dated July 2, 2014.

***CORRECTION**

The resolution adopted on June 10, 2014, under Calendar No. 164-13-A and printed in Volume 99, Bulletin Nos. 22-24, is hereby corrected to read as follows:

164-13-A
APPLICANT – Slater & Beckerman, for Grand Imperial, LLC, owner.
SUBJECT – Application May 31, 2013 – Appeal seeking to reverse Department of Buildings' determination not to issue a Letter of No Objection that would have stated that the use of the premises as Class A single room occupancy for periods of no less than one week is permitted by the existing Certificate of Occupancy. R10A zoning district.
PREMISES AFFECTED – 307 West 79th Street, northside of West 79th Street, between West End Avenue and Riverside Drive, Block 1244, Lot 8, Borough of Manhattan.
COMMUNITY BOARD #7M
ACTION OF THE BOARD – Application Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated May 3, 2013, acting on Department of Buildings Application No. 320378088 reads, in pertinent part:

> This Department regrets it cannot issue a Letter of No Objection for New Law Tenant Class A M.D. & Single Room Occupancy to [be] occupied or rented for less than 30 days as per Chapter 225 of the Laws of 2010, which clarified existing provisions related to occupancy of Class A Multiple Dwellings.
>
> In order to allow such use, an Alteration Application must be filed with the Department to change use and Certificate of Occupancy obtained if permitted by zoning; and

WHEREAS, a public hearing was held on this application on February 4, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on June 10, 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, New York State Assemblymember Linda B. Rosenthal and New York City Council Member Helen Rosenthal provided testimony in opposition to the appeal, citing concerns about illegal transient hotel use including occupancy periods of just days at a time, which are disruptive to the permanent tenants and the surrounding residential uses; and

WHEREAS, the Goddard Riverside SRO Law Project and the Hotel Trades Council provided testimony in opposition to the appeal, citing concerns about a history of harassment towards permanent tenants and otherwise protecting their rights; and

WHEREAS, certain community members and building residents provided testimony in opposition to the appeal, citing concerns about transient use in a residence zoning district and within a building occupied by permanent tenants required to share space with those renting on a short term; and

WHEREAS, certain community members spoke in support of the appeal, citing concerns that the building might otherwise be converted into a homeless shelter; and

WHEREAS, the site is located on the north side of West 79th Street between West End Avenue and Riverside Drive within an R10A zoning district and is occupied by a ten-story (with a partial 11th story) building (the "Building"); and

WHEREAS, this appeal seeks reversal of the Determination, thereby directing DOB to issue a Letter of No Objection stating that the use of the Building as Class A single room occupancy for periods of no less than one week is permitted by the existing certificate of occupancy No. 53010; and

Building History

WHEREAS, the Building was constructed in 1906 as the Lasanno Court, an approximately 40-unit apartment building; and

WHEREAS, during the Great Depression, in the 1930s, the Building was subdivided into single room occupancy (SRO) units; and

WHEREAS, in 1939, the New York State Legislature adopted MDL § 248, known as the Pack Bill, which provides regulations for SRO buildings; and

WHEREAS, in 1943, the Building was altered to comply with MDL § 248 and on March 25, 1943, DOB issued the Building's first CO permitting 247 SRO units; the Building was renamed the Imperial Court Hotel; and

WHEREAS, DOB also issued COs in 1954 and September 1960; and

WHEREAS, on November 7, 1960, DOB issued the most recent CO permitting in the cellar, "one (1) superintendent's apartment, boiler room, storage and tenants' laundry"; on the first floor, "sixteen (16) rooms-single room occupancy, two (2) community kitchenettes, registration desk, manager's office and lobby of building"; on the second through tenth floors, "twenty-three (23) rooms-single room occupancy and two (2) community kitchenettes"; and in the penthouse, "four (4) rooms – single room occupancy;" and

WHEREAS, the applicant states that in total, the CO permits 227 SRO Units and that currently and historically, 64 of the 227 SRO units have been regulated through rent control or stabilization (the "Statutory Units"); and

WHEREAS, the Appellant states that since 1979, all of the 64 Statutory Units and all of the 163 non-Statutory Units have been rented for periods of no less than seven days, in

compliance with the CO and the MDL; the Appellant submitted occupancy logs for 2008, 2009, 2010, and 2011 in support of this claim; and

Procedural History

WHEREAS, on January 13, 2011, DOB issued Notices of Violation in connection with the seven-day rentals; and

