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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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# DOCKETS

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New Case Filed Up to July 29, 2014  
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**174-14-BZ**

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**175-14-BZ**

1162 Broadway, East side of Broadway between W 27th Street and W 28th Street, Block 829, Lot(s) 28, Borough of **Manhattan, Community Board: 5**. Variance (§72-21) proposed the construction a new 14-story hotel building for a variance setback and side yard requirements, located with a M1-6 zoning district. M1-6 district.  
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**176-14-BZ**

1981 East 9th Street, East side between Avenue T and Avenue S, Block 7091, Lot(s) 66, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to legalize an existing two family residence to a one family frame residence located in an R5 zoning district. R5 in OPSZ district.  
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**177-14-BZ**

1038 Flatbush Avenue, 180'feet south of intersection of Flatbush Avenue and Regent Place, Block 5125, Lot(s) 60, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-36) to allow a physical culture establishment(PCE) within a portions of an altered building, located within an C4-~~A~~/R6A zoning district. C4-~~A~~/R6A district.  
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**178-14-BZ**

263 McGuinness Boulevard, located at the southeastern intersection Kent Street and McGuinness Boulevard, Block 2559, Lot(s) 32, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) seek a waiver of Section 22-10 ZR to permit a Use Group 6 retail use on the ground floor with accessory cellar storage a proposed four-story, two unit building located with an R6A zoning district. R6A district.  
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**179-14-BZ**

1937 East 14th Street, East side of East 14th Street between Avenue S and Avenue T, Block 7293, Lot(s) 74, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to request a special permit to allow the conversion and enlargement of an existing two family residence to single family residence located in a R5 zoning district. R5 district.  
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**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.**

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# CALENDARS

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**SEPTEMBER 9, 2014, 10:00 A.M.**

**APPEALS CALENDAR**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 9, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**SPECIAL ORDER CALENDAR**

**302-01-BZ**

APPLICANT – Deirdre A. Carson, Esq. for Creston Avenue Realty LLC, owner.

SUBJECT – Application May 28, 2014 - Extension of Time to obtain a Certificate of Occupancy of a previously granted variance (§72-21) for the continued operation of a parking facility accessory to commercial use which expired on December 11, 2013. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, West side of Creston Avenue between East 190th and East 191st Streets. Block 3175, Lot 26, Borough of Bronx.

**COMMUNITY BOARD #7BX**  
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**318-06-BZ**

APPLICANT – Eric Palatnik, LLP for Sun Company Inc. (R&M), owner.

SUBJECT – Application August 9, 2013 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of a automotive service station (UG 16B), which expired on May 22, 2013; Extension of Time to Obtain a Certificate of Occupancy which expired on November 22, 2007; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 49-05 Astoria Boulevard, Noreast corner of Astoria Boulevard and 49th Street. Block 1000, Lot 35, Borough of Queens.

**COMMUNITY BOARD #1Q**  
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**193-12-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for Vornado Realty Trust., owner; Soulcycle 384 Lafayette Street, LLC., lessee.

SUBJECT – Application March 11, 2014 – Amendment to permit the enlargement of a previously approved Special Permit (73-36) for a physical culture establishment (*SoulCycle*). M1-5B zoning district.

PREMISES AFFECTED – 384 Lafayette Street aka 692 Broadway and 2-20 East 4th Street, southwest corner of Lafayette Street and East 4th Street, Block 531m Kit 7501, Borough of Manhattan.

**COMMUNITY BOARD #2M**  
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**19-12-A**

APPLICANT – Law Offices of Marvin B Mitzner, LLC., for 38-30 28th Street, LLC., owner.

SUBJECT – Application May 9, 2014 – Application for an extension of time to complete construction of the building and obtain a Certificate of Occupancy on a previously approved grant granted common law vested right of complete construction and permitting in an M1-3 zoning district. M1-2/R5B (LIC) zoning district.

PREMISES AFFECTED – 38-30 28th Street, west side of 28th Street between 38th and 39th Avenues, Block 386, Lot 27, Borough of Queens.

**COMMUNITY BOARD #1Q**  
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**278-13-A**

APPLICANT – Slater & Beckerman, P.C., for 121 Varick St. Corp., owner.

SUBJECT – Application September 27, 2013 – Appeal of DOB determination that the advertising sign was not established as a lawful non-conforming use .M1-6 SHSD.

PREMISES AFFECTED – 121 Varick Street, southwest corner of Varick Street and Dominick Street, Block 578, Lot 67, Borough of Manhattan.

**COMMUNITY BOARD #2M**  
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**ZONING CALENDAR**

**8-14-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Oleg Saitskiy, owner.

SUBJECT – Application January 16, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (23-141); side yards requirements (23-461) and less than the rear yard requirement (23-47). R3-2 zoning district.

PREMISES AFFECTED – 1824 East 22nd Street, west side of East 22nd Street between Quentin Road and Avenue R, Block 6804, Lot 41, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**  
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**21-14-BZ**

APPLICANT – Eric Palatnik, P.C., for FSJ Realty Group LLL., owner; Crunch Richmond Hill, LLC., lessee.

SUBJECT – Application February 3, 2014 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Crunch Fitness*) contrary to §32-10. C2-4/R6A zoning district.

PREMISES AFFECTED – 115-02 Jamaica Avenue, southeast corner of Jamaica Avenue and 115th Street, Block 9305, Lot(s) 2 and 11, Borough of Queens.

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# CALENDARS

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## COMMUNITY BOARD #9Q

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### 64-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Dov Stern & Goldie Stern, owners.

SUBJECT – Application April 29, 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 yard (ZR §23-461) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1320 East 23rd Street, west side of East 23rd Street between Avenue M and Avenue N, Block 7658, Lot 58, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

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### 123-14-BZ

APPLICANT – Fried Frank Harris Shriver & Jacobson LLP, for 855 MRU LLC., owner.

SUBJECT – Application June 3, 2014 – Special Permit (§73-36) to allow the operation of physical culture establishment in portion of the cellar and first floor of the existing building located within a C6-4X and M1-6 zoning district.

PREMISES AFFECTED – 855 Avenue of the Americas, between 30th Street and 31st Street, Block 806, Lot 34, Borough of Manhattan.

## COMMUNITY BOARD #5M

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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, JULY 29, 2014  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**186-96-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Edward Ivy, owner.

SUBJECT – Application November 27, 2012 – Extension of Term of a previously granted variance (§72-21) for the continued operation of a one story warehouse and office/retail store building (UG 16 & 6), which expired on May 19, 2003; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 145-21/25 Liberty Avenue, northeast corner of Liberty Avenue and Brisbin Street, Block 10022, Lot(s) 1, 20, 24, Borough of Queens.

**COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....4  
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 extend the term of a prior variance; and

WHEREAS, a public hearing was held on this application on March 25, 2014, after due notice by publication in *The City Record*, with continued hearings on April 26, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 29, 2014; and

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

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

WHEREAS, the subject site is located on the northeast corner of Liberty Avenue and Brisbin Street within an R4 zoning district; and

WHEREAS, the site is occupied by three one-story warehouse buildings; and

WHEREAS, the Board has exercised jurisdiction over the site since May 19, 1998, when, under the subject calendar number, the Board granted a variance to permit, on a site within an R4 zoning district, the construction and maintenance of a one-story office/retail building (Use Group 6 and 16), which did not comply with the use regulations, for a term of five years, to expire on May 19, 2003; and

WHEREAS, the approval reflected a one-story building to be divided into three units; however, three attached buildings were constructed with three separate Certificates of Occupancy; and

WHEREAS, Lot 1 was approved for Use Group 6 occupancy, Lots 20 and 24 (formerly Lots 5 and 6, respectively) approved for Use Group 6 or Use Group 16 (warehouse); and

WHEREAS, the applicant now seeks a new term without any expiration; 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

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) eliminate all signage that exceeds C1 zoning district regulations; and (2) eliminate all graffiti; and

WHEREAS, the applicant submitted a sign analysis for each lot and photographs of the existing signage which will be replaced by C1 zoning district compliance and which will be brought into compliance with C1 zoning district regulations during any interim period before the new signs are installed; and

WHEREAS, the applicant submitted photographs which reflect the removal of all graffiti at the site; and

WHEREAS, the Board indicated at hearing that it would not support eliminating the term or a 15-year term; and

WHEREAS, accordingly, the applicant revised the request to seek a ten-year term which would provide greater flexibility than the prior five-year term with respect to negotiating leases with tenants; and

WHEREAS, the applicant notes that despite the lapse in term, there have not been any complaints filed with either the Community Board or DOB and that the subject use is in character with surrounding uses fronting on Liberty Avenue, a wide commercial street with numerous Use Group 6 and Use Group 16 uses; 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 May 19, 1998, to permit the noted extension of term for a period of ten years, *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 February 24, 2014' - (3) sheets; and *on further condition*:

THAT the term will expire on July 29, 2024;

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

THAT all conditions from prior resolutions, including the limitation on uses, not waived herein by the Board remain in effect and will be noted on the Certificate of Occupancy;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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 29, 2014.

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## **47-97-BZ**

APPLICANT – Sheldon Lobel, P.C., for Flatlands 78, L.L.C., owner.

SUBJECT – Application December 13, 2013 – Amendment of a previously approved Variance (§72-21) which permitted construction of a one-story and cellar retail drug store and five smaller stores with accessory parking. The amendment is seeking to remove the twenty-year term restriction imposed by the Board. C2-3/R5D & R5B zoning district.

PREMISES AFFECTED – 7802 Flatlands Avenue, corner and through lot located on the east side of Flatlands Avenue between East 78th Street and East 79th Street, Block 8015, Lot 41, Borough of Brooklyn.

## **COMMUNITY BOARD #18BK**

**ACTION OF THE BOARD** – Application granted on condition.

## **THE VOTE TO GRANT –**

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

Negative:.....0

## **THE RESOLUTION –**

WHEREAS, this is an application for an amendment to a variance to eliminate the term for Use Group 6 retail use at the site; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2014, and then to decision on July 29, 2014; and

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

WHEREAS, Community Board 18, Brooklyn, recommends approval of the request to eliminate the term; and

WHEREAS, the site has frontage on Flatlands Avenue, East 78<sup>th</sup> Street, and East 79<sup>th</sup> Street, located partially within an R5B zoning district and partially within a C2-3(R5D) zoning district; and

WHEREAS, the site is occupied by a one-story building with a drug store and four smaller stores; and

WHEREAS, the Board has exercised jurisdiction over the site since March 24, 1998 when, under the subject

calendar number, the Board granted a variance to permit the construction of a one-story building to be occupied by a drug store and five smaller stores with accessory parking (Use Group 6) in what was then partially within an R5 zoning district and partially within a C2-2 zoning district, for a 20-year term to expire on March 24, 2018; and

WHEREAS, the applicant represents that the DOB-approved plans are consistent with the Board-approved plans associated with the variance and depict a one-story and cellar building with 16,000 sq. ft. of floor area to be occupied by a drug store, five smaller retail stores, and an accessory parking area with 44 spaces and a loading berth; and

WHEREAS, the applicant notes that the prior grant’s resolution erroneously states one large store and six smaller stores, while the DOB plans correctly illustrate the one large store and five smaller stores; and

WHEREAS, the applicant represents that it is unable to locate the Board-approved plans to confirm the error regarding the number of stores; and

WHEREAS, the applicant also notes that of the total of six stores, it has merged two into one store, Flatlands Dental Care (1,941.5 sq. ft. of floor area); the remaining three smaller stores are occupied by Subway, Da Beauty Spa, and Panko Express (750 sq. ft., 966.5 sq. ft., and 916.5 sq. ft., respectfully); and the large store is occupied by Rite Aid drug store; and

WHEREAS, the applicant has submitted plans to reflect the current configuration and asserts that such configuration is in substantial compliance with the variance grant; and

WHEREAS, the applicant notes that in 2009, through the Flatbush Rezoning, the City Planning Commission rezoned the site from partially R5 and partially C2-2 to partially R5B and partially R5D/C2-3 zoning districts; and

WHEREAS, the applicant now seeks to eliminate the term; and

WHEREAS, the applicant requests that the term be eliminated for the following reasons: (1) the lease terms do not coincide with the variance term, which leads to uncertainty and difficulty obtaining leases, which typically last for 20 years for commercial uses; (2) many lessees, such as Rite Aid, prefer a longer lease with multiple options for extension; and (3) there is a hardship in securing leases due to the limited term; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens*, and *amends* the resolution, dated March 24, 1998, to eliminate a term and specifically the March 24, 2018 expiration; *on condition* that all work will substantially conform to drawings filed with this application marked “Received July 28, 2014”-(5) sheets; and *on further condition*:

THAT all conditions from the prior resolutions not specifically waived by the Board remain in effect and will be noted on the Certificate of Occupancy;

THAT this approval is limited to the relief granted by

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 300607840)

Adopted by the Board of Standards and Appeals, July 29, 2014.

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## 24-03-BZ

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

SUBJECT – Application February 26, 2014 – Extension of Term (§11-411) of a previously approved variance which permitted a gasoline service station and an automobile repair facility (UG 16) which expired on July 15, 2013; Waiver of the Rules. C1-2/R2A zoning district.

PREMISES AFFECTED – 178-02 Union turnpike, intersection formed by Union Turnpike and Surrey Parcel, Block 7227, Lot 29, Borough of Queens.

### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term for a variance permitting an automotive service station, which expired on July 15, 2013; and

WHEREAS, a public hearing was held on this application on June 17, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2014, and then to decision on July 29, 2014; and

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

WHEREAS, the subject site is located on the south side of Union Turnpike at the intersection with Surrey Place, within a C1-2(R2A) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since on July 23, 1946, under BSA Cal. No. 624-39-BZ, it granted an application to permit a gasoline service station, lubricatorium, and car wash in a business use district; and

WHEREAS, the grant was extended and amended at various times; on July 15, 2013, the Board reinstated the grant, under the subject calendar number for a term of ten years, to expire on July 15, 2013; and

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

WHEREAS, at hearing, the Board raised concerns

about: (1) the sufficiency of the screening along the rear lot line; (2) the presence of a storage shed; and (3) the condition of the landscaping; and

WHEREAS, in response, the applicant stated: (1) that it would plant four evergreen trees in the southeast corner of the site to provide a noise/screening buffer in addition to the existing wall and fence along the rear lot line; (2) the shed, which is not visible to patrons and is screened by an opaque fence above a masonry wall, is required by the service station for storage of products due to the absence of storage space in the building; photos depicting the removal of the barbed wire; and (3) it will replace several dead trees along the site’s eastern lot line as well as replant grass in the southeastern corner; and

WHEREAS, pursuant to ZR § 11-411, the Board may, in appropriate cases, allow an extension of the term of a pre-1961 variance; and

WHEREAS, the Board has determined that the evidence in the record supports the finding required to be made under ZR § 11-411.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 15, 2003, so that as amended the resolution reads: “to permit the extension of the term of the variance for an additional ten years from July 15, 2013 expiring on July 15, 2023; *on condition on condition* that all work will substantially conform to drawings, filed with this application marked “Received July 1, 2014” –(6) sheets; and on further condition:

THAT the term of the variance will expire on July 15, 2023;

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

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

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); 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 29, 2014.

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## 245-32-BZ

APPLICANT – Sion Hourizadeh, for Michael Raso, owner.

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

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## COMMUNITY BOARD #9Q

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

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### 427-70-BZ

APPLICANT – Carl A. Sulfaro, Esq. for Beach Channel, LLC, owner; Masti, Inc. lessee.

SUBJECT – Application May 21, 2012 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B). Amendment seeks to legalize a one-story accessory convenience store. C2-2/R4 zoning district.

PREMISES AFFECTED – 38-01 Beach Channel Drive, southwest corner of Beach 38th Street and Beach Channel Drive. Block 15828, Lot 30. Borough of Queens.

## COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

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

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

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### 751-78-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Baron Properties III, Inc., owner.

SUBJECT – Application October 1, 2013 – Extension of Term of a previously granted under variance (§72-21) for the continued operation of a UG16 Automotive Repair Shop (*Genesis Auto Town*) which expired on January 23, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2001; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 200-15 Northern Boulevard, northwest corner of intersection of Northern Boulevard and 201st Street, Block 6261, Lot 30, Borough of Queens.

## COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

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

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### 140-92-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application June 12, 2014 – Extension of Time to Complete Construction of a previously granted Variance (ZR 72-21) for the enlargement of an existing school (UG3) which expired on January 26, 2014. M1-2/R5D zoning district.

PREMISES AFFECTED – 39-21 Crescent Street, southerly

side of Crescent Street between 39th Avenue and 40th Avenue, Block 396, Lot(s) 10 and 36, Borough of Queens.

## COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

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

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

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### 72-11-BZ

APPLICANT – Walter T. Gorman, P.E., for Tanner and Rothafel Partnership, owner; Lukoil, lessee.

SUBJECT – Application June 30, 2014 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance for the continued operation of an Automotive Service Station (Getty) which expired on October 25, 2012; Waiver of the Rules. C1-3/R6B zoning district.

PREMISES AFFECTED – 101-06 Astoria Boulevard, southeast corner of 101st Street, Block 1688, Lot 30, Borough of Queens.

