
BULLETIN

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169-14-BZ

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170-14-BZ

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171-14-A

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172-14-BZ

235 Dixon Avenue, Corner of Dixon and Granite avenue, Block 1172, Lot(s) 244, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) is requested to allow for the reduction in the required front yard fronting from 10 feet to 4 feet, located within an R3A zoning district. R3A district.

173-14-BZ

20 East 38th Street, On the southwest corner of Madison Avenue and East 38th Street, Block 867, Lot(s) 57, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow the operation of a physical culture establishment(martial arts center) in the cellar of an existing 16-story mixed-used residential and commercial building, located within an C5-2 zoning district. C5-2 district.

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

CALENDAR

AUGUST 19, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 19, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzhock, owner.

SUBJECT – Application June 12, 2014 – Extension of Time to Complete Construction for a previously granted Variance (72-21) to legalize and enlarge a Yeshiva (*Yeshiva Ohr Yitzchok*) which expired on March 23, 2014. M1-1 zoning district.

PREMISES AFFECTED – 1214 East 15th Street, between Avenue L and Locust Avenue, Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #14BK

68-91-BZ

APPLICANT –Warshaw Burstein, LLP, for Cumberland farms, Ink., owner.

SUBJECT – Application July 1, 2014 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance for the continued operation of an Automotive Service Station (*Gulf*) which expired on March 12, 2014; Waiver of the Rules. R5D/C1-2 and R2A zoning district.

PREMISES AFFECTED – 223-15 Union Turnpike, northwest corner of Springfield Boulevard and Union Turnpike, Block 7780, Lot 1, Borough of Queens

COMMUNITY BOARD #11Q

76-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owners.

SUBJECT – Application April 25, 2014 – Amendment to modify the previously granted special permit (73-622) for the enlargement of an existing single-family detached residence. R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEALS CALENDAR

300-08-A

APPLICANT – Law office of Marvin B. Mitzner LLC, for Steven Baharestani, owner.

SUBJECT – Application April 24, 2014 – Extension of time to complete construction and obtain a Certificate of Occupancy of a previously approved grant (9-story hotel) under the common law vested rights. M1-2 /R5-B zoning district.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street between 39th and 40th Avenues, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

23-14-A

APPLICANT – Eric Palatnik, P.C., for Cheong Wing Chung & Guo Ying Zhang, owners.

SUBJECT – Application February 5, 2014 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R3-2 zoning district. R2-A zoning district.

PREMISES AFFECTED – 198-35 51st Avenue, 51st Avenue between Weeks Lane and 199th Street, Block 7374, Lot 13, Borough of Queens.

COMMUNITY BOARD #11Q

ZONING CALENDAR

222-13-BZ

APPLICANT – Eric Palatnik, P.C., for 2464 Coney Island Avenue, LLC, owner.

SUBJECT – Application July 23, 2013 – Special Permit (§73-44) to permit the reduction of the required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. C8-1/R5 zoning district.

PREMISES AFFECTED – 2472 Coney Island Avenue, southeast corner of Coney Island Avenue and Avenue V, Block 7136, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

48-14-BZ

APPLICANT – Eric Palatnik, P.C., for Vlad Benjamin, owner.

SUBJECT – Application March 26, 2014 – Special Permit (§73-622) for the enlargement of an existing two story single family home which is contrary to floor area, lot coverage and open space (ZR 23-141). R3-1 zoning district.

PREMISES AFFECTED – 174 Falmouth Street, between Hampton Avenue and Oriental Boulevard, Block 8784, Lot 196, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

50-14-BZ

APPLICANT – Eric Palatnik, P.C., for Brooklyn Rainbow Associates LLC, owner; Crunch Greenpoint LLC, lessee.

SUBJECT – Application April 1, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Crunch Fitness*) within an existing cellar and one-story commercial building. C4-3A zoning district.

PREMISES AFFECTED – 825 Manhattan Avenue aka 181 Calyer Street, north side of Calyer Street, 25' west of Manhattan Avenue, Block 2573, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #1BK

52-14-BZ

APPLICANT – Lewis Garfinkel, for Asher Fried, owner.

SUBJECT – Application April 2, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1339 East 28th Street, east side of East 28th Street, 320' south of Avenue M, Block 7664, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JULY 22, 2014
10:00 A.M.**

Present: Vice-Chair Collins, 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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a variance to permit a minor enlargement; and

WHEREAS, a public hearing was held on this application on June 24, 2014, after due notice by publication in *The City Record*, and then to decision on July 22, 2014; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application, on condition that: (1) sound attenuation is provided; (2) the compactor is operated during daylight hours only; and (3) the gate enclosing the compactor area remains closed when the compactor is not operating; and

WHEREAS, this application is brought on behalf of the New York Community Hospital of Brooklyn (“NYCH”), which is a not-for-profit corporation and an affiliate of New York Presbyterian Hospital-Weill Medical College of Cornell University; and

WHEREAS, the subject site is a triangular lot bounded by Avenue O and Kings Highway, within an R7A zoning district; and

WHEREAS, the site has 13,471 sq. ft. of lot area and is occupied by a five-story hospital building with 52,632 sq. ft. of floor area (3.91 FAR); and