WHEREAS, on January 19, 2011, the owner applied to HPD for a Certificate of No Harassment (CONH), pursuant to Administrative Code § 28-107.4 in connection with its application for a permit to build a second means of egress; and

WHEREAS, on September 13, 2011, the Department of Housing Preservation and Development (HPD) commenced a proceeding against the owner at the Office of Administrative Trials and Hearings (OATH) seeking a denial for the application for a CONH on the grounds that it had committed acts of harassment against some of the tenants; and

WHEREAS, on December 7, 2012, the OATH administrative law judge held that the owner had committed some acts of harassment against some of the tenants and recommended denial of the CONH; and

WHEREAS, in January 2013, the Environmental Control Board sustained the violations, finding that stays of less than 30 days were not permitted by the CO; and

WHEREAS, on February 11, 2013, the owner requested a Letter of No Objection (LNO) from DOB stating that the use of the Building as a Class A SRO for periods of no less than one week is permitted by the existing certificate of occupancy; DOB's denial of that request forms the basis of the subject appeal; and

WHEREAS, the Building is the subject of an Article 78 proceeding in New York Supreme Court, (Index No. 103032-2012) appealing ECB's decision to sustain the violations and is pending; and

WHEREAS, the Appellant states that since January 2011, it has attempted to rent the 163 non-statutory Units for periods of no less than 30 days, but the majority of the units have remained vacant, a condition which prompted the Appellant to seek the LNO to allow rental of the units for terms not less than one week; and

The Relevant Statutory Provisions

WHEREAS, relevant MDL provisions are provided below in pertinent pert:

1939 Text

MDL § 248 (*Single Room Occupancy)*

(16) No room shall be rented in any such building for a period of less than a week.

1946 Text

(Definitions)

MDL § 4

(16) "Single room occupancy" is the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment. When a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling.

MDL § 4

(8) A "class A" multiple dwelling is a multiple dwelling which is occupied, as a rule, for permanent residence purposes . . .

MDL § 4

(9) A "class B" multiple dwelling is a multiple dwelling which is occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals . . .

1960 Text

MDL § 248 (*Single Room Occupancy)*

(16) It shall be unlawful to rent any room in any such dwelling for a period of less than a week.

MDL § 4 (*Definitions)*

Class A Multiple Dwelling: a multiple dwelling which is occupied, as a rule, for residence purposes and not transiently.

Class B Multiple Dwelling: a multiple dwelling which is occupied, as a rule, transiently.

2011 MDL Amendment (Chapter 225 of 2010)

MDL § 4.8(a): A "class A" multiple dwelling is a multiple dwelling that is occupied for permanent residence purposes. This class shall include tenements, flat houses, maisonette apartments, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, garden-type maisonette dwelling projects, and all other multiple dwellings except class B multiple dwellings. A class A multiple dwelling shall only be used for permanent residence purposes. For the purposes of this definition, "permanent residence purposes" shall consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more and a person or family so occupying a dwelling unit shall be referred to herein as the permanent occupants of such dwelling unit.

MDL § 248

(1). . . A dwelling occupied pursuant to this section shall be deemed a class A dwelling and dwelling units occupied pursuant to this section shall be occupied for permanent residence purposes, as defined in paragraph a of subdivision eight of section four of this chapter.

(16) (*removed*); and

The Appellant's Position

WHEREAS, the Appellant asserts that the LNO should be issued for the following primary reasons: (1) the use of the Building for short-term occupancy of no less than one

week was permitted at the time the CO
was issued and MDL § 248 allowed Class A SRO units to be rented for periods of one week or more; and (2) Chapter 225 of 2010, an amendment to the MDL which requires that short-term residences may not be less than 30 days, applies prospectively and, therefore, not to the Building; and

WHEREAS, the Appellant asserts that in 1943 and 1960, when the Building was issued COs permitting single room occupancy units, the MDL provided that SRO units may be lawfully rented and occupied for periods of no less than a week; and the legislative history of the 1939 enactment of MDL § 248(16), New York State case law, and independent scholarly research clearly support the statutory provision that there is a weekly minimum applied to the period of occupancy; and

WHEREAS, the Appellant states that in 1943, when the Building was issued a CO permitting SRO units, the plain language of MDL § 248 (16) – "No room shall be rented in any such building for a period of less than a week" - permitted the SRO Units to be rented for periods of no less than one week; and

WHEREAS, the Appellant relies on the text of MDL § 248 adopted in 1939 (the "Pack Bill") and in effect in 1943; and