## COMMUNITY BOARD #3Q

THE VOTE TO CLOSE HEARING –

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

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

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## APPEALS CALENDAR

### 80-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district.

PREMISES AFFECTED – 335 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 47, 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 Montanez .....4  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, acting on Department of Buildings Application No. 120615218 read, in pertinent part:

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- (4) Cellar must have 2-hour fire separation from other floors. Ceiling and stairs must be fire rated. [MDL 143] . . .
- (8) Interior living rooms require adequate light and air. A number of rooms, including those at the top floor with skylights, are indicated as interior windowless rooms contrary to MDL 30. [MDL 30]
- (9) BSA granted a waiver of MDL 143 in total Plans must be prepared to carefully demonstrate compliance with the stipulation proposed to mitigate this requirement. Present to the department. [MDL 143]
- (10) BSA granted that fire escapes may be used as 2<sup>nd</sup> means of egress from the dwelling units. Plans shall indicate the design and construction of same including compliance with 4a-c for construction and support, 2a for the fire escape in the interior court at house #333, size height and construction of the drop ladder per 5a-c. [MDL 145 and 53]
- (11) Plans must demonstrate compliance with section 1 through 5 including stairway, platform, riser tread, and handrail dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 148, 1 through 5]
- (12) Plans must demonstrate compliance with sections 1, 3, 4, 5, 6 including public hall windows opening directly to exterior, fire proof construction and dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 149]
- (13) Plans must demonstrate compliance with sections 1 through 7 including details indicating the design of the fire-stopping, edge relief, fire resistance rated fill and coverings. [MDL 152, 1 through 7]
- (14) The proposed fire passages from the rear yards to the front of each building are contrary to C26-273(d).7, in that, there is no access from the lower termination of the rear fire escape to the street through a fire proof passage independent of the first means of egress. Design and construction of such passage shall be carefully detailed to indicate fire resistance rating, access and structural support. The fire escape at house #333 does not have access to a passage at 333. [MDL 53; C26-273(d).7]
- (15) BSA approved plans dated July 31, 2012 show winder stairs at house number 329 contrary to submitted plans dated July 17, 2013. Please resolve. [MDL 52.4]; and Proposed increase in bulk and/or height exceeds threshold of 5 stories for non-fireproof tenement.

[MDL 211.1]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, for an amendment to a prior approval to vary the MDL (the “2012 Approval”); and

WHEREAS, the applicant seeks to vary MDL § 211 to allow for the proposed one-story vertical enlargement of the subject five-story residential building; however, the analysis addresses waiver to MDL §§ 30, 52, 53, 145, 148, 149 and 152; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 84-11-A, 85-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with continued hearings on March 25, 2014, April 29, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 29, 2014; and

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

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application, citing concerns about (1) the self-creation of the hardships related to MDL non-compliance by choosing to enlarge the building; (2) a blanket waiver of all objections, rather than an individual analysis of each requested waiver; (3) whether the Board has the authority to waive non-compliance with light and air requirements; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application, which reiterates Council Member Mendez’ concerns including that there be individual assessment of MDL non-compliance rather than a single waiver; and

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

WHEREAS, the subject site is located on the north side of East 9<sup>th</sup> Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9<sup>th</sup> Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space and one residential unit on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9<sup>th</sup> Street (the “329 Building”), 333 East 9<sup>th</sup> Street (the “333 Building”), and 335 East 9<sup>th</sup> Street (the “335 Building”), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

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WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,625 sq. ft. and a height of 54'-3"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 931.8 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to ten; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,625 sq. ft. to 8,556.8 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,422 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)), and will increase the height of the subject building from 54'-3" to 67'-3" (the maximum permitted height is 75'-0"); and

WHEREAS, on September 11, 2012, the Board approved a prior version of the application for waiver to MDL §§ 51(6), 148(3), 149(2), 143, and 146 (the "2012 Approval"); and

WHEREAS, however, DOB subsequently audited the application and issued the noted supplemental objections; and

WHEREAS, the applicant asserts that the objections associated with the 2012 Approval and the initial (November 21, 2013) objections associated with the subject amendment application were issued under the assumption that the buildings are Hereafter Erected Class A (HAEA) buildings; and

WHEREAS, during the hearing process, the applicant adopted the position that the building is actually a tenement and returned to DOB to obtain a single objection for non-compliance with MDL § 211 (Article 7: Height and Bulk) for tenement buildings; and

WHEREAS, the applicant states that by requesting a variance of MDL § 211, it is not seeking a waiver of every provision that would be applicable to strictly comply with MDL § 211 but, rather, that the Board vary the requirements of MDL § 211 by specifying which provisions it cannot comply with in exchange for proposed safety measures that maintain the spirit and intent of the MDL; and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the MDL non-compliances waived under the 2012 Approval and the supplemental conditions described below; and

WHEREAS, initially, a question arose about whether the Board had jurisdiction to waive non-compliance with light and air provisions (MDL § 30) since light and air is not one of the enumerated conditions at MDL § 310(2)(a); and

WHEREAS, the Board considered the jurisdictional

question and concluded that the request to increase the height triggers the specific non-compliances and thus the Board's waiver authority under MDL § 310(2)(a)(1) allows for a waiver of MDL § 211 (Height and Bulk) and the associated enumerated non-compliances DOB identified during its audit; and

WHEREAS, however, the Board directed the applicant to address all of the DOB objections so that it could appropriately evaluate whether the MDL § 310(a) findings are met; and

WHEREAS, at the Board's request, the applicant addressed each of the specific DOB objections to supplement its assertion that the Board had jurisdiction over each non-compliance individually and through MDL § 211; and

WHEREAS, MDL § 211 (Height and Bulk) (1) states that "[e]xcept as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date;" and

WHEREAS, accordingly, the applicant addressed all of the objections DOB raised; and

WHEREAS, as to MDL § 30 (Lighting and Ventilation of Rooms), the applicant notes that interior living rooms require adequate light and air and a number of rooms are indicated as interior windowless rooms contrary to MDL § 30; and

WHEREAS, the applicant states that, through the addition of skylights, the plans for the enlargement have been amended to satisfy this requirement; and

WHEREAS, however, with respect to the existing floors, windowless rooms are an existing non-complying condition that is unaffected by the addition of a story, and, should be permitted to remain; and

WHEREAS, the applicant states that compliance with MDL § 30 would require the intrusion into and reconfiguration of occupied apartments and the reconstruction and partitioning of tenant-occupied space, which the Board found by the 2012 Approval creates a practical difficulty; and

WHEREAS, specifically, in the 333 Building and the 335 Building, the building depth is 56'-2" so that there could only be one room facing the front at a maximum depth of 30 feet and a super kitchen facing the rear with a depth of 26'-2"; the reconfiguration would result in the loss of the bedrooms; and

WHEREAS, the applicant notes that the subject building has a depth of 50'-1" so that there would be a loss of the living room or one bedroom; and

WHEREAS, the 329 Building includes a rooms that exceed the maximum permitted depth of 30'-0"; and

WHEREAS, the applicant asserts that the 2012 Approval found practical difficulty in complying with MDL requirements that necessitated making changes to spaces in the existing building that are tenant-occupied or would be affected

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by tenancies; and

WHEREAS, the applicant notes that in lieu of strict compliance with MDL § 30, mechanical ventilation, hardwired smoke detectors and a sprinkler system will be installed in each apartment; and

WHEREAS, as to MDL § 148 (Public Stairs), subsection (1) requires that all stairs be constructed as fireproof; subsection (2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; subsection (3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and subsection (4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback; and

WHEREAS, the applicant asserts that the Board-approved plans associated with the 2012 Approval show the existing stairwell and common area configuration and the 2012 Approval identifies the practical difficulty of removing and replacing core elements of the buildings, such as public stairs, stairwells and platforms; and

WHEREAS, the applicant asserts that compliance with MDL § 148 would require the removal and replacement of the stairs, landings and public hallways (and creating a separation), which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, the applicant assert that compliance with MDL § 148(1) would require that all stairs be constructed as fireproof stairs and to construct fire proof stairs would require removing and replacing the entire stairwell; and

WHEREAS, the applicant states that this would require extensive demolition and reconstruction of the new stairs as well as vacating the building since the stairs are used for egress; and

WHEREAS, the applicant asserts that compliance with MDL § 148(2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; and

WHEREAS, the applicant asserts that to provide landings at all levels at a width of 3'-6" would require demolishing existing walls of tenant occupied units and reconfiguring public hallways; and

WHEREAS, the applicant asserts that compliance with MDL § 148(3) requires that all stairs be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, the applicant notes that a practical difficulty in complying with MDL § 148(3) was found by the 2012 Approval; and

WHEREAS, the applicant asserts that compliance with MDL § 148(4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback and to provide light and ventilation at every stair at every story would require reconfiguring the current tenant occupied apartments and

extending the public hallways, which would entail replacing the core elements of the buildings; and

WHEREAS, the applicant notes that the 2012 Approval provided waiver of MDL § 148(3) and noted it is a practical difficulty to comply with MDL § 148 subsections 1-4 because they require removing and replacing the buildings' core structure since the buildings are wood frame structures. All stairs, landings and public hallways would have to be removed and replaced; and

WHEREAS, the applicant asserts that similar to MDL § 148, strict compliance with MDL § 149(1), (2) and (3) would require the removal and replacement of the stairs, landings and public hallways, which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, further, the applicant notes that in the 2012 Approval the Board considered the applicant's cost analysis for removing such core elements of the buildings; and

WHEREAS, the applicant notes that as part of the 2012 application, it provided a cost analysis for removing such core elements of the buildings and the Board accepted the cladding of stairs with gypsum board underneath and fire retardant materials on the existing risers and treads, the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor, the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells, and the installation of sprinklers; and

WHEREAS, the applicant asserts that MDL § 149 (Public Halls) (1) requires that every public hall must have a width of at least three feet; and

WHEREAS, the applicant asserts that compliance would require removing and replacing stairs, public hallways and platforms and intrusion into tenant occupied apartments to meet the requirement; and

WHEREAS, the applicant asserts that MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, the applicant represents that compliance would require removing and replacing the occupied buildings' core structure since the buildings are wood frame structures; and

WHEREAS, the applicant asserts that MDL § 149(3) requires that every public hall have at least one window opening directly upon a street or upon a lawful yard or court; and

WHEREAS, the applicant represents that compliance would require intrusion into occupied apartments and a total reconfiguration of the building core, which is practically impossible; and

WHEREAS, the applicant asserts that the 2012 Approval notes that creating a vestibule, which would require intrusion into occupied apartments, constitutes a practical difficulty; and where compliance would necessitate narrowing the existing living rooms on each apartment on floors two through five to accommodate the extended hallway landing and reconstructing the floors and ceilings to be made fire-proof, a practical difficulty exists; and

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WHEREAS, the applicant asserts that in lieu of such compliance, under the 2012 Approval, the Board accepted the installation of fire-proof self-closing doors for the entrance to each apartment, the installation of hard-wired smoke detectors in all residential units, and sprinklers; and

WHEREAS, the applicant asserts that MDL § 152 (Firestopping) requirements necessitate substantial reconstruction and rehabilitation of spaces in the existing building and, additionally, in spaces that are tenant occupied or would be affected by tenancies; and

WHEREAS, the applicant represents that strict compliance with MDL § 152 (1), (2), (3), (4), (6) and (7) is not possible since it would require the substantial reconstruction that would occur in existing occupied apartments; and

WHEREAS, the applicant submitted a letter from an architect consultant detailing the practical difficulty in complying with each subsection of MDL §152; and

WHEREAS, as to MDL § 152(1), every wall where wooden furring is used and every course of masonry from the underside to the top of any floor beams will project a distance of at least two inches beyond each face of the wall that is not on the outside of the dwelling; and whenever floor beams run parallel to a wall and wooden furring is used, every such beam must always be kept at least two inches away from the wall, and the space between the beams and the wall shall be built up solidly with brickwork from the underside to the top of the floor beams; and

WHEREAS, the applicant states that compliance would require removing and replacing the buildings' structural elements; demolishing and replacing the flooring system and all perimeter walls; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(2), whenever a wall is studded off, the space between an inside face of the wall and the studding at any floor level must be fire-stopped; every space between beams directly over a studded-off space must be fire-stopped by covering the bottom of the beams with metal lath and plaster and placing a loose fill of incombustible material at least four inches thick on the plaster between the beams, or hollow-burned clay tile or gypsum plaster partition blocks, at least four inches thick in either case and supported by cleats, will be used to fill the spaces between beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the buildings' structural elements; removing and replacing ceilings because each wooden wall stud has a wooden top and bottom plate; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(3), the applicant notes that it requires that partitions which are not parallel with the wood floor beams and which separate one apartment or suite from another or any part of an apartment or suite from a public hall or other part of the dwelling outside the apartment or suite must be filled in solidly with incombustible material between the floor beams from the plate of the partition below to the full depth of the floor beams; and

WHEREAS, the applicant represents that compliance

would require removing and replacing the apartments' and public hall elements and because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, as to MDL § 152(4), the applicant notes that it requires that if a dwelling is within ten feet of another non-fireproof building or of a side lot line, it must have its eaves or cornices built up solidly with masonry; and

WHEREAS, the applicant asserts that compliance would require removing and replacing each front cornice, all of which are independent from each other and solidly blocked at the ends of each property line; and

WHEREAS, as to MDL § 152(6), the applicant notes that it requires that every space between stair carriages of any non-fireproof stair be fire-stopped by a header beam at top and bottom; where a stair run is not all in one room or open space, the stair carriages must have an intermediate firestop, so located as to cut off communication between portions of the stair in different rooms or open spaces; and the underside and stringers of every unenclosed stair of combustible material must be fire-retarded; and

WHEREAS, the applicant represents that compliance would require removing and replacing each primary stair because the structural members of the existing stairwells are wooden and the tenant occupied apartments would have to be vacated during the demolition and construction of the buildings' primary means of egress; and

WHEREAS, as to MDL § 152(7), the applicant notes that it requires that all partitions required to be fire-retarded be fire-stopped with incombustible material at floors, ceilings and roofs; fire-stopping over partitions must extend from the ceiling to the underside of any roofing above; and any space between the top of a partition and the underside of roof boarding must be completely fire-stopped; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and, because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, in conclusion, the applicant asserts that compliance with MDL § 152 is not possible since it would require substantial reconstruction of building elements and reconstruction of the common spaces and means of egress; and

WHEREAS, the applicant asserts that in lieu of strict compliance, it proposes fire-safety measures formerly accepted by the Board, including the installation of sprinklers throughout the entire building; and

WHEREAS, at hearing, a commissioner raised concern

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about whether the proposed firestopping sealant was appropriate for wood-frame buildings and whether the building would be entirely sprinklered; and

WHEREAS, in response, the applicant revised the plans to reflect the correct sealant – Blaze Stop WF300 Intumescent Firestop Caulk – which is used for wood joists, and sprinklers throughout the building, including within each unit; and

WHEREAS, additionally, at hearing, another commissioner who was not satisfied that sufficient fire safety measures are proposed, specifically that there was not a basis to waive MDL § 152 (Fire-stopping) referred to and compared the application to the application and DOB approvals of fire safety measures for 515 East 5<sup>th</sup> Street (initially approved by DOB absent jurisdiction and not yet approved by the Board); and

WHEREAS, the commissioner indicated that the sprinkler design must satisfy all Fire and Building Code requirements; and

WHEREAS, in response, the applicant notes the following distinctions: (1) the East 5<sup>th</sup> Street proposal reflects the full demolition of the interior apartments, which allows for the introduction of additional measures compared to the subject building which does not propose a gut rehabilitation and complete demolition of apartments; (2) the construction notes on the East 5<sup>th</sup> Street plans refer to MDL § 241 which is not one of the noted objections in the subject application; and (3) the construction notes reference Building Code § 27-3459 (formerly C26-504.7) which exempts certain sprinklered areas from the fire-stopping requirement and is not being sought to waive; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed more than a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the Board notes that the new construction will comply with light and air requirements but that the existing windowless rooms will remain as they have existed; and

WHEREAS, the applicant states that the requested variance of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant states that it proposes the following fire safety measures: (1) installation of non-combustible concrete floors in the first floor public hallway; (2) installation of new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) addition of two layers of 5/8-inch gypsum board to

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the walls in the halls and stairwells; (6) installation of fireproof self-closing doors for each dwelling unit; (7) addition of fire sprinklers throughout the whole building (including sprinkler in apartments); (8) installation of hard-wired smoke detectors in all residential units; (9) installation of new fire escapes at the rear of the 333 Building and 335 Building; and (10) installation of fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, based on the above, the Board finds that will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the Board's 2012 Approval, variance to the requirements of MDL §§ 51(6), 143, 146, 148(3), and 149(2) and associated conditions remains and it is not disturbed; and

WHEREAS, the applicant notes that it has eliminated the proposed dormers from the plans and added skylights since the 2012 Approval; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decisions of the Manhattan Borough Commissioner, dated November 21, 2013

and March 10, 2014, are modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 22, 2014"-(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 Department of Buildings objections related to the MDL and does not address any other non-compliance, including any which may exist pursuant to the Zoning Resolution, Building Code, or Housing Maintenance Code;

THAT fire safety measures not limited to the following will be installed and maintained: (1) non-combustible concrete floors in the first floor public hallway; (2) new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) two additional layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) two additional layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) fireproof self-closing doors for each dwelling unit; (7) fire sprinklers throughout the whole building; (8) hard-wired smoke detectors in all residential units; (9) new fire escapes at the rear of the 333 Building and 335 Building; and (10) fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans;

THAT DOB review and approve sprinkler location and number in accordance with the Building Code and Fire Code requirements for full sprinklering of a residential building including within each unit and all public spaces, prior to the issuance of any permits;

THAT fire safety measures associated with the 2012 Approval will be installed and maintained;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

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

THAT the Department of Buildings must ensure compliance with all 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 29, 2014.