WHEREAS, the site has been under the Board’s jurisdiction since May 23, 1950, when, under BSA Cal. No. 70-50-A, the Board granted a variance under the 1916 Zoning Resolution to permit, in a residence use district, the brick enclosure of a ramp leading to the basement of an existing hospital and the construction of a fifth and sixth story and a penthouse; this grant extended at various times over the years to allow completion of construction; and

WHEREAS, on December 12, 1950, under BSA Cal. No. 538-50-A, the Board granted an appeal to permit an air-conditioning system with an equipment room on the roof; and

WHEREAS, on January 29, 1963, under BSA Cal. No. 725-62-BZ, the Board granted a variance to permit, in an R6 zoning district, the enlargement of the existing four-story hospital building, contrary to the regulations for lot coverage, height and setback, sky-exposure plane, minimum dimensions of a court, and loading berths; and

WHEREAS, most recently, on October 7, 1980, under the subject calendar number, the Board granted a variance to permit the enlargement of the existing four-story hospital building contrary to the regulations for lot coverage, sky-exposure plane, rear yard equivalent, and loading berths; and

WHEREAS, the applicant now seeks to amend the grant to permit a minor enlargement that increase the degree of non-compliance with respect to lot coverage; the enlargement will be accomplished by infilling an existing court at the first through fifth stories and it will result in an increase in floor area from 52,632 sq. ft. (3.91 FAR) to 53,794 sq. ft. (3.99 FAR); and

WHEREAS, the applicant states that the enlarged portion of the building will accommodate storage areas, structural elements, and a trash compactor; and

WHEREAS, the applicant contends that NYCH requires the additional spaces and equipment in order to carry out its programmatic needs as teaching hospital; namely, the applicant states that NYCH must adhere to National Fire Protection Association (“NFPA”) standards; and

WHEREAS, the applicant represents that the proposed increases in floor area and floor space and the ability to compact refuse will enable the hospital to meet or exceed NFPA guidelines, resulting in improvements in building maintenance, patient care, and staff safety; and

WHEREAS, the Board acknowledges that the proposal will further NYCH’s programmatic needs; and

WHEREAS, at hearing, the Board directed the applicant to: (1) verify that the proposal complies with the applicable parking requirements; and (2) clarify the proposed sound attenuation measures for the compactor; and

WHEREAS, in response, the applicant stated that the proposal complies with applicable parking requirements and submitted plans depicting the proposed sound attenuation measures; and

WHEREAS, in addition, the applicant agrees to limit the hours of compacting to ordinary business hours; and

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WHEREAS, based upon its review of the record, the Board finds that the proposed elimination of term 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 October 7, 1980, 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 16, 2014'- nine (9) sheets; and *on further condition*:

THAT the floor area of the building will not exceed 53,794 sq. ft. (3.99 FAR);

THAT parking will be as reviewed and approved by DOB;

THAT compacting of refuse will be limited to daily, from 8:00 a.m. to 8:00 p.m.;

THAT all conditions from the prior resolution not specifically waived by the Board 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."

Adopted by the Board of Standards and Appeals, July 22, 2014.

775-85-BZ

APPLICANT – Sheldon Lobel, P.C., for Ivy Cross Island Plaza, owner.

SUBJECT – Application December 18, 2013 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction of a three-story office building, contrary to permitted height and use regulations, which expired on February 24, 2012; Amendment to modify the parking layout, eliminate buffering and eliminate the term; Waiver of the Rules. C1-3/R2 and R2 zoning district.

PREMISES AFFECTED – 133-33 Brookville Boulevard, triangular lot with frontages on Brookville Boulevard, Merrick Boulevard, 133rd Avenue and 243rd Street, Block 12980, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an amendment to permit: (1) the continued operation, without a term, of an office building (Use Group 6) on a site partially within R2 zoning district and partially within an R2 (C1-3) zoning district; (2) certain site modifications, including the elimination of buffering; and (3) the elimination of the hours of operation restriction; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2014, and then to decision on July 22, 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 13, Queens, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped lot with frontages along 133rd Avenue (248 feet), 243rd Street (51 feet), Brookville Boulevard (590 feet) and Merrick Boulevard (780 feet); and

WHEREAS, the site is located partially within R2 zoning district and partially within an R2 (C1-3) zoning district; historically, the R2 (C1-3) portion of the site was zoned R2 (C2-1); and

WHEREAS, the site has approximately 181,531 sq. ft. of lot area and is occupied by a three-story commercial building with 222,285 sq. ft. of floor area (1.22 FAR) and 245 unattended parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the site since February 24, 1987, when, under the subject calendar number, the Board granted a variance to permit, on a site partially within an R2 zoning district and partially within an R2 (C2-1) zoning district, the construction of a three-story office building utilizing an existing steel skeleton, which exceeded the maximum permitted height and did not comply with the use regulations, for a term of 25 years, to expire on February 24, 2012; in addition, 286 attended parking spaces were permitted under the grant as accessory to the office use; and

WHEREAS, the applicant states that, at the time of the grant, the northeast portion of the subject block (Tax Lots 45, 47, 49, 51, 53, 57, and 58, hereafter known as the "Outparcels") was occupied with homes; subsequent to the grant, the homes were demolished and the subject site's parking lot was expanded, increasing the number of spaces in the parking lot to approximately 420 (245 spaces on the site, 82 spaces in the R2 (C1-3) portion of the Outparcels, and 93 spaces in the R2 portion of the Outparcels); the applicant notes that although the owner of the subject site owns the Outparcels, they remain separate tax and zoning lots; and