WHEREAS, the Appellant states that DOB is correct that in 1960, the MDL included definitions for Class A and Class B Multiple Dwelling, however, even if the 1960 text were operative, as was the case in 1939, these definitions did not define the length of permitted occupancy for Class A and Class B Multiple Dwelling, only that Class A must have been occupied, as a rule, for permanent residence purposes and Class B, as a rule, transiently; and

WHEREAS, the Appellant also considers the MDL § 248(16) in effect when the 1960 CO was issued - "it shall be unlawful to rent any room in any such dwelling for a period of less than a week;" and

WHEREAS, the Appellant asserts that the CO permits the Building to be used for single room occupancy and that prior to the MDL Amendment, the prior use of the Building was for short-term residences, in which occupants' stay was restricted to no less than one week; and

WHEREAS, the Appellant agrees that MDL § 248(16) allows tenants to *pay* on a weekly basis, but there is not any basis to conclude that *occupancy* was for a 30-day minimum; and

WHEREAS, the Appellant asserts that the legislative history, court statements, and scholarly research support the conclusion that MDL § 248(16) expressly and implicitly permitted the SRO units to be lawfully occupied for periods of no less than a week and that it applied to both rental and occupancy; and

WHEREAS, the Appellant asserts that prior to the 2010 MDL Amendment (the "MDL Amendment"), the use of the Building was in compliance with MDL § 248(16) in that all rooms were rented for periods of no less than one week; and

WHEREAS, the Appellant asserts that based on the communication surrounding the Pack Bill's enactment during the Great Depression, it had multiple purposes including protecting occupants in multiple dwelling rooming houses from fire and to set up minimum standards for sanitation, maintenance, and operation and to provide health and safety protections for the visitors of the 1939-1940 World's Fair who sought accommodations in excess of what the city's hotels could provide; and

WHEREAS, the Appellant cites to the City of New York v. 330 Continental LLC, 60 A.D.3d 226 (1st Dept 2009) decision on whether the City was entitled to a preliminary injunction for the point that the court stated that SROs were entitled to short term rental of a week; and

WHEREAS, the Appellant also cites to scholarly research on New York City during the Great Depression which states that the city lifted regulations that prevented the operation of SROs and connected it to the World's Fair needs; and

WHEREAS, as to the use and preservation of rights, the Appellant asserts that (1) since at least 1979, and most likely since 1943, the Building has been occupied by residential stays of no less than a week; (2) the right to rent the SRO Units for residential occupancies of no less than a week has been accrued; (3) the savings clause of MDL § 366 provides that the codification of Sections 1 through 4 of Chapter 225 of the Laws of 2010 will not impair the right to continue to rent the SRO Units for occupancies of no less than one week; and (4) Section 8 of the Laws of 2010 was not codified in the MDL and did not impair the Appellant's accrued rights; and

WHEREAS, the Appellant asserts that since the existing CO permits weekly occupancy, it is irrelevant whether or not the Building had been historically occupied for stays as short as one week; and

WHEREAS, however, the Appellant asserts that it has submitted affidavits attesting to the fact that since at least 1979 (when the owner purchased the Building) and most likely since 1943 (when the first CO was issued), the policy of the Imperial Court has been that rooms may be rented and occupied for residential stays for periods of as short as one week; and

WHEREAS, the Appellant's submissions include: an affidavit from the owner's family member who has worked at the Building since 1979; an affidavit from the son of the prior owner who worked at the Building from 1979 to 2005; five affidavits from Building tenants; eight affidavits from Building employees; and affidavits from the Building's; and

WHEREAS, the Appellant represents that after January 2013, Imperial Court's policy was changed to conform to DOB's interpretation and therefore rooms are rented and occupied for periods of no less than one month; and

WHEREAS, the applicant states that DOB has failed to produce documentation to support the assertion that the MDL ever restricted occupancy of rooms rented weekly to periods of 30 days or more; and

WHEREAS, the Appellant asserts that it has accrued a right to rent and occupy the SRO units on a weekly basis as of

1943, and again in 1960, when the COs were issued based on compliance with the MDL then in effect; and

WHEREAS, as to the MDL Amendment, effective in 2011, which specifies that short-term residences may not be less than 30 days, the Appellant asserts that it applies prospectively and, therefore, not to the Building; and