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## 84-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district. PREMISES AFFECTED – 333 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 45, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative: Commissioner Montanez.....1

**THE RESOLUTION** –

WHEREAS, the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, acting on Department of Buildings Application No. 120615192 read, in pertinent part:

- (4) Cellar must have 2-hour fire separation from other floors. Ceiling and stairs must be fire rated. [MDL 143] . . .
- (8) Interior living rooms require adequate light and air. A number of rooms, including those at the top floor with skylights, are indicated as interior windowless rooms contrary to MDL 30. [MDL 30]
- (9) BSA granted a waiver of MDL 143 in total. Plans must be prepared to carefully demonstrate compliance with the stipulation proposed to mitigate this requirement. Present to the department. [MDL 143]
- (10) BSA granted that fire escapes may be used as 2<sup>nd</sup> means of egress from the dwelling units. Plans shall indicate the design and construction of same including compliance with 4a-c for construction and support, 2a for the fire escape in the interior court at house #333, size height and construction of the drop ladder per 5a-c. [MDL 145 and 53]
- (11) Plans must demonstrate compliance with section 1 through 5 including stairway, platform, riser tread, and handrail dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 148, 1 through 5]
- (12) Plans must demonstrate compliance with sections 1, 3, 4, 5, 6 including public hall windows opening directly to exterior, fire proof construction and dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 149]
- (13) Plans must demonstrate compliance with sections 1 through 7 including details indicating the design of the fire-stopping, edge relief, fire resistance rated fill and coverings. [MDL 152, 1 through 7]
- (14) The proposed fire passages from the rear yards to the front of each building are contrary to C26-273(d).7, in that, there is no access from the lower termination of the rear fire escape to the street through a fire proof passage independent of the first means of egress. Design and construction

of such passage shall be carefully detailed to indicate fire resistance rating, access and structural support. The fire escape at house #333 does not have access to a passage at 333. [MDL 53; C26-273(d).7]

- (15) BSA approved plans dated July 31, 2012 show winder stairs at house number 329 contrary to submitted plans dated July 17, 2013. Please resolve. [MDL 52.4]; and

Proposed increase in bulk and/or height exceeds threshold of 5 stories for non-fireproof tenement. [MDL 211.1]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, for an amendment to a prior approval to vary the MDL (the “2012 Approval”); and

WHEREAS, the applicant seeks to vary MDL § 211 to allow for the proposed one-story vertical enlargement of the subject five-story residential building; however, the analysis addresses waiver to MDL §§ 30, 52, 53, 145, 148, 149 and 152; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 85-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with continued hearings on March 25, 2014, April 29, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 29, 2014; and

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

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application, citing concerns about (1) the self-creation of the hardships related to MDL non-compliance by choosing to enlarge the building; (2) a blanket waiver of all objections, rather than an individual analysis of each requested waiver; and (3) whether the Board has the authority to waive non-compliance with light and air requirements; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application, which reiterates Council Member Mendez’ concerns including that there be individual assessment of MDL non-compliance rather than a single waiver; and

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

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9<sup>th</sup> Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

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WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space and one residential unit on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9<sup>th</sup> Street (the “329 Building”), 331 East 9<sup>th</sup> Street (the “331 Building”), and 335 East 9<sup>th</sup> Street (the “335 Building”), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,011 sq. ft. and a height of 54’-3””; there is also a one-story portion and a three-story portion of the building which result in a total floor area of 10,102.5 sq. ft. on the lot; and

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 931.8 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to ten; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,011.1 sq. ft. to 7,942.9 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,422 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)), and will increase the height of the subject building from 54’-3” to 67’-3” (the maximum permitted height is 75’-0”); and

WHEREAS, on September 11, 2012, the Board approved a prior version of the application for waiver to MDL §§ 51(6), 148(3), 149(2), 143, and 146 (the “2012 Approval”); and

WHEREAS, however, DOB subsequently audited the application and issued the noted supplemental objections; and

WHEREAS, the applicant asserts that the objections associated with the 2012 Approval and the initial (November 21, 2013) objections associated with the subject amendment application were issued under the assumption that the buildings are Hereafter Erected Class A (HAEA) buildings; and

WHEREAS, during the hearing process, the applicant adopted the position that the building is actually a tenement and returned to DOB to obtain a single objection for non-compliance with MDL § 211 (Article 7: Height and Bulk) for tenement buildings; and

WHEREAS, the applicant states that by requesting a variance of MDL § 211, it is not seeking a waiver of every provision that would be applicable to strictly comply with MDL § 211 but, rather, that the Board vary the requirements of MDL § 211 by specifying which provisions it cannot

comply with in exchange for proposed safety measures that maintain the spirit and intent of the MDL; and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the MDL non-compliances waived under the 2012 Approval and the supplemental conditions described below; and

WHEREAS, initially, a question arose about whether the Board had jurisdiction to waive non-compliance with light and air provisions (MDL § 30) since light and air is not one of the enumerated conditions at MDL § 310(2)(a); and

WHEREAS, the Board considered the jurisdictional question and concluded that the request to increase the height triggers the specific non-compliances and thus the Board’s waiver authority under MDL § 310(2)(a)(1) allows for a waiver of MDL § 211 (Height and Bulk) and the associated enumerated non-compliances DOB identified during its audit; and

WHEREAS, however, the Board directed the applicant to address all of the DOB objections so that it could appropriately evaluate whether the MDL § 310(a) findings are met; and

WHEREAS, at the Board’s request, the applicant addressed each of the specific DOB objections to supplement its assertion that the Board had jurisdiction over each non-compliance individually and through MDL § 211; and

WHEREAS, MDL § 211 (Height and Bulk) (1) states that “[e]xcept as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date;” and

WHEREAS, accordingly, the applicant addressed all of the objections DOB raised; and

WHEREAS, as to MDL § 30 (Lighting and Ventilation of Rooms), the applicant notes that interior living rooms require adequate light and air and a number of rooms are indicated as interior windowless rooms contrary to MDL § 30; and

WHEREAS, the applicant states that, through the addition of skylights, the plans for the enlargement have been amended to satisfy this requirement; and

WHEREAS, however, with respect to the existing floors, windowless rooms are an existing non-complying condition that is unaffected by the addition of a story, and, should be permitted to remain; and

WHEREAS, the applicant states that compliance with MDL § 30 would require the intrusion into and reconfiguration of occupied apartments and the reconstruction and partitioning of tenant-occupied space, which the Board found by the 2012 Approval creates a practical difficulty; and

WHEREAS, specifically, in the 333 Building and the

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335 Building, the building depth is 56'-2" so that there could only be one room facing the front at a maximum depth of 30 feet and a super kitchen facing the rear with a depth of 26'-2"; the reconfiguration would result in the loss of the bedrooms; and

WHEREAS, the applicant notes that the subject building has a depth of 50'-1" so that there would be a loss of the living room or one bedroom; and

WHEREAS, the 329 Building includes a rooms that exceed the maximum permitted depth of 30'-0"; and

WHEREAS, the applicant asserts that the 2012 Approval found practical difficulty in complying with MDL requirements that necessitated making changes to spaces in the existing building that are tenant-occupied or would be affected by tenancies; and

WHEREAS, the applicant notes that in lieu of strict compliance with MDL § 30, mechanical ventilation, hardwired smoke detectors and a sprinkler system will be installed in each apartment; and

WHEREAS, as to MDL § 148 (Public Stairs), subsection (1) requires that all stairs be constructed as fireproof; subsection (2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; subsection (3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and subsection (4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback; and

WHEREAS, the applicant asserts that the Board-approved plans associated with the 2012 Approval show the existing stairwell and common area configuration and the 2012 Approval identifies the practical difficulty of removing and replacing core elements of the buildings, such as public stairs, stairwells and platforms; and

WHEREAS, the applicant asserts that compliance with MDL § 148 would require the removal and replacement of the stairs, landings and public hallways (and creating a separation), which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, the applicant assert that compliance with MDL § 148(1) would require that all stairs be constructed as fireproof stairs and to construct fire proof stairs would require removing and replacing the entire stairwell; and

WHEREAS, the applicant states that this would require extensive demolition and reconstruction of the new stairs as well as vacating the building since the stairs are used for egress; and

WHEREAS, the applicant asserts that compliance with MDL § 148(2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; and

WHEREAS, the applicant asserts that to provide landings at all levels at a width of 3'-6" would require demolishing existing walls of tenant occupied units and

reconfiguring public hallways; and

WHEREAS, the applicant asserts that compliance with MDL § 148(3) requires that all stairs be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, the applicant notes that a practical difficulty in complying with MDL § 148(3) was found by the 2012 Approval; and

WHEREAS, the applicant asserts that compliance with MDL § 148(4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback and to provide light and ventilation at every stair at every story would require reconfiguring the current tenant occupied apartments and extending the public hallways, which would entail replacing the core elements of the buildings; and

WHEREAS, the applicant notes that the 2012 Approval provided waiver of MDL § 148(3) and noted it is a practical difficulty to comply with MDL §148 subsections 1-4 because they require removing and replacing the buildings' core structure since the buildings are wood frame structures. All stairs, landings and public hallways would have to be removed and replaced; and

WHEREAS, the applicant asserts that similar to MDL § 148, strict compliance with MDL § 149(1), (2) and (3) would require the removal and replacement of the stairs, landings and public hallways, which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, further, the applicant notes that in the 2012 Approval the Board considered the applicant's cost analysis for removing such core elements of the buildings; and

WHEREAS, the applicant notes that as part of the 2012 application, it provided a cost analysis for removing such core elements of the buildings and the Board accepted the cladding of stairs with gypsum board underneath and fire retardant materials on the existing risers and treads, the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor, the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells, and the installation of sprinklers; and

WHEREAS, the applicant asserts that MDL § 149 (Public Halls) (1) requires that every public hall must have a width of at least three feet; and

WHEREAS, the applicant asserts that compliance would require removing and replacing stairs, public hallways and platforms and intrusion into tenant occupied apartments to meet the requirement; and

WHEREAS, the applicant asserts that MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, the applicant represents that compliance would require removing and replacing the occupied buildings' core structure since the buildings are wood frame structures; and

WHEREAS, the applicant asserts that MDL § 149(3) requires that every public hall have at least one window

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opening directly upon a street or upon a lawful yard or court; and

WHEREAS, the applicant represents that compliance would require intrusion into occupied apartments and a total reconfiguration of the building core, which is practically impossible; and

WHEREAS, the applicant asserts that the 2012 Approval notes that creating a vestibule, which would require intrusion into occupied apartments, constitutes a practical difficulty; and where compliance would necessitate narrowing the existing living rooms on each apartment on floors two through five to accommodate the extended hallway landing and reconstructing the floors and ceilings to be made fire-proof, a practical difficulty exists; and

WHEREAS, the applicant asserts that in lieu of such compliance, under the 2012 Approval, the Board accepted the installation of fire-proof self-closing doors for the entrance to each apartment, the installation of hard-wired smoke detectors in all residential units, and sprinklers; and

WHEREAS, the applicant asserts that MDL § 152 (Firestopping) requirements necessitate substantial reconstruction and rehabilitation of spaces in the existing building and, additionally, in spaces that are tenant occupied or would be affected by tenancies; and

WHEREAS, the applicant represents that strict compliance with MDL § 152 (1), (2), (3), (4), (6) and (7) is not possible since it would require the substantial reconstruction that would occur in existing occupied apartments; and

WHEREAS, the applicant submitted a letter from an architect consultant detailing the practical difficulty in complying with each subsection of MDL § 152; and

WHEREAS, as to MDL § 152(1), every wall where wooden furring is used and every course of masonry from the underside to the top of any floor beams will project a distance of at least two inches beyond each face of the wall that is not on the outside of the dwelling; and whenever floor beams run parallel to a wall and wooden furring is used, every such beam must always be kept at least two inches away from the wall, and the space between the beams and the wall shall be built up solidly with brickwork from the underside to the top of the floor beams; and

WHEREAS, the applicant states that compliance would require removing and replacing the buildings' structural elements; demolishing and replacing the flooring system and all perimeter walls; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(2), whenever a wall is studded off, the space between an inside face of the wall and the studding at any floor level must be fire-stopped; every space between beams directly over a studded-off space must be fire-stopped by covering the bottom of the beams with metal lath and plaster and placing a loose fill of incombustible material at least four inches thick on the plaster between the beams, or hollow-burned clay tile or gypsum plaster partition blocks, at least four inches thick in either case and supported by cleats, will be used to fill the spaces between beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the buildings' structural elements; removing and replacing ceilings because each wooden wall stud has a wooden top and bottom plate; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(3), the applicant notes that it requires that partitions which are not parallel with the wood floor beams and which separate one apartment or suite from another or any part of an apartment or suite from a public hall or other part of the dwelling outside the apartment or suite must be filled in solidly with incombustible material between the floor beams from the plate of the partition below to the full depth of the floor beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, as to MDL § 152(4), the applicant notes that it requires that if a dwelling is within ten feet of another non-fireproof building or of a side lot line, it must have its eaves or cornices built up solidly with masonry; and

WHEREAS, the applicant asserts that compliance would require removing and replacing each front cornice, all of which are independent from each other and solidly blocked at the ends of each property line; and

WHEREAS, as to MDL § 152(6), the applicant notes that it requires that every space between stair carriages of any non-fireproof stair be fire-stopped by a header beam at top and bottom; where a stair run is not all in one room or open space, the stair carriages must have an intermediate firestop, so located as to cut off communication between portions of the stair in different rooms or open spaces; and the underside and stringers of every unenclosed stair of combustible material must be fire-retarded; and

WHEREAS, the applicant represents that compliance would require removing and replacing each primary stair because the structural members of the existing stairwells are wooden and the tenant occupied apartments would have to be vacated during the demolition and construction of the buildings' primary means of egress; and

WHEREAS, as to MDL § 152(7), the applicant notes that it requires that all partitions required to be fire-retarded be fire-stopped with incombustible material at floors, ceilings and roofs; fire-stopping over partitions must extend from the ceiling to the underside of any roofing above; and any space between the top of a partition and the underside of roof boarding must be completely fire-stopped; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and, because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

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WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, in conclusion, the applicant asserts that compliance with MDL § 152 is not possible since it would require substantial reconstruction of building elements and reconstruction of the common spaces and means of egress; and

WHEREAS, the applicant asserts that in lieu of strict compliance, it proposes fire-safety measures formerly accepted by the Board, including the installation of sprinklers throughout the entire building; and

WHEREAS, at hearing, a commissioner raised concern about whether the proposed firestopping sealant was appropriate for wood-frame buildings and whether the building would be entirely sprinklered; and

WHEREAS, in response, the applicant revised the plans to reflect the correct sealant – Blaze Stop WF300 Intumescent Firestop Caulk – which is used for wood joists, and sprinklers throughout the building, including within each unit; and

WHEREAS, additionally, at hearing, another commissioner who was not satisfied that sufficient fire safety measures are proposed, specifically that there was not a basis to waive MDL § 152 (Fire-stopping) referred to and compared the application to the application and DOB approvals of fire safety measures for 515 East 5<sup>th</sup> Street (initially approved by DOB absent jurisdiction and not yet approved by the Board); and

WHEREAS, the commissioner indicated that the sprinkler design must satisfy all Fire and Building Code requirements; and

WHEREAS, in response, the applicant notes the following distinctions: (1) the East 5<sup>th</sup> Street proposal reflects the full demolition of the interior apartments, which allows for the introduction of additional measures compared to the subject building which does not propose a gut rehabilitation and complete demolition of apartments; (2) the construction notes on the East 5<sup>th</sup> Street plans refer to MDL § 241 which is not one of the noted objections in the subject application; and (3) the construction notes reference Building Code § 27-3459 (formerly C26-504.7) which exempts certain sprinklered areas from the fire-stopping requirement and is not being sought to waive; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related

to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed more than a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the Board notes that the new construction will comply with light and air requirements but that the existing windowless rooms will remain as they have existed; and

WHEREAS, the applicant states that the requested variance of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed

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construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant states that it proposes the following fire safety measures: (1) installation of non-combustible concrete floors in the first floor public hallway; (2) installation of new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) installation of fireproof self-closing doors for each dwelling unit; (7) addition of fire sprinklers throughout the whole building (including sprinkler in apartments); (8) installation of hard-wired smoke detectors in all residential units; (9) installation of new fire escapes at the rear of the 333 Building and 335 Building; and (10) installation of fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, based on the above, the Board finds that will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the Board's 2012 Approval, variance to the requirements of MDL §§ 51(6), 143, 146, 148(3), and 149(2) and associated conditions remains and it is not disturbed; and

WHEREAS, the applicant notes that it has eliminated the proposed dormers from the plans and added skylights since the 2012 Approval; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310,

unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, are modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 22, 2014" -(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 Department of Buildings objections related to the MDL and does not address any other non-compliance, including any which may exist pursuant to the Zoning Resolution, Building Code, or Housing Maintenance Code;

THAT fire safety measures not limited to the following will be installed and maintained: (1) non-combustible concrete floors in the first floor public hallway; (2) new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) two additional layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) two additional layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) fireproof self-closing doors for each dwelling unit; (7) fire sprinklers throughout the whole building; (8) hard-wired smoke detectors in all residential units; (9) new fire escapes at the rear of the 333 Building and 335 Building; and (10) fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans;

THAT DOB review and approve sprinkler location and number in accordance with the Building Code and Fire Code requirements for full sprinklering of a residential building including within each unit and all public spaces, prior to the issuance of any permits;

THAT fire safety measures associated with the 2012 Approval will be installed and maintained;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

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

THAT the Department of Buildings must ensure compliance with all 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

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29, 2014.