WHEREAS, the applicant now requests an amendment to permit the following changes to the grant: (1) elimination of the 25-year term; (2) reduction in the number of parking spaces at the site, from 286 attended spaces, to 245 unattended spaces; (3) elimination of the buffering requirement between the site and the Outparcels; and (4) elimination of the hours of operation restriction, which limits the use of the building to Monday through Saturday, from :00 a.m. to 6:00 p.m.; and

WHEREAS, as to the term, the applicant contends that a variance term on a building of this scale presents an undue hardship on the owner's ability to conduct normal business in the commercial real estate market, in that it creates uncertainty with respect to both leasing and financing; and

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WHEREAS, as to the reduction in the number of parking spaces, the applicant states that although the number of spaces at the subject site is reduced, the number of available spaces for the uses in the building has increased by 175 spaces, owing to the use of the Outparcels for additional parking; and

WHEREAS, as to the elimination of buffering, the applicant states that buffering is unnecessary given the demolition of the homes on the Outparcels and their current use as parking for the subject building; and

WHEREAS, finally, as to the elimination of the hours of operation, the applicant states that requiring all office workers at the building to adhere to a strict 8:00 a.m. to 6:00 p.m. schedule is impractical for a building of this size with this diversity of tenants; likewise, the limitation is unnecessary, since the Outparcels no longer contain residential uses and the entire block is devoted office uses and buffered from nearby residential uses by streets; and

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

WHEREAS, at hearing, the Board directed the applicant to: (1) notify the surrounding neighbors of the request to eliminate the term; (2) enhance the landscaping around the perimeter of the site; and (3) provide information on the lighting of the parking lot; and

WHEREAS, in response, the applicant submitted proof that the tenants were notified and an amended site plan, which indicates that 16 street trees will be provided along 133rd Avenue, as well as a four- to six-foot uniform hedge barrier along 133rd Avenue and 243rd Street; and

WHEREAS, in addition, the applicant states that parking lot lights are directed downward and away from residential uses and are on timers, which adjust for different seasons; and

WHEREAS, the Board has reviewed the application and has determined that this application is appropriate to grant, with certain conditions.

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolution, as adopted on February 24, 1987, to permit the noted modifications, including the elimination of the term and the elimination of the restrictions on the hours of operation, *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received July 8, 2014'- six (6) sheets; and *on further condition*:

THAT a minimum of 245 unattended parking spaces will be provided at the site;

THAT lighting will be directed down and away from residential uses;

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

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

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

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

Adopted by the Board of Standards and Appeals, July 22, 2014.

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lesaga LLC, owner.

SUBJECT – Application December 31, 2013 – Extension of Time to obtain a Certificate of Occupancy of a previously granted variance for the continued operation of a UG6 eating and drinking establishment (*McDonald's*), which expired on May 18, 2009; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, north side of Madison Street 184' east of the intersection of Madison Street and Rutgers Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of the time to obtain a Certificate of Occupancy for an eating and drinking establishment (Use Group 6); and

WHEREAS, a public hearing was held on this application on April 11, 2014, after due notice by publication in the *City Record*, with continued hearings on May 13, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 22, 2014; and

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

WHEREAS, the site is located on the north side of Madison Street between Rutgers Street and Jefferson Street, within an R7-2 zoning district; and

WHEREAS, the site is currently occupied by an eating and drinking establishment (Use Group 6) operated as McDonald's; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 19, 1955 when, under BSA Cal. No. 664-54-BZ, the Board granted a variance to permit the construction and maintenance of a commercial building (retail store) for a term of 15 years; and

WHEREAS, on October 7, 1997, under the subject calendar number, the Board granted an application to re-establish the variance, which lapsed in 1970; and

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WHEREAS, in 2004, the use of the subject premises was changed from a retail store to an eating and drinking establishment; and

WHEREAS, on November 18, 2008, the Board approved an amendment to legalize the change in use from a retail store (Use Group 6) to an eating and drinking establishment (Use Group 6) and to extend the term for a period of ten years to expire on October 7, 2017; and

WHEREAS, a condition of the grant was that an updated CO be obtained by May 18, 2009; and

WHEREAS, a CO has not been obtained; and

WHEREAS, at hearing, the Board directed the applicant to ensure that the signage complies with C1 zoning district regulations; and

WHEREAS, in response, the applicant removed all non-complying signage including flags and banners; and

WHEREAS, the applicant submitted photographs that reflect the removal of the flags, banners, and support brackets that held them; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and grants an extension of time to obtain a Certificate of Occupancy, to expire on July 15, 2015; *on condition* that any and all use will substantially conform to drawings associated with the prior approval; and *on further condition*:

THAT the grant will expire on October 7, 2017;

THAT a rear yard no less than 11'-0" in depth will be provided in accordance with the BSA-approved plans and be maintained free and clear of debris and any other encroachments;

THAT the premises will be maintained clean and free of graffiti;

THAT all signage will comply with C1 zoning district regulations;

THAT the above conditions and all other relevant conditions from prior approvals will be listed on the certificate of occupancy;

THAT a certificate of occupancy will be obtained by July 15, 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) 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. (DOB Application. No. 121682287)

Adopted by the Board of Standards and Appeals, July 22, 2014.