WHEREAS, the Appellant states that MDL § 366 (1) and (4) are savings clauses which dictate that the MDL provisions apply prospectively; specifically, MDL § 366(1) "the repeal of any provision this chapter, or the repeal of any provisions of any statute of the state or local law, ordinance, resolution or regulation shall not affect or impair any act done, offense committed or right accruing, accrued or acquired . . . prior to the time of such repeal, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent and in the same manner as if such provisions had not been repealed;" and (4) "No existing right or remedy of any kind shall be lost or impaired by reason of the adoption of this chapter as so amended unless by specific provision of a law which does not amend all articles of this chapter;" and

WHEREAS, the Appellant asserts that the MDL Amendment does not contain any "specific provision" that an existing right to rent for seven days or more has been "lost or impaired" as a result of the MDL Amendment therefore the "right" or the owner to rent units for periods of seven days or more may be continued; and

WHEREAS, the Appellant also cites to MDL § 13, which provides that "nothing . . . shall be construed to require any change in the construction, use or occupancy of any multiple dwelling lawfully occupied as such on April eighteenth, nineteen hundred twenty-nine, under the provisions of all local laws, ordinances, rules and regulations applicable thereto on such date; but should the occupancy of such dwelling be changed to any other kind or class after such date, such dwelling shall be required to comply with the provisions of section nine;" and

WHERERAS, the Appellant asserts that the Building was constructed as a "tenement" in 1906 and lawfully occupied on April 18, 1929, so nothing in the MDL requires any change in the use or occupancy of the Building; and

WHEREAS, the Appellant asserts that because the Building was operated in compliance with the MDL prior to the MDL Amendment, the use of the Building for stays of no less than one week may be continued; and

WHEREAS, accordingly, the Appellant states that if the Board determines that MDL § 248(16) applied both to rental and occupancy, then MDL § 366 would permit the Appellant to continue to rent the SRO Units for weekly occupancy; and

<u>DOB's Position</u>

WHEREAS, DOB asserts that its denial of the LNO request was proper for the following primary reasons: (1) the Building has a CO and the CO does not permit the Class A New Law tenement to be occupied for periods of less than 30 days; and (2) the MDL Amendment did not change DOB's interpretation of the occupancy authorized by the CO, but rather clarified existing provisions related to occupancy of Class A Multiple Dwellings; and

WHEREAS, DOB asserts that contrary to the Appellant's arguments, the MDL never permitted weekly occupancy of the Building and the 1943 and 1960 COs are consistent with that position; and

WHEREAS, DOB asserts that the 1960 version of the MDL is applicable and not the 1939 version since the most recent CO (issued in 1960) resulted from a 1958 Alteration Application; however, both versions of the MDL distinguish transient occupancy from permanent occupancy and would therefore be consistent with DOB's interpretation; and

WHEREAS, DOB notes that under both the 1939 MDL and the 1960 MDL, Class A use was distinguished from "transient" use; weekly occupancy is more appropriately associated with transient use; and

WHEREAS, thus DOB cites to the 1958-2011 text of MDL § 248 (16): "it shall be unlawful to *rent* [an SRO room] for less than a week." (emphasis added); and

WHEREAS, DOB's position is that the former MDL § 248 (16) restricts the payment term to a minimum of one week but does not similarly identify the minimum occupancy period; and

WHEREAS, DOB also notes that the term "occupancy" appears throughout the MDL and could have been used in lieu of "rental" if the weekly rental minimum requirement were intended to authorize weekly occupancy; and

WHEREAS, DOB asserts that the weekly rental provision of the 1939 Pack Bill explained that the bill's weekly rental provision governed only rental payments and not occupancy; and

WHEREAS, DOB states that while there is no definition of the term "rental" in the MDL, the common understanding of the word is that it governs payment, and not occupancy and in the definition of "Class A" the MDL does not provide that it should be "rented" for permanent residence purposes, but uses the term "occupied;" and

WHEREAS, DOB states that there is nothing in the statute to suggest that rental and occupancy should be treated as equivalents; and

WHEREAS, DOB notes that in 1958, the MDL contained the term "permanent residence purposes" and defined a "Class A multiple dwelling as a multiple dwelling which is occupied, as a rule, for permanent residence purposes;" it defined a "Class B multiple dwelling" as "a multiple dwelling which is occupied as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals;" and

WHEREAS, DOB states that according to the 1960 CO, the building is a "New Law Tenement Class 'A' Multiple Dwelling and Single Room Occupancy" which means that it must be occupied as a Class A multiple dwelling which mandates occupancy be for "permanent residence purposes;" and

WHEREAS, DOB asserts that it is consistent with the principle of statutory construction that a statute or ordinance be construed as a whole and that its sections be considered together and with reference to each other; and