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**85-11-A**

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district. PREMISES AFFECTED – 331 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 45, 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 and Commissioner Hinkson.....3

Negative: Commissioner Montanez.....1

**THE RESOLUTION** –

WHEREAS, the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, acting on Department of Buildings Application No. 120615209 read, in pertinent part:

- (4) Cellar must have 2-hour fire separation from other floors. Ceiling and stairs must be fire rated. [MDL 143] . . .
- (8) Interior living rooms require adequate light and air. A number of rooms, including those at the top floor with skylights, are indicated as interior windowless rooms contrary to MDL 30. [MDL 30]
- (9) BSA granted a waiver of MDL 143 in total. Plans must be prepared to carefully demonstrate compliance with the stipulation proposed to mitigate this requirement. Present to the department. [MDL 143]
- (10) BSA granted that fire escapes may be used as 2<sup>nd</sup> means of egress from the dwelling units. Plans shall indicate the design and construction of same including compliance with 4a-c for construction and support, 2a for the fire escape in the interior court at house #333, size height and construction of the drop ladder per 5a-c. [MDL 145 and 53]
- (11) Plans must demonstrate compliance with section 1 through 5 including stairway, platform, riser tread, and handrail dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 148, 1 through 5]
- (12) Plans must demonstrate compliance with sections 1, 3, 4, 5, 6 including public hall windows opening directly to exterior, fire proof construction and dimensions. In the event any dimensions or construction are

non-complying, same shall be cited on plans. [MDL 149]

- (13) Plans must demonstrate compliance with sections 1 through 7 including details indicating the design of the fire-stopping, edge relief, fire resistance rated fill and coverings. [MDL 152, 1 through 7]
- (14) The proposed fire passages from the rear yards to the front of each building are contrary to C26-273(d).7, in that, there is no access from the lower termination of the rear fire escape to the street through a fire proof passage independent of the first means of egress. Design and construction of such passage shall be carefully detailed to indicate fire resistance rating, access and structural support. The fire escape at house #333 does not have access to a passage at 333. [MDL 53; C26-273(d).7]
- (15) BSA approved plans dated July 31, 2012 show winder stairs at house number 329 contrary to submitted plans dated July 17, 2013. Please resolve. [MDL 52.4]; and

Proposed increase in bulk and/or height exceeds threshold of 5 stories for non-fireproof tenement. [MDL 211.1]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, for an amendment to a prior approval to vary the MDL (the “2012 Approval”); and

WHEREAS, the applicant seeks to vary MDL § 211 to allow for the proposed one-story vertical enlargement of the subject five-story residential building; however, the analysis addresses waiver to MDL §§ 30, 52, 53, 145, 148, 149 and 152; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 84-11-A and 103-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with continued hearings on March 25, 2014, April 20, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 29, 2014; and

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

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application, citing concerns about (1) the self-creation of the hardships related to MDL non-compliance by choosing to enlarge the building; (2) a blanket waiver of all objections, rather than an individual analysis of each requested waiver; (3) whether the Board has the authority to waive non-compliance with light and air requirements; and

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WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application, which reiterates Council Member Mendez' concerns including that there be individual assessment of MDL non-compliance rather than a single waiver; and

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

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 25 feet of frontage along East 9<sup>th</sup> Street, a depth of 92.25 feet, and a total lot area of 2,306 sq. ft.; and

WHEREAS, the site is occupied by a five-story non-fireproof building, with retail space and one residential unit on the ground floor and a total of eight dwelling units on the upper four floors (two dwelling units per floor); and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 329 East 9<sup>th</sup> Street (the "329 Building"), 331 East 9<sup>th</sup> Street (the "331 Building"), and 333 East 9<sup>th</sup> Street (the "333 Building"), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 7,023.5 sq. ft. and a height of 54'-3"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a sixth floor containing an additional 931.3 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to ten; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 7,023.5sq. ft. to 7,954.8 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 331 Building, and the 333 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,422 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)), and will increase the height of the subject building from 54'-3" to 67'-3" (the maximum permitted height is 75'-0"); and

WHEREAS, on September 11, 2012, the Board approved a prior version of the application for waiver to MDL §§ 51(6), 148(3), 149(2), 143, and 146 (the "2012 Approval"); and

WHEREAS, however, DOB subsequently audited the application and issued the noted supplemental objections; and

WHEREAS, the applicant asserts that the objections associated with the 2012 Approval and the initial (November 21, 2013) objections associated with the subject amendment application were issued under the assumption that the buildings are Hereafter Erected Class A (HAEA) buildings;

and

WHEREAS, during the hearing process, the applicant adopted the position that the building is actually a tenement and returned to DOB to obtain a single objection for non-compliance with MDL § 211 (Article 7: Height and Bulk) for tenement buildings; and

WHEREAS, the applicant states that by requesting a variance of MDL § 211, it is not seeking a waiver of every provision that would be applicable to strictly comply with MDL § 211 but, rather, that the Board vary the requirements of MDL § 211 by specifying which provisions it cannot comply with in exchange for proposed safety measures that maintain the spirit and intent of the MDL; and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the MDL non-compliances waived under the 2012 Approval and the supplemental conditions described below; and

WHEREAS, initially, a question arose about whether the Board had jurisdiction to waive non-compliance with light and air provisions (MDL § 30) since light and air is not one of the enumerated conditions at MDL § 310(2)(a); and

WHEREAS, the Board considered the jurisdictional question and concluded that the request to increase the height triggers the specific non-compliances and thus the Board's waiver authority under MDL § 310(2)(a)(1) allows for a waiver of MDL § 211 (Height and Bulk) and the associated enumerated non-compliances DOB identified during its audit; and

WHEREAS, however, the Board directed the applicant to address all of the DOB objections so that it could appropriately evaluate whether the MDL § 310(a) findings are met; and

WHEREAS, at the Board's request, the applicant addressed each of the specific DOB objections to supplement its assertion that the Board had jurisdiction over each non-compliance individually and through MDL § 211; and

WHEREAS, MDL § 211 (Height and Bulk) (1) states that "[e]xcept as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date;" and

WHEREAS, accordingly, the applicant addressed all of the objections DOB raised; and

WHEREAS, as to MDL § 30 (Lighting and Ventilation of Rooms), the applicant notes that interior living rooms require adequate light and air and a number of rooms are indicated as interior windowless rooms contrary to MDL § 30; and

WHEREAS, the applicant states that, through the addition of skylights, the plans for the enlargement have been

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amended to satisfy this requirement; and

WHEREAS, however, with respect to the existing floors, windowless rooms are an existing non-complying condition that is unaffected by the addition of a story, and, should be permitted to remain; and

WHEREAS, the applicant states that compliance with MDL § 30 would require the intrusion into and reconfiguration of occupied apartments and the reconstruction and partitioning of tenant-occupied space, which the Board found by the 2012 Approval creates a practical difficulty; and

WHEREAS, specifically, in the 333 Building and the 335 Building, the building depth is 56'-2" so that there could only be one room facing the front at a maximum depth of 30 feet and a super kitchen facing the rear with a depth of 26'-2"; the reconfiguration would result in the loss of the bedrooms; and

WHEREAS, the applicant notes that the subject building has a depth of 50'-1" so that there would be a loss of the living room or one bedroom; and

WHEREAS, the 329 Building includes a rooms that exceed the maximum permitted depth of 30'-0"; and

WHEREAS, the applicant asserts that the 2012 Approval found practical difficulty in complying with MDL requirements that necessitated making changes to spaces in the existing building that are tenant-occupied or would be affected by tenancies; and

WHEREAS, the applicant notes that in lieu of strict compliance with MDL § 30, mechanical ventilation, hardwired smoke detectors and a sprinkler system will be installed in each apartment; and

WHEREAS, as to MDL § 148 (Public Stairs), subsection (1) requires that all stairs be constructed as fireproof; subsection (2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; subsection (3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and subsection (4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback; and

WHEREAS, the applicant asserts that the Board-approved plans associated with the 2012 Approval show the existing stairwell and common area configuration and the 2012 Approval identifies the practical difficulty of removing and replacing core elements of the buildings, such as public stairs, stairwells and platforms; and

WHEREAS, the applicant asserts that compliance with MDL § 148 would require the removal and replacement of the stairs, landings and public hallways (and creating a separation), which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, the applicant assert that compliance with MDL § 148(1) would require that all stairs be constructed as fireproof stairs and to construct fire proof stairs would require removing and replacing the entire stairwell; and

WHEREAS, the applicant states that this would require extensive demolition and reconstruction of the new stairs as well as vacating the building since the stairs are used for egress; and

WHEREAS, the applicant asserts that compliance with MDL § 148(2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; and

WHEREAS, the applicant asserts that to provide landings at all levels at a width of 3'-6" would require demolishing existing walls of tenant occupied units and reconfiguring public hallways; and

WHEREAS, the applicant asserts that compliance with MDL § 148(3) requires that all stairs be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, the applicant notes that a practical difficulty in complying with MDL § 148(3) was found by the 2012 Approval; and

WHEREAS, the applicant asserts that compliance with MDL § 148(4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback and to provide light and ventilation at every stair at every story would require reconfiguring the current tenant occupied apartments and extending the public hallways, which would entail replacing the core elements of the buildings; and

WHEREAS, the applicant notes that the 2012 Approval provided waiver of MDL § 148(3) and noted it is a practical difficulty to comply with MDL § 148 subsections 1-4 because they require removing and replacing the buildings' core structure since the buildings are wood frame structures. All stairs, landings and public hallways would have to be removed and replaced; and

WHEREAS, the applicant asserts that similar to MDL § 148, strict compliance with MDL § 149(1), (2) and (3) would require the removal and replacement of the stairs, landings and public hallways, which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, further, the applicant notes that in the 2012 Approval the Board considered the applicant's cost analysis for removing such core elements of the buildings; and

WHEREAS, the applicant notes that as part of the 2012 application, it provided a cost analysis for removing such core elements of the buildings and the Board accepted the cladding of stairs with gypsum board underneath and fire retardant materials on the existing risers and treads, the addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor, the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells, and the installation of sprinklers; and

WHEREAS, the applicant asserts that MDL § 149 (Public Halls) (1) requires that every public hall must have a width of at least three feet; and

WHEREAS, the applicant asserts that compliance would require removing and replacing stairs, public hallways and platforms and intrusion into tenant occupied apartments to

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meet the requirement; and

WHEREAS, the applicant asserts that MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, the applicant represents that compliance would require removing and replacing the occupied buildings' core structure since the buildings are wood frame structures; and

WHEREAS, the applicant asserts that MDL § 149(3) requires that every public hall have at least one window opening directly upon a street or upon a lawful yard or court; and

WHEREAS, the applicant represents that compliance would require intrusion into occupied apartments and a total reconfiguration of the building core, which is practically impossible; and

WHEREAS, the applicant asserts that the 2012 Approval notes that creating a vestibule, which would require intrusion into occupied apartments, constitutes a practical difficulty; and where compliance would necessitate narrowing the existing living rooms on each apartment on floors two through five to accommodate the extended hallway landing and reconstructing the floors and ceilings to be made fire-proof, a practical difficulty exists; and

WHEREAS, the applicant asserts that in lieu of such compliance, under the 2012 Approval, the Board accepted the installation of fire-proof self-closing doors for the entrance to each apartment, the installation of hard-wired smoke detectors in all residential units, and sprinklers; and

WHEREAS, the applicant asserts that MDL § 152 (Firestopping) requirements necessitate substantial reconstruction and rehabilitation of spaces in the existing building and, additionally, in spaces that are tenant occupied or would be affected by tenancies; and

WHEREAS, the applicant represents that strict compliance with MDL § 152 (1), (2), (3), (4), (6) and (7) is not possible since it would require the substantial reconstruction that would occur in existing occupied apartments; and

WHEREAS, the applicant submitted a letter from an architect consultant detailing the practical difficulty in complying with each subsection of MDL §152; and

WHEREAS, as to MDL § 152(1), every wall where wooden furring is used and every course of masonry from the underside to the top of any floor beams will project a distance of at least two inches beyond each face of the wall that is not on the outside of the dwelling; and whenever floor beams run parallel to a wall and wooden furring is used, every such beam must always be kept at least two inches away from the wall, and the space between the beams and the wall shall be built up solidly with brickwork from the underside to the top of the floor beams; and

WHEREAS, the applicant states that compliance would require removing and replacing the buildings' structural elements; demolishing and replacing the flooring system and all perimeter walls; and intrusion into occupied apartments;

and

WHEREAS, as to MDL § 152(2), whenever a wall is studded off, the space between an inside face of the wall and the studding at any floor level must be fire-stopped; every space between beams directly over a studded-off space must be fire-stopped by covering the bottom of the beams with metal lath and plaster and placing a loose fill of incombustible material at least four inches thick on the plaster between the beams, or hollow-burned clay tile or gypsum plaster partition blocks, at least four inches thick in either case and supported by cleats, will be used to fill the spaces between beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the buildings' structural elements; removing and replacing ceilings because each wooden wall stud has a wooden top and bottom plate; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(3), the applicant notes that it requires that partitions which are not parallel with the wood floor beams and which separate one apartment or suite from another or any part of an apartment or suite from a public hall or other part of the dwelling outside the apartment or suite must be filled in solidly with incombustible material between the floor beams from the plate of the partition below to the full depth of the floor beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, as to MDL § 152(4), the applicant notes that it requires that if a dwelling is within ten feet of another non-fireproof building or of a side lot line, it must have its eaves or cornices built up solidly with masonry; and

WHEREAS, the applicant asserts that compliance would require removing and replacing each front cornice, all of which are independent from each other and solidly blocked at the ends of each property line; and

WHEREAS, as to MDL § 152(6), the applicant notes that it requires that every space between stair carriages of any non-fireproof stair be fire-stopped by a header beam at top and bottom; where a stair run is not all in one room or open space, the stair carriages must have an intermediate firestop, so located as to cut off communication between portions of the stair in different rooms or open spaces; and the underside and stringers of every unenclosed stair of combustible material must be fire-retarded; and

WHEREAS, the applicant represents that compliance would require removing and replacing each primary stair because the structural members of the existing stairwells are wooden and the tenant occupied apartments would have to be vacated during the demolition and construction of the buildings' primary means of egress; and

WHEREAS, as to MDL § 152(7), the applicant notes

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that it requires that all partitions required to be fire-retarded be fire-stopped with incombustible material at floors, ceilings and roofs; fire-stopping over partitions must extend from the ceiling to the underside of any roofing above; and any space between the top of a partition and the underside of roof boarding must be completely fire-stopped; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and, because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, in conclusion, the applicant asserts that compliance with MDL § 152 is not possible since it would require substantial reconstruction of building elements and reconstruction of the common spaces and means of egress; and

WHEREAS, the applicant asserts that in lieu of strict compliance, it proposes fire-safety measures formerly accepted by the Board, including the installation of sprinklers throughout the entire building; and

WHEREAS, at hearing, a commissioner raised concern about whether the proposed firestopping sealant was appropriate for wood-frame buildings and whether the building would be entirely sprinklered; and

WHEREAS, in response, the applicant revised the plans to reflect the correct sealant – Blaze Stop WF300 Intumescent Firestop Caulk – which is used for wood joists, and sprinklers throughout the building, including within each unit; and

WHEREAS, additionally, at hearing, another commissioner who was not satisfied that sufficient fire safety measures are proposed, specifically that there was not a basis to waive MDL § 152 (Fire-stopping) referred to and compared the application to the application and DOB approvals of fire safety measures for 515 East 5<sup>th</sup> Street (initially approved by DOB absent jurisdiction and not yet approved by the Board); and

WHEREAS, the commissioner indicated that the sprinkler design must satisfy all Fire and Building Code requirements; and

WHEREAS, in response, the applicant notes the following distinctions: (1) the East 5<sup>th</sup> Street proposal reflects the full demolition of the interior apartments, which allows for the introduction of additional measures compared to the subject building which does not propose a gut rehabilitation and complete demolition of apartments; (2) the construction notes on the East 5<sup>th</sup> Street plans refer to MDL § 241 which is not one of the noted objections in the subject application; and (3) the construction notes reference Building Code § 27-3459 (formerly C26-504.7) which exempts certain sprinklered areas from the fire-stopping requirement and is not being sought to waive; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the

MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed more than a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the Board notes that the new construction will comply with light and air requirements but that the existing windowless rooms will remain as they have existed; and

WHEREAS, the applicant states that the requested variance of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial

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justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant states that it proposes the following fire safety measures: (1) installation of non-combustible concrete floors in the first floor public hallway; (2) installation of new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) installation of fireproof self-closing doors for each dwelling unit; (7) addition of fire sprinklers throughout the whole building (including sprinkler in apartments); (8) installation of hard-wired smoke detectors in all residential units; (9) installation of new fire escapes at the rear of the 333 Building and 335 Building; and (10) installation of fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, based on the above, the Board finds that will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the Board's 2012 Approval, variance to the

requirements of MDL §§ 51(6), 143, 146, 148(3), and 149(2) and associated conditions remains and it is not disturbed; and

WHEREAS, the applicant notes that it has eliminated the proposed dormers from the plans and added skylights since the 2012 Approval; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, are modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 22, 2014" -(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 Department of Buildings objections related to the MDL and does not address any other non-compliance, including any which may exist pursuant to the Zoning Resolution, Building Code, or Housing Maintenance Code;

THAT fire safety measures not limited to the following will be installed and maintained: (1) non-combustible concrete floors in the first floor public hallway; (2) new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) two additional layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) two additional layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) fireproof self-closing doors for each dwelling unit; (7) fire sprinklers throughout the whole building; (8) hard-wired smoke detectors in all residential units; (9) new fire escapes at the rear of the 333 Building and 335 Building; and (10) fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans;

THAT DOB review and approve sprinkler location and number in accordance with the Building Code and Fire Code requirements for full sprinklering of a residential building including within each unit and all public spaces, prior to the issuance of any permits;

THAT fire safety measures associated with the 2012 Approval will be installed and maintained;

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THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

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

THAT the Department of Buildings must ensure compliance with all 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 29, 2014.