245-03-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for Allied Enterprises NY LLC, owner; McDonald's Real Estate Company, lessee.

SUBJECT – Application December 26, 2013 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (*McDonald's*), which expired on December 12, 2013. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, northeast corner of Francis Lewis Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on December 9, 2013; and

WHEREAS, a public hearing was held on this application on May 20, 2014, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2014, and then to decision on July 22, 2014; and

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

WHEREAS, Queens Borough President Melinda Katz recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of the intersection of Francis Lewis Boulevard and Willets Point Boulevard, within a C1-2 (R3-2) zoning district; and

WHEREAS, the site is occupied by an existing eating and drinking establishment (*McDonald's*), with a drive-through facility with a ten-vehicle reservoir capacity, and 15 accessory parking spaces; and

WHEREAS, on December 9, 2003, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, authorizing the drive-through facility for the existing restaurant for a period of five years, to expire on December 9, 2008; and

WHEREAS, on February 10, 2009, the Board granted an extension of term, to expire on December 9, 2013; and

WHEREAS, the applicant now requests an additional five-year extension of term; and

WHEREAS, at hearing, the Board directed the applicant to remove all signage contrary to the approved plans and to restore the speed bump to the parking lot; and

WHEREAS, in response, the applicant provided a photograph, which demonstrates that all excessive signage has been removed; in addition, the applicant states that the speed bump will be restored; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term is

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appropriate, so long as the restaurant complies with all conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens and amends* the resolution, dated December 9, 2003, so that as amended the resolution reads: “to extend the term for five years from December 9, 2013, to expire on December 9, 2018; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received April 22, 2014’- four (4) sheets; and *on further condition*:

THAT the term of this grant will expire on December 9, 2018;

THAT all signage will comply with C1 zoning district regulations;

THAT there will be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

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

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

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

(DOB App. No. 401574060)

Adopted by the Board of Standards and Appeals, July 22, 2014.

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a physical culture establishment (“PCE”); and

WHEREAS, a public hearing was held on this application on June 24, 2014, after due notice by publication in *The City Record*, and then to decision on July 22, 2014; and

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

WHEREAS, the subject site is located on the northeast corner of the intersection of Coney Island Avenue and Avenue P, within an R7A (C2-3) zoning district; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Third Avenue and East 106th Street, partially within a C1-5 (R8A) zoning district and partially within an R7A zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; the PCE occupies 10,137 sq. ft. of floor space in the cellar, 5,261 sq. ft. of floor area on the first story, and 11,189 sq. ft. of floor area on the second story, for a total PCE floor space within the building of 26,587 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the site since January 27, 2004, when, under the subject calendar number, the Board granted a variance to permit the operation of the PCE partially within a residence district, for a term of ten years, to expire on January 27, 2014; and

WHEREAS, on December 10, 2013, the Board granted an extension of term for the PCE, for a term of ten years, to expire on December 10, 2023; and

WHEREAS, the applicant notes that a condition of the 2013 grant was that a certificate of occupancy (“CO”) was to be obtained by May 10, 2014; however, as of that date, the CO had not been obtained; and

WHEREAS, accordingly, the applicant seeks an extension of time to obtain the CO; and

WHEREAS, the applicant represents that the issuance of the CO has been delayed because the building has not yet received a public assembly certificate of operation (“PA”); further, the issuance of the PA has been delayed by the requirement to provide a fire protection plan for the entire building; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction and amendment 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, dated January 27, 2004, so that as amended the resolution reads: “to grant an extension of the time to obtain a certificate of occupancy, to expire on January 22, 2015; *on condition*:

THAT a certificate of occupancy will be obtained by January 22, 2015;

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

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

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Adopted by the Board of Standards and Appeals, July 22, 2014.

271-07-BZ

APPLICANT – Eric Palatnik, P.C., for 217 W.23rd Street LLC., owner; Crunch LLC, lessee.

SUBJECT – Application December 23, 2013 – Amendment of a special permit (§73-36) and variance (§72-21) authorizing a physical culture establishment (*Crunch*) by allowing a change in operator, Extension of Term, Extension of Time to obtain a Certificate of Occupancy, and Waiver of the Rules. C2-7A/R8A zoning district.

PREMISES AFFECTED – 215 West 23rd Street, north side of West 23rd Street, 118.75 ft. west of intersection of West 23rd Street and 7th Avenue, Block 773, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for a physical culture establishment (“PCE”), which expires on September 19, 2015, an extension of time to obtain a certificate of occupancy, which expired on September 16, 2012, and an amendment to permit a change in operator; and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in *The City Record*, and then to decision on July 22, 2014; and

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

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 23rd Street, between Seventh Avenue and Eighth Avenue; and

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

WHEREAS, the PCE occupies a total of 31,809 sq. ft. of floor area, with 8,852 sq. ft. of floor area on the first floor, second floor, and cellar levels, respectively, and 5,253 sq. ft. of floor area on the cellar mezzanine level; and

WHEREAS, on September 16, 2008, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36 and a variance pursuant to ZR § 72-21, to permit, on a site partially within an R8A zoning district and partially within a C2-7A zoning district, the legalization of a PCE on the first floor, second floor, cellar and cellar mezzanine level of the subject building, including

within the portions of the building solely within the R8A portion of the site, for a term of ten years, to expire on September 19, 2015; in addition, the grant provided that substantial construction was to be completed in accordance with ZR § 72-23; thus, a certificate of occupancy was to have been obtained within four years of the grant (September 16, 2012); and