WHEREAS, accordingly, DOB asserts that MDL § 248(16) must be read in conjunction with the MDL §§ 4(8) and (9) in effect in 1960 which define Class A and Class B occupancies; and

WHEREAS, DOB cites to MDL §§ 4(8) and (9) which define the terms "Class A" and "Class B" multiple dwellings, use the term "occupied," and provide that a Class A multiple dwelling is to be occupied for "permanent residence purposes", while a Class B multiple dwelling is to be occupied transiently;" and

WHEREAS, DOB notes that MDL § 248 states that "a dwelling occupied pursuant to [section 248] shall be deemed a Class A dwelling;" the definition of "single room occupancy in MDL § 4(16) further states that "When a class A multiple dwelling is used wholly or in part for a single room occupancy, it remains a Class A multiple dwelling;" and

WHEREAS, DOB states that according to MDL § 4 (8), a Class A multiple dwelling is to be occupied for "permanent residence purposes;" and

WHEREAS, DOB consulted Merriam Webster's dictionary which defines the word "permanent" as "continuing or enduring without fundamental or marked change," while the word "transient" is defined as "not lasting long" and "passing through or by a place with only a brief stay or sojourn;" and

WHEREAS, DOB states that the plain meaning of "permanent" resident cannot be construed to include a person who occupies a hotel room for only a week; and

WHEREAS, DOB asserts that common sense supports a conclusion that one does not become a permanent resident of a location by virtue of a one-week stay and that such stay is more consistent with a "transient" occupancy See Connors v. Boorstein, 4 N.Y. 2d 172, 175(1958) (interpreting statutory terms as matter of common sense."); 440 East 102nd Street Corp. v. Murdock, 285 N.Y. 298, 309 (1941)(citing "common use and understanding" in defining statutory terms); Kupelian v. Andrews, 233 N.Y. 278, 284 (1922) (statutory terms construed in a manner consistent with "common experience"); and

WHEREAS, DOB notes that pursuant to NYC Charter § 643, DOB is the agency responsible for interpreting the MDL in the first instance and DOB has consistently interpreted Class A permanent residence to require a minimum occupancy of 30 days, treating Class A "permanent" occupancy as the equivalent of J-2 Building Code occupancy and Class B "transient" occupancy as the equivalent of J-1 day-to-day or weekly occupancy; and

WHEREAS, DOB asserts that its interpretation is consistent with the principles of statutory interpretation that a statute be interpreted consistent with common sense - in this case weekly turnover would not commonly be understood to be permanent occupancy – and that a statute must be construed as a whole such that MDL§ 248(16) which prohibits rental of any room in and Class A SRO for a period of less than one week must be interpreted in conjunction with MDL §§ 4(8) and (9) which define Class A and Class B occupancies in terms of occupancy and not rental; and

WHEREAS, DOB notes that single room occupancy units are suitable only for permanent residence purposes, because while MDL § 248 required some upgrades, there was no requirement that these units comply with the more stringent fire safety requirements applicable to transient units; and

WHEREAS, DOB also notes that MDL § 248 was enacted in 1939, during the Great Depression, when weekly rates might be preferred over daily rates which would likely result in a higher weekly cost and that weekly rates would be preferred to monthly rates, because those sums would be potentially easier for people to save than a higher monthly sum; and

WHEREAS, DOB states that the Court's decision in City of New York v. 330 Continental LLC was not a decision on the merits and the Appellant's citations are *dicta*; and

WHEREAS, DOB states that the decision issued in Continental was issued in response to the City's request for a preliminary injunction to enjoin the defendants in that case from using the disputed premises transiently, pending final determination of the action of the case and that the excerpts cited from that case are non-binding dicta used to explain the court's determination that the City had failed to establish a right to a preliminary injunction; and

WHEREAS, DOB notes that the court stated that, "[i]n view of the as-yet unresolved vagueness and ambiguity of the language of the MDL and the ZR that the City seeks to enforce, it cannot be said that the City has demonstrated a clear right to the drastic remedy of preliminary injunction;" the decision was not a final ruling on the case which ultimately settled with the defendants agreeing to use the subject premises for "permanent residence purposes" consistent with the City's interpretation of the term, meaning for thirty consecutive days or longer; and

WHEREAS, DOB concludes that since the Continental litigation settled and since it was only a decision on the preliminary injunction motion and not a decision on the merits of the case, the City had no basis to appeal; the City then clarified this historical interpretation in Chapter 225 of the Laws of 2010; and