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## 103-11-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Kushner Companies, owners.

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district. PREMISES AFFECTED – 329 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 44, 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 and Commissioner Hinkson.....3

Negative: Commissioner Montanez.....1

#### THE RESOLUTION –

WHEREAS, the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, acting on Department of Buildings Application No. 120615227 read, in pertinent part:

- (4) Cellar must have 2-hour fire separation from other floors. Ceiling and stairs must be fire rated. [MDL 143] . . .
- (8) Interior living rooms require adequate light and air. A number of rooms, including those at the top floor with skylights, are indicated as interior windowless rooms contrary to MDL 30. [MDL 30]
- (9) BSA granted a waiver of MDL 143 in total. Plans must be prepared to carefully demonstrate compliance with the stipulation proposed to mitigate this requirement. Present to the department. [MDL 143]
- (10) BSA granted that fire escapes may be used as 2<sup>nd</sup> means of egress from the dwelling units. Plans shall indicate the design and construction of same including compliance with 4a-c for construction and support, 2a for the fire escape in the interior court at house #333, size height and construction of the drop ladder per 5a-c. [MDL 145 and 53]

- (11) Plans must demonstrate compliance with section 1 through 5 including stairway, platform, riser tread, and handrail dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 148, 1 through 5]
- (12) Plans must demonstrate compliance with sections 1, 3, 4, 5, 6 including public hall windows opening directly to exterior, fire proof construction and dimensions. In the event any dimensions or construction are non-complying, same shall be cited on plans. [MDL 149]
- (13) Plans must demonstrate compliance with sections 1 through 7 including details indicating the design of the fire-stopping, edge relief, fire resistance rated fill and coverings. [MDL 152, 1 through 7]
- (14) The proposed fire passages from the rear yards to the front of each building are contrary to C26-273(d).7, in that, there is no access from the lower termination of the rear fire escape to the street through a fire proof passage independent of the first means of egress. Design and construction of such passage shall be carefully detailed to indicate fire resistance rating, access and structural support. The fire escape at house #333 does not have access to a passage at 333. [MDL 53; C26-273(d).7]
- (15) BSA approved plans dated July 31, 2012 show winder stairs at house number 329 contrary to submitted plans dated July 17, 2013. Please resolve. [MDL 52.4]; and

Proposed increase in bulk and/or height exceeds threshold of 5 stories for non-fireproof tenement. [MDL 211.1]; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, for an amendment to a prior approval to vary the MDL (the “2012 Approval”); and

WHEREAS, the applicant seeks to vary MDL § 211 to allow for the proposed one-story vertical enlargement of the subject four-story residential building; however, the analysis addresses waiver to MDL §§ 30, 52, 53, 145, 148, 149 and 152; and

WHEREAS, three companion applications to vary the MDL to permit one-story vertical enlargements of the three adjacent buildings, filed under BSA Cal. Nos. 80-11-A, 84-11-A and 85-11-A, were heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in *The City Record*, with continued hearings on March 25, 2014, April 29, 2014, June 10, 2014, and July 15, 2014, and then to decision on July 29, 2014; and

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

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Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, New York City Council Member Rosie Mendez recommends disapproval of this application, citing concerns about (1) the self-creation of the hardships related to MDL non-compliance by choosing to enlarge the building; (2) a blanket waiver of all objections, rather than an individual analysis of each requested waiver; (3) whether the Board has the authority to waive non-compliance with light and air requirements; and

WHEREAS, the Greenwich Village Society for Historic Preservation provided testimony in opposition to this application, which reiterates Council Member Mendez' concerns including that there be individual assessment of MDL non-compliance rather than a single waiver; and

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

WHEREAS, the subject site is located on the north side of East 9th Street, between First Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 16 feet of frontage along East 9<sup>th</sup> Street, a depth of 92.25 feet, and a total lot area of 1,476 sq. ft.; and

WHEREAS, the site is occupied by a four-story non-fireproof building with a total of four dwelling units; and

WHEREAS, the applicant states that the subject building is located on a single zoning lot with three adjacent buildings located at 331 East 9<sup>th</sup> Street (the "331 Building"), 333 East 9<sup>th</sup> Street (the "333 Building"), and 335 East 9<sup>th</sup> Street (the "335 Building"), each of which is seeking identical relief to vary the MDL in order to allow for a one-story vertical enlargement; and

WHEREAS, the applicant notes that the proposed zoning lot has a total lot area of 8,395 sq. ft.; and

WHEREAS, the applicant states that the existing building was constructed prior to 1929; and

WHEREAS, the subject building has a floor area of approximately 4,006.5 sq. ft. and a height of 48'-0"; and

WHEREAS, the applicant proposes to enlarge the building by constructing a fifth floor containing an additional 801.3 sq. ft. of floor area to be occupied by one additional dwelling unit, increasing the total number of dwelling units in the building to five; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of the subject building from 4,006.5 sq. ft. to 4,807.8 sq. ft., and in combination with the proposed enlargements of the 329 Building, the 331 Building, and the 333 Building, will increase the total floor area on the proposed zoning lot from 27,826 sq. ft. (3.31 FAR) to 31,422 sq. ft. (3.75 FAR) (the maximum permitted floor area is 33,580 sq. ft. (4.0 FAR)), and will increase the height of the subject building from 48'-0" to 60'-0" (the maximum permitted height is 75'-0"); and

WHEREAS, on September 11, 2012, the Board approved a prior version of the application for waiver to MDL

§§ 51(6), 148(3), 149(2), 143, and 146 (the "2012 Approval"); and

WHEREAS, however, DOB subsequently audited the application and issued the noted supplemental objections; and

WHEREAS, the applicant asserts that the objections associated with the 2012 Approval and the initial (November 21, 2013) objections associated with the subject amendment application were issued under the assumption that the buildings are Hereafter Erected Class A (HAEA) buildings; and

WHEREAS, during the hearing process, the applicant adopted the position that the building is actually a tenement and returned to DOB to obtain a single objection for non-compliance with MDL § 211 (Article 7: Height and Bulk) for tenement buildings; and

WHEREAS, the applicant states that by requesting a variance of MDL § 211, it is not seeking a waiver of every provision that would be applicable to strictly comply with MDL § 211 but, rather, that the Board vary the requirements of MDL § 211 by specifying which provisions it cannot comply with in exchange for proposed safety measures that maintain the spirit and intent of the MDL; and

WHEREAS, MDL § 211 requires that in order for a pre-1929 non-fireproof residential building to increase in height beyond five stories, the building must comply with the provisions of the MDL; the proposed addition of a sixth floor to the subject building results in the MDL non-compliances waived under the 2012 Approval and the supplemental conditions described below; and

WHEREAS, initially, a question arose about whether the Board had jurisdiction to waive non-compliance with light and air provisions (MDL § 30) since light and air is not one of the enumerated conditions at MDL § 310(2)(a); and

WHEREAS, the Board considered the jurisdictional question and concluded that the request to increase the height triggers the specific non-compliances and thus the Board's waiver authority under MDL § 310(2)(a)(1) allows for a waiver of MDL § 211 (Height and Bulk) and the associated enumerated non-compliances DOB identified during its audit; and

WHEREAS, however, the Board directed the applicant to address all of the DOB objections so that it could appropriately evaluate whether the MDL § 310(a) findings are met; and

WHEREAS, at the Board's request, the applicant addressed each of the specific DOB objections to supplement its assertion that the Board had jurisdiction over each non-compliance individually and through MDL § 211; and

WHEREAS, MDL § 211 (Height and Bulk) (1) states that "[e]xcept as otherwise provided in subdivision four of this section, no non-fireproof tenement shall be increased in height so that it shall exceed five stories, except that any tenement may be increased to any height permitted for multiple dwellings erected after April eighteenth, nineteen hundred twenty-nine, if such tenement conforms to the provisions of this chapter governing like multiple dwellings erected after such date;" and

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WHEREAS, accordingly, the applicant addressed all of the objections DOB raised; and

WHEREAS, as to MDL § 30 (Lighting and Ventilation of Rooms), the applicant notes that interior living rooms require adequate light and air and a number of rooms are indicated as interior windowless rooms contrary to MDL § 30; and

WHEREAS, the applicant states that, through the addition of skylights, the plans for the enlargement have been amended to satisfy this requirement; and

WHEREAS, however, with respect to the existing floors, windowless rooms are an existing non-complying condition that is unaffected by the addition of a story, and, should be permitted to remain; and

WHEREAS, the applicant states that compliance with MDL § 30 would require the intrusion into and reconfiguration of occupied apartments and the reconstruction and partitioning of tenant-occupied space, which the Board found by the 2012 Approval creates a practical difficulty; and

WHEREAS, specifically, in the 333 Building and the 335 Building, the building depth is 56'-2" so that there could only be one room facing the front at a maximum depth of 30 feet and a super kitchen facing the rear with a depth of 26'-2"; the reconfiguration would result in the loss of the bedrooms; and

WHEREAS, the applicant notes that the subject building has a depth of 50'-1" so that there would be a loss of the living room or one bedroom; and

WHEREAS, the 329 Building includes a rooms that exceed the maximum permitted depth of 30'-0"; and

WHEREAS, the applicant asserts that the 2012 Approval found practical difficulty in complying with MDL requirements that necessitated making changes to spaces in the existing building that are tenant-occupied or would be affected by tenancies; and

WHEREAS, the applicant notes that in lieu of strict compliance with MDL § 30, mechanical ventilation, hardwired smoke detectors and a sprinkler system will be installed in each apartment; and

WHEREAS, as to MDL § 148 (Public Stairs), subsection (1) requires that all stairs be constructed as fireproof; subsection (2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; subsection (3) requires that all stairs must be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and subsection (4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback; and

WHEREAS, the applicant asserts that the Board-approved plans associated with the 2012 Approval show the existing stairwell and common area configuration and the 2012 Approval identifies the practical difficulty of removing and replacing core elements of the buildings, such as public stairs, stairwells and platforms; and

WHEREAS, the applicant asserts that compliance with MDL § 148 would require the removal and replacement of the stairs, landings and public hallways (and creating a separation), which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, the applicant assert that compliance with MDL § 148(1) would require that all stairs be constructed as fireproof stairs and to construct fire proof stairs would require removing and replacing the entire stairwell; and

WHEREAS, the applicant states that this would require extensive demolition and reconstruction of the new stairs as well as vacating the building since the stairs are used for egress; and

WHEREAS, the applicant asserts that compliance with MDL § 148(2) requires that every stair must be at least three feet in width and all levels must have landings 3'-6" in width; and

WHEREAS, the applicant asserts that to provide landings at all levels at a width of 3'-6" would require demolishing existing walls of tenant occupied units and reconfiguring public hallways; and

WHEREAS, the applicant asserts that compliance with MDL § 148(3) requires that all stairs be completely separated from all other stairs, public halls and shafts by fireproof walls, with fireproof doors and assemblies; and

WHEREAS, the applicant notes that a practical difficulty in complying with MDL § 148(3) was found by the 2012 Approval; and

WHEREAS, the applicant asserts that compliance with MDL § 148(4) requires light and ventilation at every stair at every story by a window or windows opening onto a street, court, yard or space above a setback and to provide light and ventilation at every stair at every story would require reconfiguring the current tenant occupied apartments and extending the public hallways, which would entail replacing the core elements of the buildings; and

WHEREAS, the applicant notes that the 2012 Approval provided waiver of MDL § 148(3) and noted it is a practical difficulty to comply with MDL §148 subsections 1-4 because they require removing and replacing the buildings' core structure since the buildings are wood frame structures. All stairs, landings and public hallways would have to be removed and replaced; and

WHEREAS, the applicant asserts that similar to MDL § 148, strict compliance with MDL § 149(1), (2) and (3) would require the removal and replacement of the stairs, landings and public hallways, which the Board found to be a practical difficulty in the 2012 Approval; and

WHEREAS, further, the applicant notes that in the 2012 Approval the Board considered the applicant's cost analysis for removing such core elements of the buildings; and

WHEREAS, the applicant notes that as part of the 2012 application, it provided a cost analysis for removing such core elements of the buildings and the Board accepted the cladding of stairs with gypsum board underneath and fire retardant materials on the existing risers and treads, the addition of two layers of 5/8-inch gypsum board to the ceilings of the common

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areas at each floor, the addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells, and the installation of sprinklers; and

WHEREAS, the applicant asserts that MDL § 149 (Public Halls) (1) requires that every public hall must have a width of at least three feet; and

WHEREAS, the applicant asserts that compliance would require removing and replacing stairs, public hallways and platforms and intrusion into tenant occupied apartments to meet the requirement; and

WHEREAS, the applicant asserts that MDL § 149(2) requires that all public halls be completely enclosed with fireproof floor, ceiling and walls, and separated from all stairs by fireproof partitions or walls; and

WHEREAS, the applicant represents that compliance would require removing and replacing the occupied buildings' core structure since the buildings are wood frame structures; and

WHEREAS, the applicant asserts that MDL § 149(3) requires that every public hall have at least one window opening directly upon a street or upon a lawful yard or court; and

WHEREAS, the applicant represents that compliance would require intrusion into occupied apartments and a total reconfiguration of the building core, which is practically impossible; and

WHEREAS, the applicant asserts that the 2012 Approval notes that creating a vestibule, which would require intrusion into occupied apartments, constitutes a practical difficulty; and where compliance would necessitate narrowing the existing living rooms on each apartment on floors two through five to accommodate the extended hallway landing and reconstructing the floors and ceilings to be made fire-proof, a practical difficulty exists; and

WHEREAS, the applicant asserts that in lieu of such compliance, under the 2012 Approval, the Board accepted the installation of fire-proof self-closing doors for the entrance to each apartment, the installation of hard-wired smoke detectors in all residential units, and sprinklers; and

WHEREAS, the applicant asserts that MDL § 152 (Firestopping) requirements necessitate substantial reconstruction and rehabilitation of spaces in the existing building and, additionally, in spaces that are tenant occupied or would be affected by tenancies; and

WHEREAS, the applicant represents that strict compliance with MDL § 152 (1), (2), (3), (4), (6) and (7) is not possible since it would require the substantial reconstruction that would occur in existing occupied apartments; and

WHEREAS, the applicant submitted a letter from an architect consultant detailing the practical difficulty in complying with each subsection of MDL § 152; and

WHEREAS, as to MDL § 152(1), every wall where wooden furring is used and every course of masonry from the underside to the top of any floor beams will project a distance of at least two inches beyond each face of the wall that is not on the outside of the dwelling; and whenever floor beams run

parallel to a wall and wooden furring is used, every such beam must always be kept at least two inches away from the wall, and the space between the beams and the wall shall be built up solidly with brickwork from the underside to the top of the floor beams; and