WHEREAS, accordingly, the applicant seeks an extension of the term of the PCE special permit for ten years and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant also seeks approval to operate the PCE as Crunch instead of David Barton Gym, as set forth in the prior grant; and

WHEREAS, the applicant notes that there are no proposed changes to the configuration of the exercise equipment or the overall program of the PCE and that sound attenuation will be in accordance with the prior approved plans; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated September 16, 2008, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years from the date of this resolution and to grant an extension of time obtain a certificate of occupancy; *on condition* that any and all use will substantially conform to drawings associated with the prior approval; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on July 22, 2024;

THAT a certificate of occupancy will be obtained by July 22, 2015;

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

THAT the hours of operation will be limited to Monday through Friday from 5:30 a.m. to midnight; Saturday from 8:00 a.m. to 9:00 p.m., and Sunday from 5:00 a.m. to 11:00 p.m.; and

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

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

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

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

Adopted by the Board of Standards and Appeals, July 22, 2014.

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997-84-BZ

APPLICANT – Sheldon Lobel, P.C., for 222 Union Associates, owner.

SUBJECT – Application January 23, 2014 – Amendment (§11-413) to a previous variance for a public parking garage. The amendment would convert the building to mixed use, with retail (UG 6) on first floor and cellar, and residential (UG 2) on the second through sixth floors. R6A & C1-1/R6A zoning district.

PREMISES AFFECTED – 798-804 Union Street, 6th Avenue and 7th Avenue, Block 957, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for continued hearing.

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

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

103-14-A

APPLICANT – Akerman LLP, for 55 Eckford Lots LLC, owner.

SUBJECT – Application May 9, 2014 – Appeal seeking a determination that the owner has obtained a common law vested right to complete construction under the prior R6/M1-1 zoning district regulations. M1-2/R6B zoning district.

PREMISES AFFECTED – 55 Eckford Street, west side of Eckford bounded by Driggs Avenue to its north and Engert Avenue to its south, Block 2698, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown,

Commissioner Hinkson and Commissioner Montanez4
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy for a 12-story mixed residential building at the subject site; and

WHEREAS, a public hearing was held on this application on June 8, 2004, after due notice by publication in *The City Record*, and then to decision on July 22, 2014; and

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

WHEREAS, the subject site is located on the west side of Eckford Street, between Driggs Avenue and Engert Avenue, partially within an R6B/M1-2 (MX-8) zoning district and partially within an R6A/M1-2 (MX-8) zoning district, within a Special Mixed Use District; and

WHEREAS, the site has approximately 98 feet of frontage along Eckford Street and 10,440 sq. ft. of lot area; and

WHEREAS, the applicant proposes to develop the site with a 12-story residential (Use Group 2) building; and

WHEREAS, the site was formerly located within an R6/M1-1 zoning district; and

WHEREAS, on March 22, 2004, New Building Permit No. 301756319-01-NB (hereinafter, the “New Building Permit”) was issued by the Department of Buildings (“DOB”) authorizing construction of the building in accordance with the R6/M1-1 zoning district regulations; and

WHEREAS, on May 11, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Greenpoint Williamsburg Rezoning, which rezoned the site from R6/M1-1 to partially R6B/M1-2 (MX-8) and partially R6A/M1-2 (MX-8); and

WHEREAS, as of the Enactment Date, all work on the proposed building’s foundations had been completed; thus, per ZR §§ 11-331 and 11-332, the applicant had until May 11, 2007 to complete construction under the R6/M1-1 regulations and obtain a certificate of occupancy; and

WHEREAS, however, as of May 11, 2007, construction had not been completed and a certificate of occupancy had not been obtained; accordingly, the applicant filed for an extension of time to complete construction pursuant to ZR § 11-332; and

WHEREAS, on October 23, 2007, under BSA Cal. No. 157-07-BZY, the Board granted an extension of time to complete construction and obtain a certificate of occupancy pursuant to ZR § 11-332, for a term of two years, to expire on October 23, 2009; in its grant, the Board recognized that the New Building Permit was lawfully issued, and that, subsequent to such issuance, the applicant had completed 100 percent of the foundation, the steel frame for six of the 12 stories of the proposed building, and concrete slab floors for stories one through six; in addition, the Board recognized that during that same time period 17 percent of the expenditures

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for the development had been made; and

WHEREAS, however, as of October 23, 2009, construction had not been completed; and

WHEREAS, as such, on April 27, 2010, under BSA Cal. No. 157-07-BZY, the Board granted an additional extension of time to complete construction and obtain a certificate of occupancy, for a term of two years, to expire on April 27, 2012; the applicant notes that, subsequent to the 2007 grant, due to the financial crisis, no additional construction was completed and no additional expenditures were made; thus, the Board's 2010 grant was based on the same amount of construction and expenditures as the 2007 grant; and

WHEREAS, the applicant represents that as of April 27, 2012, construction had not been substantially completed and a certificate of occupancy had not been obtained; and

WHEREAS, the applicant notes that an application for an additional extension of time under ZR § 11-332 was not timely filed due to a change in ownership and financing difficulties; and

WHEREAS, accordingly, the applicant now seeks an extension of time to complete construction and obtain a certificate of occupancy under the common law doctrine of vested rights; and