WHEREAS, as to the MDL Amendment, DOB asserts that the amendments contained in Chapter 225 of the Laws of 2010 (and the 1960 change to MDL § 248) did not change what had been its interpretation (for at least 40 years) of what "permanent residence purposes" meant, which was the occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more;" and

WHEREAS, DOB states that, instead, the purpose of the amendments was as stated in the law, a "clarification" of the DOB's historical interpretation relating to occupancy of Class A multiple dwellings;" and

WHEREAS, DOB notes that the bill was enacted "to fulfill the original intent of the law as construed by enforcing agencies, including the New York City Department of Buildings" (See "New York State Senate Introducer's memorandum in Support, reprinted in New York State Archives' Legislative History/Bill Jacket for the Laws of 2010,

Chapter 225); and

WHEREAS, finally, DOB notes that Section 8 of the amendments provides that it "shall apply to all buildings in existence on such effective date and to buildings constructed after such effective date;" therefore, as clarifying amendments, the amendments are not to be applied only prospectively; and

WHEREAS, DOB asserts that since the Building was required to be occupied permanently (for 30 days or more) both prior to Chapter 225 and after, no existing right to rent for seven or more days has been lost or impaired as a result of the MDL amendments and transient use which was never permitted cannot be continued pursuant to the MDL savings clauses; and

WHEREAS, DOB states that prior to the adoption of Chapter 225, MDL §§ 4(16) and 248(1), the Building was a Class A multiple dwelling subject to MDL § 4(8)'s requirement that it be occupied for permanent residence purposes with "permanent residence" meaning occupancy of 30 days or more and not weekly occupancy; and

WHEREAS, DOB notes that it issued violations for illegal transient occupancy prior to the 2011 enactment of the MDL Amendment; and

The Board's Conclusion

WHEREAS, the Board agrees with DOB that the Multiple Dwelling Law and the Building's COs never permitted occupancy of the premises for weekly stays, and therefore there is no "existing right or remedy that is lost," and the MDL's savings clauses do not apply; and

WHEREAS, the Board agrees that the provisions of the MDL must be read together and that (1) the CO classification of Class A SRO is informed by the definition of Class A occupancy as permanent occupancy; and (2) the internal MDL references, dictionary definitions, plain meaning, common sense, and the legislative intent all support DOB's conclusion that permanent occupancy requires stays of periods of at least 30 days; and

WHEREAS, the Board agrees with DOB that the text in effect at the time of the 1960 CO issuance applies, but would reach the same conclusion even if the text in effect in 1943 applied; and

WHEREAS, the Board notes that although the relevant MDL text has been amended since 1939, the underlying principles, including common sense concepts of time and residency, have not been redefined and that a seven-day stay would have never satisfied a requirement for permanent occupancy; and

WHEREAS, the Board finds that the distinctions between Class A and Class B and permanent and transient were understood at the time the CO was issued and there is not any evidence that in 1943 or 1960, at the issuance of the COs, that DOB accepted a rental term of any less than a month; and

WHEREAS, the Board does not find support for the Appellant's assertion that the MDL in effect in 1943 expressly or implicitly reflected that the SRO Units could be lawfully rented and occupied for weekly periods; and

WHEREAS, the Board does not see any indication in the legislative history that there was a greater need for transient (weekly) occupancy rather than for shorter payment terms; and

WHEREAS, further, the Board notes that DOB is the agency empowered to interpret the MDL in the first instance and that the MDL allows it to create greater restrictions; and

WHEREAS, the Board accepts DOB's interpretation of the legislative history and finds that the Appellant's focus on the fleeting goals of the World's Fair, derived from trade organizations' interests and the scholarly discussion of housing during the Great Depression is unpersuasive; and

WHEREAS, the Board notes that there are public policy reasons to require greater safety measures for transient or truly temporary accommodations and permanent accommodations and finds the fact that the Pack Bill only required that the Building comply with MDL § 248 is consistent with a finding that Class A SROs are a form of permanent occupancy rather than transient; and

WHEREAS, the Board notes that the 1939 amendments encouraged the improvement of conditions of buildings which had been built for one form of Class A permanent use but have been converted to another much denser Class A occupancy; and

WHEREAS, the Board notes that the issuance of the CO in 1960 with the occupancy classification of Class A for the first time – meaning permanent occupancy – supports DOB's conclusion that the approval was reviewed pursuant to the 1958 MDL because if the owner at the time believed that the newly defined Class A classification changed the meaning of the operative MDL provisions then he would have had an interest in revising the classification of the Building rather than obtaining a new CO with the new Class A classification; and