WHEREAS, the applicant states that compliance would require removing and replacing the buildings' structural elements; demolishing and replacing the flooring system and all perimeter walls; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(2), whenever a wall is studded off, the space between an inside face of the wall and the studding at any floor level must be fire-stopped; every space between beams directly over a studded-off space must be fire-stopped by covering the bottom of the beams with metal lath and plaster and placing a loose fill of incombustible material at least four inches thick on the plaster between the beams, or hollow-burned clay tile or gypsum plaster partition blocks, at least four inches thick in either case and supported by cleats, will be used to fill the spaces between beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the buildings' structural elements; removing and replacing ceilings because each wooden wall stud has a wooden top and bottom plate; and intrusion into occupied apartments; and

WHEREAS, as to MDL § 152(3), the applicant notes that it requires that partitions which are not parallel with the wood floor beams and which separate one apartment or suite from another or any part of an apartment or suite from a public hall or other part of the dwelling outside the apartment or suite must be filled in solidly with incombustible material between the floor beams from the plate of the partition below to the full depth of the floor beams; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, as to MDL § 152(4), the applicant notes that it requires that if a dwelling is within ten feet of another non-fireproof building or of a side lot line, it must have its eaves or cornices built up solidly with masonry; and

WHEREAS, the applicant asserts that compliance would require removing and replacing each front cornice, all of which are independent from each other and solidly blocked at the ends of each property line; and

WHEREAS, as to MDL § 152(6), the applicant notes that it requires that every space between stair carriages of any non-fireproof stair be fire-stopped by a header beam at top and bottom; where a stair run is not all in one room or open space, the stair carriages must have an intermediate firestop, so located as to cut off communication between portions of the stair in different rooms or open spaces; and the underside and

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stringers of every unenclosed stair of combustible material must be fire-retarded; and

WHEREAS, the applicant represents that compliance would require removing and replacing each primary stair because the structural members of the existing stairwells are wooden and the tenant occupied apartments would have to be vacated during the demolition and construction of the buildings' primary means of egress; and

WHEREAS, as to MDL § 152(7), the applicant notes that it requires that all partitions required to be fire-retarded be fire-stopped with incombustible material at floors, ceilings and roofs; fire-stopping over partitions must extend from the ceiling to the underside of any roofing above; and any space between the top of a partition and the underside of roof boarding must be completely fire-stopped; and

WHEREAS, the applicant represents that compliance would require removing and replacing the apartments' and public hall elements and, because these Old Law Tenements contain wooden wall studs and plates, the floors and ceilings at each landing would have to be removed and replaced; and

WHEREAS, further, the applicant states that the tenant occupied apartments would have to be vacated during the demolition and construction of the rooms and means of egress; and

WHEREAS, in conclusion, the applicant asserts that compliance with MDL § 152 is not possible since it would require substantial reconstruction of building elements and reconstruction of the common spaces and means of egress; and

WHEREAS, the applicant asserts that in lieu of strict compliance, it proposes fire-safety measures formerly accepted by the Board, including the installation of sprinklers throughout the entire building; and

WHEREAS, at hearing, a commissioner raised concern about whether the proposed firestopping sealant was appropriate for wood-frame buildings and whether the building would be entirely sprinklered; and

WHEREAS, in response, the applicant revised the plans to reflect the correct sealant – Blaze Stop WF300 Intumescent Firestop Caulk – which is used for wood joists, and sprinklers throughout the building, including within each unit; and

WHEREAS, additionally, at hearing, another commissioner who was not satisfied that sufficient fire safety measures are proposed, specifically that there was not a basis to waive MDL § 152 (Fire-stopping) referred to and compared the application to the application and DOB approvals of fire safety measures for 515 East 5<sup>th</sup> Street (initially approved by DOB absent jurisdiction and not yet approved by the Board); and

WHEREAS, the commissioner indicated that the sprinkler design must satisfy all Fire and Building Code requirements; and

WHEREAS, in response, the applicant notes the following distinctions: (1) the East 5<sup>th</sup> Street proposal reflects the full demolition of the interior apartments, which allows for the introduction of additional measures compared to the subject building which does not propose a gut rehabilitation

and complete demolition of apartments; (2) the construction notes on the East 5<sup>th</sup> Street plans refer to MDL § 241 which is not one of the noted objections in the subject application; and (3) the construction notes reference Building Code § 27-3459 (formerly C26-504.7) which exempts certain sprinklered areas from the fire-stopping requirement and is not being sought to waive; and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the subject building was constructed prior to 1929; therefore the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that each of the noted conditions fits within one of the sections of MDL § 310(2)(a) – namely height and bulk and means of egress – which the Board has the express authority to vary; therefore the Board has the power to vary or modify the subject provisions pursuant to MDL § 310(2)(a); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict compliance with each of the noted provisions of the MDL; and

WHEREAS, the applicant states that while it has specified the practical difficulties that would result from strictly complying with each of the individual provisions of the MDL, the underlying issue is that the subject building was constructed more than a century ago using the then common materials and designs, and there is no feasible way to remove all the combustible wood to create segregated and fireproof areas and add elevator cores; and

WHEREAS, the applicant represents that because the proposed vertical enlargement is not permitted, the MDL restriction creates practical difficulty and unnecessary hardship in that it prevents the site from utilizing the development potential afforded by the subject zoning district; and

WHEREAS, specifically, the applicant notes that the subject district permits an FAR of 4.0, and the proposed enlargement, in combination with the proposed enlargements of the 329 Building, the 333 Building, and the 335 Building, will increase the FAR on the proposed zoning lot from 3.31 to 3.75; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the

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requirements of the MDL; and

WHEREAS, the Board notes that the new construction will comply with light and air requirements but that the existing windowless rooms will remain as they have existed; and

WHEREAS, the applicant states that the requested variance of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the pre-1929 building; and

WHEREAS, the applicant states that the objections cited by DOB are all existing conditions in legally occupied buildings, and the proposal to increase the height from 54'-3" to 67'-3" to accommodate one additional residential unit effectively triggers the retrofitting of the entire building; and

WHEREAS, the applicant represents that the proposed construction promotes the intent of the law because the additional occupancies will be of minimal impact and will not result in overcrowding of the building, the newly constructed spaces will be compliant with current fire safety norms, and the proposal will provide a number of significant fire safety improvements; and

WHEREAS, specifically, the applicant states that it proposes the following fire safety measures: (1) installation of non-combustible concrete floors in the first floor public hallway; (2) installation of new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) addition of two layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) addition of two layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) installation of fireproof self-closing doors for each dwelling unit; (7) addition of fire sprinklers throughout the whole building (including sprinkler in apartments); (8) installation of hard-wired smoke detectors in all residential units; (9) installation of new fire escapes at the rear of the 333 Building and 335 Building; and (10) installation of fire-stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans; and

WHEREAS, the applicant represents that the above-mentioned fire safety improvements provide a significant added level of fire protection beyond what presently exists in the subject building and improves the health, welfare, and safety of the building's occupants; and

WHEREAS, the applicant represents that the addition of one floor to the subject building does little to increase fire risk, and that the proposed building will actually be significantly safer than it is in its present condition; and

WHEREAS, the applicant submitted a report from a fire consultant endorsing the proposed improvements to the building and stating that "it cannot be understated how significantly fire safety will be improved if the plans are approved by the Board;" and

WHEREAS, the applicant represents that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, based on the above, the Board finds that will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the Board's 2012 Approval, variance to the requirements of MDL §§ 51(6), 143, 146, 148(3), and 149(2) and associated conditions remains and it is not disturbed; and

WHEREAS, the applicant notes that it has eliminated the proposed dormers from the plans and added skylights since the 2012 Approval; and

WHEREAS, as to the Opposition's arguments that the proposed enlargement will have a negative effect on the low-rise character of the surrounding neighborhood and that the alleged hardships are self-created by the applicant's desire to enlarge the building, the Board notes that in an application to vary the requirements of the MDL under MDL § 310, unlike in an application to vary the Zoning Resolution under ZR § 72-21, the Board's review is limited to whether there are practical difficulties and unnecessary hardship in complying with the strict letter of the MDL, that the spirit and intent of the MDL are maintained, and that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the requirements of MDL §§ 30, 52.4, 53, 145, 148, 149 and 152 is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decisions of the Manhattan Borough Commissioner, dated November 21, 2013 and March 10, 2014, are modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received July 22, 2014"-(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 Department of Buildings objections related to the MDL and does not address any other non-compliance, including any which may exist pursuant to the Zoning Resolution, Building Code, or Housing Maintenance Code;

THAT fire safety measures not limited to the following will be installed and maintained: (1) non-combustible concrete floors in the first floor public hallway; (2) new fireproof stairs in the cellar/basement spaces; (3) cladding of all remaining stairs with gypsum board; (4) two additional layers of 5/8-inch gypsum board to the ceilings of the common areas at each floor; (5) two additional layers of 5/8-inch gypsum board to the walls in the halls and stairwells; (6) fireproof self-closing doors for each dwelling unit; (7) fire sprinklers throughout the whole building; (8) hard-wired smoke detectors in all residential units; (9) new fire escapes at the rear of the 333 Building and 335 Building; and (10) fire-

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stopping at the junctures between the walls and floors/ceilings in the public hallways as detailed in the proposed plans;

THAT DOB review and approve sprinkler location and number in accordance with the Building Code and Fire Code requirements for full sprinklering of a residential building including within each unit and all public spaces, prior to the issuance of any permits;

THAT fire safety measures associated with the 2012 Approval will be installed and maintained;

THAT the Department of Buildings will confirm the establishment of the zoning lot, consisting of tax lots 44, 45, 46, and 47, prior to the issuance of a building permit;

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

THAT the Department of Buildings must ensure compliance with all 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 29, 2014.

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## 304-13-A, 312-13-A and 313-13-A

APPLICANT – Simons & Wright, for 517 West 19th Street LLC, owner; David Zwirner, lessee; Lan Chen Corp. 36-36 Prince Street, owner; David Zwirner, lessee; 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 – 517-519, 521-525, 531 West 19th Street, north side of West 19th Street between 10th and 11th Avenues, Block 691, Lots 15, 19 and 22, Borough of Manhattan.

## COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Appeals Denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....4

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to three final determinations issued by the Department of Buildings (“DOB”); and

WHEREAS, the final determination with respect to the building located at 517 West 19th Street and Certificate of Occupancy No. 110362054 was issued on October 21, 2013, and states in pertinent part:

[t]he request to consider an art gallery as retail space in Group M occupancy (2008 Building Code classification) and not as an assembly Group A-3 occupancy is hereby denied; and

WHEREAS, the final determination with respect to the building located at 521 West 19th Street and DOB

Application No. 103825372 was issued on October 30, 2013, and states in pertinent part:

[t]he request to consider an art gallery as retail space in Group M occupancy (2008 Building Code classification) and not as an assembly Group A-3 occupancy is hereby denied; and

WHEREAS, the final determination with respect to the building located at 531 West 19th Street and Certificate of Occupancy No. 104404431 was issued on October 30, 2013, and states in pertinent part:

[t]he request to consider an art gallery as retail space in Group M occupancy (2008 Building Code classification) and not as an assembly Group A-3 occupancy is hereby denied; and

WHEREAS, hereafter these determinations are referred to as the Final Determinations; and

WHEREAS, a public hearing was held on this appeal on May 6, 2014, after due notice by publication in *The City Record*, with a continued hearing on June 24, 2014, and then to decision on July 29, 2014; and

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

WHEREAS, the appeal is filed on behalf of the tenant of the three buildings, David Zwirner Gallery (the “Appellant” or the “Gallery”), which contends that DOB’s determinations were erroneous; and

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

WHEREAS, the subject site comprises Tax Lots 22 (517 West 19th Street), 19 (521 West 19th Street, and 15 (531 West 19th Street); and

WHEREAS, the is site located within a C6-2 zoning district, within the Special West Chelsea District; it has 225 feet of frontage along West 19th Street, and approximately 20,700 sq. ft. of lot area; and

WHEREAS, the site is occupied by three abutting buildings; Lot 22 is occupied by a one-story building, and Lots 19 and 15 are each occupied by a two-story building; and

WHEREAS, the Certificate of Occupancy (“CO”) for the building on Lot 22 (CO No. 110362054, issued October 30, 2009) authorizes the first story to be occupied as “Art Sales,” which the CO classifies as Use Group 6 and Occupancy Group M, and it establishes a maximum occupancy of 35 persons; and

WHEREAS, the CO for the building on Lot 19 (CO No. 103825372) is a temporary CO, which will expire on October 22, 2014; it authorizes the first story to be occupied as “Commercial Art Gallery,” which it classifies as Use Group 6C and Occupancy Group F-3, and it establishes a maximum occupancy of 128 persons; in addition, it authorizes accessory storage and offices for nine persons on the mezzanine and an accessory library and offices for three persons on the penthouse level; and

WHEREAS, the CO for the building on Lot 15 (CO No. 10440443) was issued on July 2, 2007; it authorizes the first

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and second stories to be occupied as “Art Sales,” “Offices,” and “Storage,” all of which it classifies as Use Group 6 and Occupancy Group “COM”; this CO establishes a maximum occupancy of 129 persons on the first story and 37 persons on the second story; and

WHEREAS, the Appellant represents that the buildings are connected by access openings and used both individually and conjunctively by the Gallery for the display and sale of art, art openings, and other events; and

## PROCEDURAL HISTORY

WHEREAS, the Appellant states that in April 2012, it sought determinations from DOB confirming that none of the buildings at the site required the installation of a sprinkler system; in reviewing the requests, DOB determined that the COs for the buildings on Lots 22 and 15 should have been identified as assembly occupancies (F-3 under the 1968 Building Code) rather than as “Art Sales” occupancies (C under the 1968 Building Code); as such, DOB determined that the buildings failed to provide adequate egress, that the COs were issued in error, and that amended COs and Place of Assembly Certificates of Operation were required; and

WHEREAS, in addition, the Appellant states that DOB determined that although the Temporary CO for the building on Lot 19 correctly identifies the occupancy as assembly, the maximum number of persons permitted—the occupant load—was incorrectly calculated; as such, the building failed to provide adequate egress, the required Place of Assembly Certificate of Operation was never obtained, and the permit underlying the Temporary CO was subject to revocation; and

WHEREAS, in response, the Appellant filed a series of determination requests seeking reconsideration of the interpretation that the buildings were properly classified as assembly occupancies; these requests were denied by the Manhattan Borough Commissioner on February 5, 2013, and by the First Deputy Commissioner in October 2013, resulting in the issuance of the Final Determinations; and

WHEREAS, the Appellant then timely filed this appeal; and

WHEREAS, accordingly, the question on appeal is whether the Gallery at the site is, as DOB asserts, an assembly occupancy, or, as the Appellant asserts, a mercantile occupancy; and

## DISCUSSION

### A. THE APPELLANT’S POSITION

WHEREAS, the Appellant asserts that the Final Determinations are erroneous in that they: (1) classify the buildings on Lots 15 and 22 as assembly occupancies even though the buildings are primarily used for art sales; (2) fail to comply with the code requirement to calculate the occupant load for all three buildings based on actual usage; and (3) include reference to the 1938 Building Code despite the fact that none of the buildings was altered under the 1938 Building Code; and

WHEREAS, in the alternative, the Appellant contends that providing a second means of egress for the building located on Lot 19 is a sufficiently safe alternative to changing the classifications of the buildings on Lots 15 and 22 and

obtaining Place of Assembly Certificates of Operation for all three buildings at the site; and

WHEREAS, the Appellant states that, per 1968 Building Code § 27-239, “every building hereafter erected or altered . . . shall be classified in one of the occupancy groups listed in Table 3-1 according to the main use or dominant occupancy of the building”; and

WHEREAS, the Appellant contends that the final determinations do not reflect that DOB complied with this provision; rather, the Appellant states that DOB classifies the buildings as “galleries” because they are tenanted by the David Zwirner Gallery and galleries appear in 1968 Building Code Table 3-2 as an illustrative example of an assembly occupancy; and

WHEREAS, the Appellant notes that the other F-3 occupancies provided in 1968 Building Code Table 3-2 (exhibition halls, gymnasias, museums, passenger terminals, bowling alleys, and skating rinks) are categorically distinct from the day-to-day operations of the buildings that comprise the David Zwirner Gallery; and

WHEREAS, the Appellant states that the Gallery is a place to purchase art; thus, it is primarily a mercantile occupancy rather than assembly occupancy and the usage of the term “gallery” is to connote the high-end nature of the business, akin to certain retail establishments that sell expensive jewelry under trade names including the word “gallery”; and

WHEREAS, the Appellant notes that 1968 Building Code § 27-232 defines an “assembly space” as “any part of a place of assembly, exclusive of a stage, that is occupied by numbers of persons during the major period of occupancy” and a “place of assembly” as “an enclosed room or space in which seventy-five or more persons gather for religious, recreational, educational, political or social purposes, for the consumption of food or drink, or for similar group activities or which is designed for use by seventy-five or more persons gathered for any of the above reasons”; and

WHEREAS, the Appellant asserts that neither definition supports classification of a gallery where art sales occur as an inherently assembly occupancy; the Appellant states that the buildings are not designed or used as a space to gather but rather as a space to sell art; and

WHEREAS, the Appellant observes that, per 1968 Building Code § 27-257, F-3 occupancies are characterized by occupancies in which persons are “physically active and do not have a common center of attention” and contrasts this description with the actual use of the Gallery, which the Appellant represents does not include physical activity and does include a narrow center of attention (pieces of art); and