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the Text Enactment Date and the Rezoning Date and that the work was performed pursuant to such lawful permit; and

WHEREAS, by letter dated March 24, 2010, DOB states the New Building Permit was lawfully issued; and

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

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

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

WHEREAS, as noted above, the Board has recognized that substantial construction was performed and substantial expenditures were made subsequent to the issuance of the

New Building Permit and prior to the Enactment Date; and

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

WHEREAS, the applicant states that the owner would incur a loss of \$2,469,352 if the building must be modified to comply with the R6B/M1-2 (MX-8) and R6A/M1-2 (MX-8) regulations; this amount represents that costs of redesigning and reconstructing the building (\$2,000,000) plus the value of the floor area lost under the new zoning regulations (\$269,352); and

WHEREAS, thus, the applicant asserts and the Board agrees that complying with the current zoning regulations would result in a serious loss to the owner; and

WHEREAS, the Board has reviewed the evidence in the record and determined that the requested extension of time is warranted; and

WHEREAS, accordingly, the Board hereby grants the owner of the site a two-year extension of time to complete construction and obtain a certificate of occupancy.

Therefore it is Resolved, that this application to renew New Building Permit No. 301756319-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete construction and obtain a certificate of occupancy for two years from the date of this resolution, to expire on July 22, 2016.

Adopted by the Board of Standards and Appeals, July 22, 2014.

49-14-A

APPLICANT – Jesse Masyr, Esq of Fox Rothschild LLP, for Archdiocese of New York, owner.

SUBJECT – Application March 25, 2014 – Proposed 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

THE VOTE TO CLOSE HEARING –

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

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

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ZONING CALENDAR

210-13-BZ

CEQR #14-BSA-006Q

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

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

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

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 6, 2013, acting on Department of Buildings Application No. 420465455, reads in pertinent part:

“Proposed physical culture establishment is not permitted in a C1-4/R7A zoning district as-of-right or by special permit;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C1-4(R7A) zoning district, the legalization of a physical culture establishment (PCE) in a former manufacturing building, contrary to ZR § 32-00; 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 June 17, 2014, and then to decision on July 22, 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 1, Queens, recommends approval of the application; and

WHEREAS, the Queens Borough President recommends approval of the application; and

WHEREAS, the site is located on the west side of 50th Street, between Roosevelt Avenue and 43rd Avenue and Queens Boulevard, with 102 feet of frontage on 50th Street, a depth of 100 feet and a total lot area of 10,463 sq. ft.; and

WHEREAS, the site is occupied by a one-story and basement building designed as a factory building, with 19,715 sq. ft. of floor area; and

WHEREAS, the PCE occupies 9-857 sq. ft. of floor area on the basement level and is operated as *Physique*; and

WHEREAS, the PCE has been in operation at the site since approximately 2003; and

WHEREAS, the applicant represents that the manufacturing building for dolls and doll clothing with accessory offices was built in approximately 1950, and was occupied by manufacturing use until the 1980s; and

WHEREAS, the applicant notes that in 1989, the first floor of the building was converted to a billiard hall (Use Group 8) while the basement continued to be used for manufacturing and storage (Use Group 17), as reflected on the 1989 Certificate of Occupancy; and

WHEREAS, the applicant states that some time prior to 2003, the basement level was converted to PCE use; and

WHEREAS, when the PCE use began at the site it was within a C2-2(R7-1) zoning district, where PCE’s area allowed pursuant to Board special permit under ZR § 73-36; and

WHEREAS, the applicant acknowledges that although a PCE would have been permitted under the prior zoning district regulations, the prior owner never sought a special permit from the Board; and

WHEREAS, on July 28, 2011, the site was rezoned from C2-2(R7-1) to C1-4(R7A), pursuant to the Sunnyside-Woodside rezoning; and

WHEREAS, neither PCEs nor billiard halls are permitted under the current zoning; and

WHEREAS, the applicant represents that there has not been a discontinuance of the non-conforming billiard use on the second floor and, thus it is a legal pre-existing non-conforming use; and

WHEREAS, accordingly, only the proposed legalization of the PCE use on the basement level is the subject of the application; and

WHEREAS, the applicant now seeks a variance to legalize the operation of the PCE because the special permit for a PCE is not available in the subject zoning district; and

WHEREAS, the building will not be enlarged or otherwise altered as a part of this proposal; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the existing building is obsolete; and (2) the layout and lack of street exposure; and

WHEREAS, as to the obsolescence of the building, the applicant states that the building was constructed in 1950 and designed to accommodate manufacturing uses on both floors and is thus incompatible with not only conforming uses such as Use Group 6 use, but even modern manufacturing use; and

WHEREAS, the applicant asserts that the layout and lack of street exposure prohibit the basement space from being used for conforming uses such as Use Group 6 retail; and

WHEREAS, specifically, the applicant states that due to the location of portions of the basement level being below grade, it has limited street level exposure or access to light and air; and

WHEREAS, the applicant notes that the site slopes gently down toward 43rd Avenue to the north creating an area with slightly more street exposure; however, this corner of the building is occupied by its stairwell and elevator core and would be cost prohibitive to reconfigure the building to create a space for a conforming use tenant by relocating the building’s core; and

WHEREAS, the applicant notes that local retail and

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service establishment uses are dependent on street visibility and direct access to attract customers and that need cannot be met with below grade space; and