WHEREAS, the Board notes that the Appellant contends that the issuance of a CO certifies that the Building "conforms substantially to the approved plans and specifications, and to the requirements of the building code and all other laws and ordinances, and of the rules and regulations of the Board of Standards and Appeals, applicable to a building of its class and kind at the time the permit was issued" and that such reliance actually supports a conclusion that DOB issued the CO pursuant to the 1958 clarified text, which the owner would have been aware of; and

WHEREAS, the Board notes that the 1943 CO only identifies the building as a New Law Tenement and Single Room Occupancy but not also as Class A; and

WHEREAS, the Board notes that tenements are within the MDL § 4 definition of Class A; and

WHEREAS, the Board finds it logical to conclude that the 1943 CO classification and the 1960 CO classification had the same meaning, just as the 1939 MDL text and 1958 MDL text did; and

WHEREAS, the Board finds that all three discussed versions of the MDL support the point that there is a distinction between Class A and Class B occupancy in that

Class A and its regulatory provisions apply to permanent occupancy and Class B applies to transient; and

WHEREAS, the Board notes that the 1946 MDL defined "single room occupancy" as the occupancy of a single room separated from all other rooms within an apartment in a multiple dwelling and that "[w]hen a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling;" and

WHEREAS, accordingly, accordingly, the Board finds that MDL § 248 clearly establishes SROs within the definition of Class A multiple dwellings and Class A multiple dwellings are to be occupied "as a rule for "permanent residence purposes," which is not satisfied by stays of one week; and

WHEREAS, as to the MDL Amendment and the Appellant's invocation of the savings clauses, the Board accepts DOB's position that the amendment served to clarify language and clearly articulate the position that it had held for decades that permanent occupancy requires a minimum stay of 30 days; the Board does not see any support for a conclusion that a Class A SRO with a minimum seven-day term is a separate protected class of occupancy; and

WHEREAS, the Board agrees with DOB that no right was ever established or accrued for seven-day occupancy and thus there is no right to save; and

WHEREAS, the Board notes that the MDL Amendment does not allow property owners to maintain transient use with permanent use fire safety conditions; transient use must meet transient use requirements; and

WHEREAS, the Board finds that there has always been a necessary distinction between transient and permanent occupancy and that is furthered by the CO identification of Class A and Class B occupancies; and

WHEREAS, the Board notes that the Building was constructed and occupied for several decades as a New Law Tenement Multiple Dwelling and that it was converted to a New Law Tenement Class A Multiple Dwelling SRO building; in both iterations, the Building accommodated permanent occupancy, identified as Class A since 1960; based on the legislative history and the economic climate, DOB's assertion that the rental payment system and not the need for more transient occupancy is the change which sparked the 1939 amendments and the Building's conversion; and

WHEREAS, the Board notes that approximately one-quarter of the Building is occupied by the Statutory Units which are permanent tenancies; and

WHEREAS, the Board notes that the Appellant sought to gather additional Building occupancy records, but the Board does not find those records to be relevant because the Building was constructed as a Class A apartment building, and has since then had COs only for a Class A SRO, there is no basis to assert that it was actually a Class B use; and

WHEREAS, the Board does not find that evidence related to the occupancy of the Building is relevant to the interpretation of the MDL text; and

Therefore it is Resolved, that the Board denies the appeal and affirms DOB's denial of a request for a Letter of No Objection, which would authorize occupancy of the Building for a minimum period of seven days rather than 30 days.

Adopted by the Board of Standards and Appeals, June 10, 2014.

The resolution has been amended. Corrected in Bulletin No. 26, Vo. 99, dated July 2, 2014.

***CORRECTION**

The resolution adopted on February 4, 2014, under Calendar No. 249-13-BZ and printed in Volume 99, Bulletin No. 6, is hereby corrected to read as follows:

249-13-BZ
CEQR #14-BSA-027K
APPLICANT – Eric Palatnik, P.C., for Reva Holding Corporation, owner; Crunch LLC, lessee.
SUBJECT – Application August 26, 2013 – Special Permit (§73-36) to allow a physical cultural establishment (*Crunch Fitness*) within portions of existing commercial building. C4-3 zoning district.
PREMISES AFFECTED – 747 Broadway, northeast corner of intersection of Graham Avenue, Broadway and Flushing Avenue, Borough of Brooklyn.
COMMUNITY BOARD #1BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 25, 2013, acting on Department of Buildings ("DOB") Application No. 301509231, reads in pertinent part:

> Proposed physical culture establishment is contrary to that allowed as-of-right under ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-3 zoning district, the operation of a physical culture establishment ("PCE") on the second story of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 26, 2013 after due notice by publication in *The City Record*, with a continued hearing on January 14, 2014 and then to decision on February 4, 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 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is an irregular lot located at the northeast corner of the intersection of Graham Avenue, Flushing Avenue, and Broadway, with a portion of the lot extending to Debevoise Street, within a C4-3 zoning district; and

WHEREAS, the site has 87.67 feet of frontage along Graham Avenue, 203.56 feet of frontage along Flushing Avenue, 38.75 feet of frontage along Broadway, 110 feet of frontage along Debevoise Street, and 38,700 sq. ft. of lot area; and

WHEREAS, the site is occupied by a five-story commercial building with 131,580 sq. ft. of floor area (3.4 FAR); and

WHEREAS, the PCE is proposed to occupy approximately 15,953 sq. ft. of floor area on the second story of the building; and

WHEREAS, the PCE will be operated as Crunch 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 Saturday, from 5:00 a.m. to 11:00 p.m., and Sunday from 7:00 a.m. to 9:00 p.m.; and

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

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

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

WHEREAS, at hearing, the Board directed the applicant to clarify: (1) whether any portion of the PCE was proposed on the first story; and (2) whether there were any residential uses in the subject building or in any adjacent buildings; and

WHEREAS, in response, the applicant clarified that although the PCE is accessed through a common commercial lobby on the first story, there is no PCE program space on the first story; in addition, the applicant represented that there are no residential uses in the subject building or in any adjacent building; 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. 14BSA027K dated August 12, 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 located in a C4-3 zoning district, the operation of a PCE on the second story of a five-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 6, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on February 4, 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, February 4, 2014.

The resolution has been amended to correct the Application No. which read: "301509923."**Now reads**: "301509231".

Corrected in Bulletin No. 26, Vol. 99, dated July 2, 2014.

***CORRECTION**

The resolution adopted on June 10, 2014, under Calendar No. 331-13-BZ and printed in Volume 99, Bulletin Nos. 22-24, is hereby corrected to read as follows:

331-13-BZ
CEQR #14-BSA-093K
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 (*Planet Fitness*) 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
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated December 18, 2013, acting on DOB Application No. 320817345, reads, in pertinent part:

> Proposed physical culture establishment is not permitted as-of-right in a C4-2 zoning district pursuant to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-2 zoning district, the operation of a physical culture establishment ("PCE") in portions of the first story and mezzanine of a one-story commercial building, contrary to ZR § 32-30; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

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

WHEREAS, Community Board 11, Brooklyn, recommends approval of the application, on condition that: (1) the 85th Street side of the property is not used for entrance or egress; (2) the gate on the 85th Street side is secured at all times; and (3) additional bike racks on 86th Street are provided, if permitted by law; and

WHEREAS, the subject site is a through lot located on the block east of 20th Avenue between 85th Street and 86th Street, within a C4-2 zoning district; and

WHEREAS, the site has approximately 11 feet of frontage along 20th Avenue, 70 feet of frontage along 85th Street, 70 feet of frontage along 86th Street, and 14,330 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building with a mezzanine; the building has a total of 13,990 sq. ft. of floor area (0.98 FAR); and

WHEREAS, the applicant states that it proposes to enlarge the mezzanine level by 3,550 sq. ft., resulting in a total building floor area of 17,540 sq. ft. (1.22 FAR); and

WHEREAS, the proposed PCE will occupy 16,880 sq. ft. of floor area – 12,540 sq. ft. of floor area on the first story and 4,340 sq. ft. of floor space on the mezzanine level; and

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

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

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

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

WHEREAS, the 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 requested clarification regarding the proposed PCE's use of the 85th Street entrance to the site; and

WHEREAS, in response, the applicant provided photographs showing that the 85th Street entrance to the site is enclosed with a gated fence; the applicant also represented that the PCE would not have an entrance on the 85th Street side of the building; 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. 14BSA093K dated December 23, 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 within a C4-2 zoning district, the operation of a PCE in portions of the first story and mezzanine of a one-story commercial building, contrary to ZR § 32-30; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 11, 2014" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 10, 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 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, June 10, 2014.

The resolution has been amended. Corrected in Bulletin No. 26, Vo. 99, dated July 2, 2014.