WHEREAS, the Appellant notes that 1968 Building Code § 27-232 omits the words “retail” and “sales” from its list of activities for which people gather, which it states implies that retail and assembly uses are mutually exclusive; thus, because the buildings are primarily intended to facilitate sales of art, they are properly classified as mercantile occupancies; and

WHEREAS, further, the Appellant notes that 1968

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Building Code § 27-248 indicates that “buildings and spaces shall be classified in the mercantile occupancy group when they are used for display and sales of goods accessible to public inspection” and that 2008 Building Code § 309.1 provides that mercantile group M includes “retail” and “sales rooms”; thus, because the Gallery is engaged in a retail business, the occupancy of the buildings is by definition mercantile; and

WHEREAS, in support of this assertion, the Appellant represents that the Gallery sold approximately 2,025 works of art during the years 2010-2012 and that it sells approximately 750 art books per year; therefore, the Appellant contends that the buildings are primarily used for selling goods and thus properly categorized as mercantile occupancies; and

WHEREAS, to further support its assertion that the proper classification of the buildings is mercantile, the Appellant submitted a table reflecting that eight nearby art galleries have COs that do not classify the occupancy as F-3 or A-3; the COs range in issuance date from 2001 to 2014 and reflect a variety of use and occupancy descriptions; accordingly, the Appellant asserts that DOB has previously classified art galleries as mercantile and it is arbitrarily declining to classify the buildings on Lots 22 and 15 as mercantile in this case; and

WHEREAS, in addition, the Appellant states that the Final Determinations contain erroneous occupant load calculations, which result in occupant loads in excess of 74 persons per building and trigger the requirement to provide a second means of egress from each building and Place of Assembly Certificates of Operation for each building; and

WHEREAS, the Appellant states that, pursuant to 1968 Building Code § 27-358(b), “when the actual occupant load of any space will be significantly lower than that listed in Table 6-2, the commissioner may establish a lower basis for determination of occupant load”; thus, the typical occupancy of the buildings, which, the Appellant estimates is five to ten persons for the entire site per day, must be considered rather than the buildings’ capacity based on their floor area; and

WHEREAS, the Appellant asserts that the Final Determinations for the buildings located on Lots 22 and 15 erroneously employ the 1938 Building Code for the calculation of the required occupant load despite the fact that the permit applications were filed to comply with the applicable provisions of the 1968 Building Code; therefore, these final determinations are defective as a matter of law; and

WHEREAS, the Appellant also states that DOB cannot clarify the rationale for its Final Determinations on appeal; and

WHEREAS, accordingly, the Appellant requests that the Board grant the appeal, reverse the Final Determinations, and declare that Place of Assembly Certificates of Operation are not required for any of the buildings, including the building located on Lot 19; and

WHEREAS, finally, at hearing and in its final submission, the Appellant advanced alternative proposal in which the buildings on Lots 22 and 15 remain mercantile and the building on Lot 19 retains its classification as assembly but

is altered to include a second means of egress; and

WHEREAS, the Appellant represents that because the buildings essentially operate as a single facility, four means of egress (one each from the buildings on Lots 22 and 15 and two from the building on Lot 19) is a sufficiently safe condition regardless of whether the facility is classified as mercantile or assembly; and

WHEREAS, thus, the Appellant alternatively requests that the Board grant the appeal subject to the inclusion of a second means of egress from the building on Lot 19; and

## B. DOB’S POSITION

WHEREAS, DOB contends that that the Final Determinations were properly issued, in that: (1) each of the three buildings at the site is an assembly occupancy; and (2) the occupant load calculations indicate each building has an occupant load in excess of 74 persons, triggering the requirement to obtain a Place of Assembly Certificate of Operation; and

WHEREAS, DOB contends that the proper classification of all three buildings at the site is assembly; thus, to the extent that DOB has issued COs classifying the occupancy at the buildings on Lots 22 and 15 as other than assembly, it did so erroneously; and

WHEREAS, DOB asserts that the only applicable occupancy group for the Gallery under the 1968 Building Code and 2008 Building Code is the assembly occupancy, which includes art gallery occupancies; and

WHEREAS, DOB notes that 1968 Building Code § 27-241 directs an applicant to Table 3-2 and Reference Standard RS 3-3 for the list of representative occupancies that must be used as a basis for classifying buildings and spaces by occupancy; and

WHEREAS, DOB states that 1968 Building Code Table 3-2 identifies “galleries” as representative of the assembly occupancy group with the F-3 designation and Reference Standard RS 3-3 lists “art galleries” as belonging to the assembly Occupancy Group F-3; thus, DOB asserts that an “art gallery” occupancy is expressly categorized in the assembly occupancy group; and

WHEREAS, in addition, DOB states that an art gallery is consistent with the descriptions of assembly occupancy under 1968 Building Code §§ 27-254 and 27-257; and

WHEREAS, DOB observes that 1968 Building Code § 27-254 provides that buildings and spaces shall be classified in the assembly occupancy group when they are designed for use by any number of persons for recreational or social purposes or for similar group activities; DOB contends that art galleries are designed to accommodate people convened to view and buy artwork and therefore belong in the assembly category per § 27-254; likewise, 1968 Building Code § 27-257 provides that occupancy group F-3 shall include buildings and spaces in which the persons assembled are physically active and do not have a common center of attention; DOB contends that this description is suitable for art galleries, where viewers walk through the gallery spaces and direct their attention to various exhibits; and

WHEREAS, as to the 2008 Building Code, DOB notes

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that § BC 303 specifically lists “art galleries” among the A-3 assembly uses and § BC 303.1 provides that Assembly Group A includes the use of a building or portion thereof for the gathering together of any number of persons for purposes such as social functions, recreation or similar group activities; and

WHEREAS, thus, DOB asserts that art galleries are categorized in the assembly occupancy group by the specific and general descriptions of the 1968 and 2008 Building Codes; thus, DOB properly concluded that all three buildings at the site are F-3 assembly occupancies; and

WHEREAS, DOB notes that the appellant disavows the label used on the davidzwiner.com website (which describes the site as “a contemporary art gallery”) and disregards the plain meaning of the term “art gallery” as an establishment that displays and sells works of art; and

WHEREAS, DOB also observes that neither the 1968 Building Code nor the 2008 Building Code uses the term “art sales establishment”; thus, DOB states that there is no support for the Appellant’s classification of the buildings using that term; and

WHEREAS, DOB notes that the Appellant does not dispute that the buildings are used to display and sell art, and does not distinguish the activities at the site from those typical of art galleries; and

WHEREAS, DOB states that the concept that art gallery assembly occupancies should be classified as “art sales” mercantile occupancies must be rejected because art galleries do not have the degree of openness and organization of displays found in most mercantile occupancies that alleviate risks to life safety; and

WHEREAS, rather, DOB states that the arrangement, darkened spaces, opportunity for congestion and density of occupant loads associated with art galleries and other occupancies classified in the assembly group category creates a potential for fatality and injury from fire that is comparatively high; thus, building code limitations are generally more restrictive for assembly occupancies than for other group classifications; and

WHEREAS, similarly, DOB contends that the diversity of displays in the David Zwiner Gallery during recent exhibitions reveals their dissimilarity to the orderly displays of department store, drug store and convenience store mercantile occupancies; these displays include the following: (1) a recording studio film was shown from January 9 to February 22, 2014; (2) abstract sculptures made of cellophane, chalked paper and powder were arranged on the floor and suspended from the ceiling from February 28 to April 12, 2014; (3) a life-sized sculpture was encountered by viewers on a one-on-one basis in a mirrored room from March 6 to April 19, 2014; (4) a candy-making factory was installed from April 24 to June 14, 2014; and (5) contemporary art and sculpture was displayed on the wall, floor and ceiling from May 2 to June 14, 2014; and

WHEREAS, DOB contends that art galleries do not belong in the mercantile occupancy group merely because sales comprise a portion of gallery activities; occupancy groups are intended to capture the full scope of activities associated with a particular occupancy, not just one aspect, and occupancies that include the sale of merchandise, such as coffee houses (assembly occupancy) or barber and beauty shops (business occupancy), are not classified under the mercantile occupancy group because additional characteristics call for a more comprehensive classification to address the particular life safety concerns associated with such occupancies; and

WHEREAS, DOB states that with respect to the Gallery buildings, the design and arrangement of spaces and displays of artwork are indistinguishable from those found in museums, which are also F-3 assembly occupancies; given this similarity of design, DOB contends that the distinction that artwork can be purchased from a gallery but not from a museum is not relevant to the codes’ safety considerations; and

WHEREAS, DOB also disagrees with the Appellant that the classification of the buildings as assembly instead of mercantile violates 1968 Building Code § 27-239, which, as noted above, states that “[e]very building hereafter erected or altered . . . shall, for the purposes of this code, be classified in one of the occupancy groups listed in Table 3-1 according to the main use or dominant occupancy of the building”; as noted above, the Appellant asserts that the dominant occupancy of the building is mercantile because the majority of activities at the site are sales of art; and

WHEREAS, DOB asserts that the Appellant failed to submit evidence to demonstrate that the buildings’ main use or dominant occupancy is mercantile; further, DOB states that even if the buildings’ classification were mercantile, the 1968 Building Code § 27-238 requires that every “space or room . . . be classified in one of the occupancy groups listed in Table 3-1 according to the occupancy or use of the space or room,” and DOB classifies the spaces within the buildings as assembly; thus, DOB contends that the code requires the classification of both buildings and spaces and does not mandate that the classification of the building controls the classification of its spaces; and

WHEREAS, DOB also notes that this concept is reflected in COs, which specify the occupancy classification of a building as well as the occupancy groups that apply to specific parts of a building; and

WHEREAS, DOB also disagrees with the Appellant’s occupant load calculations and asserts that, based on its calculations, each building has a capacity of more than 74 persons and therefore must obtain a Place of Assembly Certificate of Operation; and

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WHEREAS, DOB notes that 1968 Building Code § 27-358 and Table 6-2 establish the occupant load for an art gallery; according to Table 6-2, the occupancy “exhibition space” which is used for museums, is also used for art galleries because museums have spaces, activity and occupant volumes comparable to art galleries; per Table 6-2, the occupant load requirement for an “exhibition space” is ten sq. ft. of net floor area<sup>1</sup> per occupant; and

WHEREAS, DOB states that, with respect to an art gallery assembly occupancy, areas used for the display of art work must be included in the net floor area calculation because art installations are changed over time as new pieces having various dimensions are displayed and sold; further, DOB notes that such display areas do not fall under any exclusion listed in 1968 Building Code § 27-232’s definition of “net floor area”; and

WHEREAS, DOB agrees with the Appellant that per 1968 Building Code § 27-358(b), it has the authority to establish a lower basis for determination of occupant load where appropriate; however, DOB contends that such a reduction is not appropriate for the Gallery given the size of the exhibition space; and

WHEREAS, DOB states that even though normal occupancy may be less than that determined by Table 6-2, the normal occupant load is not an appropriate design standard because the greatest hazard to occupants occurs when an unusually large crowd is present; and

WHEREAS, DOB asserts that using the exhibition space occupant load calculation of ten sq. ft. of net floor area per person, the following are the occupant loads for the buildings:

(1) 460 persons for the building on Lot 22, which has approximately 4,600 sq. ft. of net floor area; (2) 253 persons for the building on Lot 19, which has approximately 2,535 sq. ft. of net floor area; and (3) 284 persons for the building on Lot 15, which has approximately 2,835 sq. ft. of net floor area; and

WHEREAS, consequently, DOB concludes that each building has an occupant load well in excess of 75 persons; as such, each building is a “place of assembly,” which according to 1968 Building Code § 27-232 is “an enclosed room or space in which seventy-five or more persons gather for religious, recreational, educational, political or social purposes, or for the consumption of food or drink, or for similar group activities or which is designed for use by seventy-five or more persons gathered for any of the above reasons;” and

WHEREAS, DOB notes that per 1968 Building Code §

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<sup>1</sup> “Floor area (net)” is defined in the 1968 Building Code to include actual occupied area and to exclude permanent building components, as follows: “when used to determine the occupant load of a space, shall mean the horizontal occupiable area within the space, excluding the thickness of walls, and partitions, columns, furred-in spaces, fixed cabinets, equipment, and accessory spaces such as closets, machine and equipment rooms, toilets, stairs, halls, corridors, elevators and similar unoccupied spaces.”

27-525.1(a), it is “unlawful to use or occupy any building or premises or part thereof as a Place of Assembly unless and until a permit therefor has been issued”; accordingly, DOB states that each of the buildings requires a Place of Assembly Certificate of Operation; and

WHEREAS, as to the Appellant’s assertion that because the Final Determinations for the buildings located on Lots 22 and 15 erroneously employ the 1938 Building Code for the calculation of the required occupant load despite the fact that the permit applications were filed to comply with the applicable provisions of the 1968 Building Code, the determinations are defective as a matter of law, DOB disagrees; and

WHEREAS, DOB states that the Appellant specifically requested (by checking the applicable checkboxes on the determination request form) an analysis of the buildings’ occupancy classifications and compliance under 2008, 1968, and 1938 Building Codes; and

WHEREAS, thus, DOB asserts that it was merely being responsive to the Appellant’s request; and

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

## CONCLUSION

WHEREAS, the Board agrees with DOB that: (1) the occupancy of each building on the site is assembly; (2) based on the occupant loads for the buildings, Place of Assembly Certificates of Operation are required for each building; and (3) references to the 1938, 1968, and 2008 Building Codes in the Final Determinations were provided at the request of the Appellant, and, in any event, would not be an impediment to the Board’s resolution of this appeal; in addition, the Board declines to consider the Appellant’s alternative compliance proposal, as it has not been submitted to DOB for that agency’s consideration; and

WHEREAS, the Board finds that, based on the evidence submitted and the applicable provisions of the 1968 Building Code, the buildings have been appropriately classified by DOB as assembly occupancies; and

WHEREAS, the Board agrees with DOB that the only applicable occupancy group for the Gallery under the 1968 Building Code and 2008 Building Code is the assembly occupancy; and

WHEREAS, the Board finds that the applicable provisions of the 1968 Building Code expressly categorize a gallery as an assembly occupancy, in that § 27-241 directs an applicant to Table 3-2 and Reference Standard RS 3-3 for the list of representative occupancies that must be used as a basis for classifying buildings and spaces by occupancy and both Table 3-2 and Reference Standard RS 3-3 clearly identify “galleries” as representative of the assembly occupancy group; and

WHEREAS, likewise, the Board agrees with DOB that an art gallery is consistent with the descriptions of assembly occupancy under 1968 Building Code §§ 27-254 and 27-257; and

WHEREAS, the Board notes that 1968 Building Code §

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27-254 classifies buildings in the assembly occupancy group when they are designed for use by any number of persons for recreational or social purposes or for similar group activities and the Board finds that an art gallery falls squarely within this classification; and

WHEREAS, the Board agrees with DOB that art galleries are designed to accommodate people convened to view and buy artwork and therefore belong in the assembly category per § 27-254; and

WHEREAS, likewise, the Board finds that art gallery patrons are physically active and do not have a common center of attention but rather may not follow a direct path as they examine various exhibits and installations; thus, per 1968 Building Code § 27-257, an art gallery is properly classified as an assembly occupancy; and

WHEREAS, as to the 2008 Building Code, the Board notes that § BC 303 specifically lists “art galleries” among the A-3 assembly uses and § BC 303.1 provides that Assembly Group A includes the use of a building or portion thereof for the gathering together of any number of persons for purposes such as social functions, recreation or similar group activities; and

WHEREAS, the Board disagrees with the Appellant that DOB determined that the David Zwirner Gallery was a gallery because its trade name include the word “gallery”; rather, DOB methodically examined the nature of the occupancy in light of the applicable provisions of the code, and concluded that the buildings at the site are properly classified as assembly occupancies; and

WHEREAS, the Board observes, as DOB notes, that neither the 1968 Building Code nor the 2008 Building Code uses the term “art sales establishment”; thus, the Board finds that there is no support in either code for the Appellant’s classification of the buildings using that term; and

WHEREAS, the Board also finds that an “art sales” mercantile occupancy is not appropriate for the buildings in question because they do not have the degree of openness and organization of displays found in most mercantile occupancies; likewise, as DOB’s catalog of recent exhibitions demonstrates (which include a film, a sculpture installation, and a candy-making factory), displays found within the Gallery have little in common with displays typically found in representative mercantile occupancies; and

WHEREAS, further, the Board agrees with DOB that the design and arrangement of spaces and displays of artwork are indistinguishable from those found in museums, which are also F-3 assembly occupancies; that a visitor can purchase the items on display at a gallery but cannot, generally speaking, purchase the items on display at a museum is, in the Board’s view, an inconsequential distinction in the realm of occupancy classification; and