WHEREAS, further, the applicant notes that the windows are located well below eye level of pedestrians and do not provide sufficient visibility for businesses located at the basement level; and

WHEREAS, the applicant asserts that the space is also not desirable for conforming use such as offices since there is very little access to light and air; and

WHEREAS, the applicant also notes that the size of the basement level is not conducive to confirming tenants because local retail and service establishments in the subject area of Queens generally occupy spaces that are less than 4,000 sq. ft.; and

WHEREAS, accordingly, since the basement level is more than twice that size, it would need to be subdivided into two or three smaller spaces to be marketable to a broader range of uses; and

WHEREAS, the applicant states that the building's layout with little street exposure and a circulation core that is located in the northeast corner of the building make the subdivision of the space impractical, if not impossible; and

WHEREAS, the applicant asserts that the requirements of a PCE use differ from those of conforming commercial uses in that the PCE does not require the same amount of street exposure, is better suited to a large open floor place, and does not require any significant capital expenditures to the manufacturing building to accommodate a fitness center; and

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

WHEREAS, the applicant asserts that because of its unique physical conditions, there is no possibility that the development of the property in conformance with the applicable use regulations will bring a reasonable return to the owner; and

WHEREAS, the applicant initially submitted a feasibility study analyzing (1) retail use on the basement level and upper floor; and (2) the proposed PCE on the basement level and retail use on the upper floor; and

WHEREAS, at the Board's direction, the applicant also analyzed a community facility option; and

WHEREAS, the applicant concluded that neither conforming scenario resulted in a reasonable rate of return due to the inability to market the space for either of these uses and the inability to compensate for the costs of converting the building to conforming use; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject building's unique physical conditions, 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

use 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, specifically, the applicant states that there will not be any change to the exterior of the building, which has existed at the site since 1950; and

WHEREAS, the applicant asserts that the surrounding area is characterized by a mix of retail and residential uses; and

WHEREAS, specifically, the site is located just north of two main commercial thoroughfares (Roosevelt Avenue and Queens Boulevard) and is among a wide range of commercial uses including drug stores, automotive repair shops and gas stations; and

WHEREAS, the applicant notes that the only other use in the building is the non-conforming billiard hall; and

WHEREAS, the applicant asserts that the PCE has occupied the site for more than ten years and is compatible with the billiard hall and with adjacent uses; and

WHEREAS, the applicant notes that at the inception of the PCE use at the site, it was within a zoning district in which the special permit was available, but due to the 2011 rezoning is no longer available; and

WHEREAS, specifically, the applicant asserts that adjacent residential uses to the north and west do not experience sound or vibrations from the PCE activities; and

WHEREAS, the applicant notes that there are open areas with widths of at least 20 feet that buffer the PCE from the buildings to the north and west; and

WHEREAS, additionally, the wall of the gym facing north does not have windows and the portion of the facility includes stairwells, reception desk, and locker rooms, which do not create noise or vibrations; and

WHEREAS, the applicant states that treadmills and cardio machines are located on the east portion of the facility facing the street and the PCE does not offer any classes such as spinning or aerobics, which are generally accompanied by loud music; and

WHEREAS, the applicant notes that the west-facing wall does have windows similar to the east ones facing the street, but smaller in size; and

WHEREAS, at the Board's request, the applicant will tint the west-facing windows to prevent interior light from shining outside; and

WHEREAS, the applicant notes that the site is within a commercial zoning district with a heavy traffic volume; and

WHEREAS, at the Board's request, the applicant removed the awning over the entrance; and

WHEREAS, the applicant provided a revised sign analysis and photographs that reflect that the signage complies; 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

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WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

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

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14BSA006Q, and dated January 20, 2014; 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, within a C1-4(R7A) zoning district, the legalization of a physical culture establishment (PCE) in a former manufacturing building, contrary to ZR § 32-00, *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 12, 2014"- Four (4) sheets; and *on further condition*:

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

THAT the term of this grant will be limited to ten

years from the date of this grant, and will expire on July 22, 2024, subject to further renewal;

THAT, the hours of the physical culture establishment will be limited to Monday through Friday from 5:30 a.m. to 12:00 a.m.; Saturday from 7:00 a.m. to 9:00 p.m.; and Sunday from 7:00 a.m. to 6:00 p.m.;

THAT all signage at the site will comply with C1 zoning district regulations;

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

THAT a new certificate of occupancy be obtained within six months from the date of this grant, on January 22, 1015;

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 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 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, July 22, 2014.

39-14-BZ

CEQR #14-BSA-125M

APPLICANT – Francis R. Angelino, Esq., for 97-101 Reade LLC and II LLC, owner; Exceed Fitness LLC, lessee.

SUBJECT – Application March 17, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Exceed Fitness*). C6-3A zoning district.

PREMISES AFFECTED – 97 Reade Street, between West Broadway and Church Street, Block 145, Lot 7504, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 5, 2014, acting on DOB Application No. 121911306, reads, in pertinent part:

Proposed physical culture establishment in C6-3A is not permitted as of right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-3A zoning district,

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within the Special Tribeca Mixed Use District and the SoHo Cast Iron Historic District, the operation of a physical culture establishment (“PCE”) in portions of the ground floor, cellar and sub-cellar of a seven-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in the *City Record*, and then to decision on July 22, 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, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Reade Street between West Broadway and Church Street, within a C6-3A zoning district, within the Special Tribeca Mixed Use District and the SoHo Cast Iron Historic District; and

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

WHEREAS, the proposed PCE will occupy 1,977 sq. ft. of floor area on the ground floor, 2,119 sq. ft. of floor space in the cellar, and 1,353 sq. ft. of floor space in the sub-cellar, for a total PCE size of 5,449 sq. ft.; and

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

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:30 a.m. to 9:00 p.m. and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

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

WHEREAS, the Fire Department states that it has no objection to the proposal; and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificates of No Effect, dated February 6, 2014, February 25, 2014 and March 7, 2014; 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 the proposed ADA-compliance and sound attenuation measures; the Board also inquired as to whether trainers will be permitted to access the PCE outside the proposed hours of operation; and

WHEREAS, in response, the applicant confirmed that the PCE will comply with the applicable provisions of the ADA and will have adequate sound attenuation; additionally, the applicant states that trainers will only use

the PCE during the proposed hours of operation; 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 proposed Type II action discussed in the CEQR Checklist, CEQR No. 14-BSA-125M, dated March 17, 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 C6-3A zoning district, within the Special Tribeca Mixed Use District and the SoHo Cast Iron Historic District, the operation of a physical culture establishment (“PCE”) in portions of the ground floor, cellar and sub-cellar of a seven-story mixed residential and commercial building; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 22, 2014” (4) sheets and “Received April 16, 2014” (1) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on July 22, 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 all sound attenuation measures proposed will be installed, maintained and reflected on the Board-approved plans;

THAT the hours of operation for the PCE will be limited to Monday through Friday, from 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.;

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

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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, July 22, 2014.

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

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

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

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

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

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

153-11-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoros Parais, owner.

SUBJECT – Application September 21, 2011 – Reinstatement (§§11-411 & 11-412) to permit the continued operation of an automotive repair use (UG 16B); amendment to enlarge the existing one story building; 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

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

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 a vertical enlargement and conversion of an existing two-story automotive repair facility to a four-story UG 4A House of Worship (*People of Destiny Church*), contrary to coverage ratio (§24-11),. 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

ACTION OF THE BOARD – Laid over to September 23, 2014, at 10 A.M., for continued hearing.

298-13-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Chon, owner.
SUBJECT – Application November 1, 2013 – Special Permit (§73-49) to permit 36 rooftop parking spaces, accessory to an 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

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 16, 2014, at 10 A.M., for decision, hearing closed.

327-13-BZ

APPLICANT – Goldman Harris LLC, for JCWH Coney Island LLC, owner.

SUBJECT – Application December 23, 2014 – Special Permit (§73-44) to reduce the required number of accessory parking spaces from 346 to 272 spaces for a mixed use building containing UG4 health care and UG 6 office uses. C8-2, C2-3/R5 zoning district.

PREMISES AFFECTED – 1504 Coney Island Avenue, aka 1498, 1526, 1528, 1532-1538 Coney Island Avenue, property occupies the northwest corner of Coney Island Avenue and Avenue L. Block 6536, Lot(s) 28, 30, 34, 40, 41, 42, 43, Borough of Brooklyn.

COMMUNITY BOARD # 12BK

ACTION OF THE BOARD – Laid over to September 9, 2014, at 10 A.M., for continued hearing.

27-14-BZ

APPLICANT – Sheldon Lobel, P.C., for 496 Broadway LLC., owner.

SUBJECT – Application February 7, 2014 – Variance (§72-21) to permit a UG 6 retail use on the first floor and cellar, contrary to use regulations (§42-14D(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 496 Broadway, east side of Broadway between Broome Street and Spring Street, Block 483, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to August 19, 2014, at 10 A.M., for decision, hearing closed.

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133-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 175 Father Capodanno Boulevard, Block 3122, Lot 118, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

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

134-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 53 Doty Avenue, Block 3124, Lot 147, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

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

135-14-A

APPLICANT – Department of Housing Preservation and Development.

SUBJECT – Application June 16, 2014 – Waiver of Section 36, Article 3 of the General City Law, property is not fronting a mapped street. R3-1 Zoning District.

PREMISES AFFECTED – 19 Sunnymeade Village, Block 3122, Lot 174, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

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

136-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard 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

THE VOTE TO CLOSE HEARING –

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

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

137-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard 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

THE VOTE TO CLOSE HEARING –

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

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

138-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard 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

THE VOTE TO CLOSE HEARING –

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

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

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139-14-BZ

APPLICANT – Department of Housing Preservation & Development.

SUBJECT – Application June 16, 2014 – Special Permit (§64-92) to waive yard 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

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4

Negative:.....0

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

Jeff Mulligan, Executive Director

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*CORRECTION

The resolution adopted on June 24, 2014, under Calendar No. 279-13-BZ and printed in Volume 99, Bulletin No. 26, is hereby corrected to read as follows:

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 first through fourth 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 Montanez4
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 first through four stories of a proposed 37-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 37-story commercial building is being constructed on the site and will have a total of 231,577 sq. ft. of floor area; and

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

WHEREAS, the PCE will occupy 15,210 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;

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals 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.

The resolution has been amended. Corrected in Bulletin No. 30, Vo. 99, dated July 30, 2014.