WHEREAS, similarly, the Board disagrees with the Appellant that having a substantial and lucrative sales component compels classification of the buildings as mercantile; whether an art gallery is highly successful is not a reasonable consideration in determining how to classify the art gallery occupancy; rather, as DOB asserts, the nature of the

display and the anticipated behavior of the occupants control; and

WHEREAS, the Board also disagrees with the Appellant that the classification of the buildings as assembly instead of mercantile violates 1968 Building Code § 27-239; the Board finds that the Appellant failed to submit anything other than conclusory statements to demonstrate that the buildings’ “main use or dominant occupancy” is mercantile; further, even if the buildings’ classification were mercantile, the Board agrees with DOB that 1968 Building Code § 27-238 requires every space or room to be classified in one of the occupancy groups and the Board finds that DOB correctly classified the spaces within the buildings as assembly; thus, the Board concludes that both the majority of spaces within the buildings and the buildings themselves are properly classified within the assembly occupancy group; and

WHEREAS, similarly, the Board is not persuaded by the Appellant’s argument that because the typical number of visitors to the Gallery on a daily basis is ten persons or less, the buildings are not appropriately classified as assembly occupancies; first, the Appellant conceded at hearing that the number of visitors for special events and openings was significantly greater than ten persons; second, both Vice-Chair Collins and Commissioner Hinkson indicated at hearing that they had personally attended events at the Gallery and recall seeing numbers of persons well in excess of the typical occupant loads of the Gallery according to the Appellant; thus, the Board agrees with DOB that public safety dictates that a building or space be required to have sufficient egress for the maximum number of persons capable of occupying such building or space, rather than the “typical” number of persons; and

WHEREAS, as to the Appellant’s assertion that because eight nearby retail art galleries have COs that do not classify the occupancy as F-3 or A-3, DOB is arbitrarily refusing to classify the buildings on Lots 22 and 15 as mercantile, the Board does not agree; indeed, the Board finds nothing persuasive about the Appellant’s table; the actual COs themselves were not included, there are no plans associated with the information provided about the COs, and there is no indication whether the buildings have Place of Assembly Certificates of Operation; therefore, based on the Appellant’s table, it is impossible to determine the extent to which DOB’s issuance of these eight COs deviated in any meaningful respect from DOB’s position in the instant appeal; and

WHEREAS, in addition, former Chair Srinivasan noted at hearing that her own research of property records in the neighborhood surrounding the site revealed art galleries that have COs for assembly occupancy, including the Jack Shainman Gallery at 513 West 20th Street (CO No. 101301002, issued December 27, 2011) and the Bortolami Gallery-Zieher Smith Gallery at 526-520 West 20th Street (CO No. 102824552, issued December 8, 2011); and

WHEREAS, therefore, the Board concludes that DOB correctly classified the buildings’ occupancy as assembly; and

WHEREAS, the Board agrees with DOB’s occupant load calculations and agrees that each building has a capacity

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of more than 74 persons and therefore each must obtain a Place of Assembly Certificate of Operation; and

WHEREAS, the Board finds that, pursuant to 1968 Building Code § 27-358 and Table 6-2, the occupant load for the exhibition space within the subject buildings is ten sq. ft. of net floor area per occupant; accordingly, the Board agrees with DOB that each building has an occupant load well in excess of 74 persons; and

WHEREAS, the Board also agrees with DOB that the areas used for the display of art work must be included in the net floor area calculation both because art installations are changed over time as new pieces having various dimensions are displayed and sold, and because areas used for art displays are not excluded from net floor area under 1968 Building Code § 27-232's definition of "net floor area"; and

WHEREAS, the Board finds that under 1968 Building Code § 27-358(b), DOB may establish a lower basis for determination of occupant load where appropriate, but is by no means required to where it determines doing so would not further public safety; thus, the Board finds, as DOB found, that a lower basis for determination of occupant load is not appropriate for the Gallery given the size of the exhibition space and the evidence that it holds events and openings in which hundreds of persons are permitted to occupy the gallery at once; and

WHEREAS, accordingly, the Board finds that each building is a "place of assembly" pursuant to 1968 Building Code § 27-232; and

WHEREAS, the Board also notes that the failure to obtain a Place of Assembly Certificate of Operation where required is contrary to 1968 Building Code § 27-525.1(a); and

WHEREAS, turning to the Appellant's assertion that because the Final Determinations for the buildings located on Lots 22 and 15 erroneously employ the 1938 Building Code for the calculation of the required occupant load despite the fact that the permit applications were filed to comply with the applicable provisions of the 1968 Building Code, the determinations are defective as a matter of law, the Board is not persuaded; and

WHEREAS, first, as DOB notes, the Appellant specifically requested an examination of the buildings' occupancy classifications under the 2008, 1968, and 1938 Building Codes; second, and more importantly, the Board observes that DOB often clarifies the rationale for its determinations during the appeal process; thus, an appellant is given ample opportunity to respond to any arguments that DOB may not have presented at the agency level; and

WHEREAS, finally, at hearing, the Appellant advanced an alternative egress configuration for the buildings, which it represents provide a sufficient safe alternative to obtaining Public Assembly Certificates of Operation and new COs for the buildings on Lot 22 and 15; the Board declines to consider the Appellant's proposal, because it has not been submitted to DOB for consideration; and

WHEREAS, in conclusion, the Board affirms the Final Determinations classifying the buildings' occupancy as assembly and requiring a Place of Assembly Certificate of

Operation for each building; and

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

Adopted by the Board of Standards and Appeals, July 29, 2014.

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## 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 256<sup>th</sup> Street and Sigma Place. Block 5947, Lot 120. Borough of Bronx.

### COMMUNITY BOARD #8BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated May 20, 2014, acting on DOB Application No. 220211937, reads in pertinent part:

1. The proposed horizontal enlargement is not permitted in the bed of the mapped street Approval from the Board of Standards and Appeals of Standards as per GCL 35.
2. The proposed enlargement encroaches into the front yard required from Independence Avenue contrary to ZR 24-34.
3. The proposed enlargement encroaches into the sky exposure plane from Independence Avenue contrary to ZR 24-521; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, hearing closed and then to decision on July 29, 2014; and

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

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, this is an application to allow the construction of an enlargement to an existing community facility, which will be partially located within the bed of the mapped but unbuilt portion of Independence Avenue; and

WHEREAS, the subject site comprises contiguous lots (Block 5947, Lot 120 and Block 5952, Lot 120) partially within an R1-1 zoning district and partially within an R1-2 zoning district, within a Special Natural Area District; and

WHEREAS, Independence Avenue is mapped to a

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width of 60 feet, with 30 feet of width within Block 5947 and 30 feet of width within Block 5952; and

WHEREAS, the site has a lot area of approximately 356,417 sq. ft. and is entirely owned by the Archdiocese of New York; it is occupied by a three-story community facility building with approximately 75,600 sq. ft. of floor area, which was constructed in the early 1900s for retired priests; the facility is commonly known as the O'Connor Residence; and

WHEREAS, the applicant states that approximately 25,188 sq. ft. of lot area is located within the bed of Independence Avenue, and approximately 3,136 sq. ft. of the proposed enlargement will lie within the bed of mapped Independence Avenue; and

WHEREAS, the applicant also state that due to the steeply sloping nature of the site, it is considered a Tier II site within the Special Natural Area District; because the proposal includes modifications to the botanic environment and alters trees, the proposal requires a Special Natural Area District authorization from the Department of City Planning; the applicant notes that an application was submitted under Application No. N140311ZAX on March 17, 2014 and approved on June 11, 2014; and

WHEREAS, by letter dated September 24, 2013, the Fire Department states that it has reviewed the site plan and has no objection to the proposal, subject to the following conditions: (1) the entire building must be fully-sprinklered; (2) the building must be provided with interconnected smoke alarms; (3) at least one hydrant must be located within 100 feet of any and all building Siamese connections; (4) a Fire Department access road including a 70-ft. diameter turnaround must be provided; (5) "No Parking Anytime Fire Zone" signs must be installed every 75 feet along the access road; and (6) there shall be no parking anywhere along the fire access road from the public street to the turnaround; and

WHEREAS, by letter dated April 15, 2014, the Department of Environmental Protection ("DEP") states that: (1) there are no sewers or water mains at the above referenced location; and (2) Modified City Drainage Plan No. 40-1 dated June 14, 1955, calls for a future 15-inch diameter combined sewer in Independence Avenue between West 256th Street and Arlington Avenue; and

WHEREAS, DEP further stated that it requires the applicant to submit a survey/plan showing the width of mapped portion of Independence Avenue, dimensions of the property and distance from the nearest intersection; and to provide the 32-ft. wide sewer corridor for the 15-inch diameter future combined sewer, crossing the property or the applicant has an option to amend the drainage plan; and

WHEREAS, in response to DEP's request, the applicant submitted a revised survey, dated May 15, 2014; the revised survey depicts the width of Independence Avenue, the metes and bounds of the property, the distances to West 256th Street and Arlington Avenue, and the point of vertical intersection of Independence Avenue, approximately 125 feet south of the northerly property line; and

WHEREAS, the applicant states that due to the fact that the proposed high point of Independence Avenue is on the

property, property to the north can be served by the future 15-inch diameter future combined sewer that flows to the north; therefore, a sewer corridor across the property is not necessary and requests that DEP rescind their request for a sewer corridor; and

WHEREAS, by letter dated May 29, 2014, DEP states that, based on its review of the applicant's response, it has no objections to the proposal; and

WHEREAS, by correspondence dated June 18, 2014, the Department of Transportation ("DOT") states that: (1) according to the Bronx Borough President's Topographical Bureau, Independence Avenue at this location is mapped at a 60-ft. width on the Final City Map and is not titled to the City; and (2) construction within the bed of Independence Avenue is not presently included in DOT's Capital Improvement Program; and

WHEREAS, the Board notes that pursuant to GCL § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements; and

WHEREAS, the Board notes that pursuant to ZR § 72-01(g), the Board may waive bulk regulations where construction is proposed in part within the bed of a mapped street; such bulk waivers will be only as necessary to address non compliances resulting from the location of construction within and outside of the mapped street, and the zoning lot will comply to the maximum extent feasible with all applicable zoning regulations as if the street were not mapped; and

WHEREAS, therefore, consistent with GCL § 35 and ZR § 72-01(g), the Board finds that applying the bulk regulations across the portion of the subject lot within the mapped street and the portion of the subject lot outside the mapped street as if the lot were unencumbered by a mapped street is both reasonable and necessary to allow the proposed construction; 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 May 20, 2014, acting on DOB Application No. 220211937, by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Section 72-01(g) of the Zoning Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked "Received July 24, 2014"-(1) sheet; 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 portion of the street were not mapped;

THAT the entire building must be fully-sprinklered;

THAT the building must be provided with interconnected smoke alarms;

THAT at least one hydrant must be located within 100 feet of any and all building Siamese connections;

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THAT a fire department access road including a 70-foot diameter turnaround must be provided;

THAT "No Parking Anytime Fire Zone" signs must be installed every 75 feet along the access road;

THAT there will not be parking anywhere along the fire access road from the public street to the turnaround;

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 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 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 July 29, 2014.

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## 89-14-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 215 East 64th St. Co. LLC c/o Deniham Hospitality, owner. SUBJECT – Application April 30, 2014 – Extension of Time to obtain a Class B Certificate of Occupancy to legalize a hotel (*Affinia Gardens Hotel*) under MDL Section 120(b) (3), as provided under recent amendments under Chapters 225 and 566 of the Laws of New York. R8B zoning district.

PREMISES AFFECTED – 215 East 64th Street, north side of East 64th Street between Second Avenue and Third Avenue, Block 1419, Lot 10, Borough of Manhattan.

### COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to October 28, 2014, at 10 A.M., for decision, hearing closed.

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## 145-14-A

APPLICANT – Yuk Lam, for XU M Hui, owner. SUBJECT – Application June 23, 2014 – Proposed four-story building not fronting on a mapped street, contrary to Article 3, Section 36 of the General City Law.

PREMISES AFFECTED – 136-16 Carlton Place, between Linden Place and Leavitt Street, Block 4960, Lot 62, Borough of Queens.

### COMMUNITY BOARD #4Q

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

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## ZONING CALENDAR

### 28-12-BZ

#### CEQR #12-BSA-075Q

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

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated December 26, 2013, acting on DOB Application No. 420349279, reads:

Legalization of existing rooftop parking contrary to ZR Section 44-11;

Proposed reduction in required accessory off-street parking for office use (Use Group 6, parking requirement category B1) is contrary to ZR Section 44-20; and

WHEREAS, this is an application under ZR §§ 73-03, 73-44 and 73-49 to legalize, on a site within an M1-1 zoning district, a reduction in the required number of accessory parking spaces for a one-story commercial building occupied by offices (Use Group 6), contrary to ZR § 44-20, and the location of 15 parking spaces on the rooftop of the building, contrary to ZR § 44-11; 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 29, 2014; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and WHEREAS, the subject site is rectangular lot located on the north side of 37th Avenue between 13th Street and 14th Street, within an M1-1 zoning district; and

WHEREAS, the site has 75 feet of frontage along 37th Avenue and 7,512 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building (Use Group 6) with 7,453 sq. ft. of floor area (0.99 FAR), five parking spaces in the cellar, and 15 parking spaces on the rooftop; and

WHEREAS, pursuant to ZR § 32-15, the subject Use Group 6 office is in parking requirement category B1, which requires that one accessory parking space be provided for every 300 sq. ft. of floor area; thus, the existing Use Group 6

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office floor area at the site generates 25 required accessory parking spaces, resulting in a parking deficit of five spaces; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject M1-1 zoning district, grant a special permit that would allow a reduction in the number of accessory off-street parking spaces required under the applicable Zoning Resolution provision, for Use Group 6 office use in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 44-21 the total number of parking spaces that will be required in connection with the proposal is 25 spaces; thus, if the special permit is granted, only 13 parking spaces will be required; nevertheless, the applicant proposes 20 parking spaces; and

WHEREAS, pursuant to ZR § 73-44, the Board must determine that the Use Group 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant states that its good faith is demonstrated by the modesty of its request (a reduction of five spaces is requested where a reduction of 12 spaces is contemplated) and by the fact that the building is currently occupied as a Use Group 6 office; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, in addition, the special permit under ZR § 73-44 requires and the applicant represents that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, turning to the findings for ZR § 73-49, pursuant to that section, the Board may permit parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the rooftop parking will not impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, the applicant states that there are no residential uses immediately adjacent to the rooftop parking and that the nearby uses include an auto parts storage yard, a vacant lot, an office building with no windows facing the rooftop parking, and, across 37th Avenue, a public school (P.S. 111); and

WHEREAS, the applicant also notes that lighting for the rooftop parking is directed away from adjacent lots and that the site is operated Monday through Friday, from 7:00 a.m. to 6:00 p.m., and closed Saturday and Sunday; and

WHEREAS, at hearing, the Board directed the

applicant to install additional safety measures in the parking lot; and

WHEREAS, in response, the applicant represents that bumpers will be installed; and

WHEREAS, accordingly, 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 uses is outweighed by the advantages to be derived by the community; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-03, 73-44 and 73-49 have been met; 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 CEQR No. 12-BSA-075Q, dated January 1, 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 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 makes each and every one of the required findings under ZR §§ 73-03, 73-44 and 73-49 to legalize, on a site within an M1-1 zoning district, a reduction in the required number of accessory parking spaces for a one-story commercial building occupied by offices (Use Group 6), contrary to ZR § 44-20, and the location of 15 parking spaces on the rooftop of the building, contrary to ZR § 44-11; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received July 25, 2014"—seven (7) sheets, and on further condition:

THAT a maximum of 15 parking spaces will be provided on the rooftop;

THAT a minimum of 20 parking spaces will be provided at the site;

THAT all lighting on the roof will be directed down and away from adjacent uses;

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THAT the rooftop parking will be screened from neighboring residences as per the BSA-approved plans;

THAT the site will be maintained safe and free of debris;

THAT there will be no change in the use of the site without prior review and approval by the Board;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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

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

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 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 29, 2014.

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## 243-12-BZ

### CEQR #13-BSA-015R

APPLICANT – EPDSO, 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

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 18, 2012, acting on DOB Application No. 520096299, reads, in pertinent part:

Proposed physical culture establishment in an M3-1 zoning district is contrary to the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a M3-1 zoning district, within the Special South Richmond Development District, the legalization of an existing physical culture establishment

(“PCE”) on the first story of a two-story commercial building, contrary to ZR § 42-10; 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 29, 2014; and

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

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application; and

WHEREAS, the subject site is located on the south side of Richmond Valley Road, between Arthur Kill Road and Page Avenue, within an M3-1 zoning district; and

WHEREAS, the site has approximately 907 feet of frontage along Richmond Valley Road and approximately 225,417 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with 65,519 sq. ft. of floor area (0.28 FAR) and surface parking for 217 automobiles; and

WHEREAS, the applicant represents that the PCE occupies 11,725 sq. ft. of floor area on the first story; and

WHEREAS, the applicant states that the PCE is operated as Intoxx Fitness; and

WHEREAS, the applicant states that the PCE has been in operation since August 1, 2010; and

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

WHEREAS, the hours of operation for the PCE are Monday through Friday, from 5:00 a.m. to 11:00 p.m., Saturday, from 8:00 a.m. to 8:00 p.m., and Sunday, from 8:00 a.m. to 6:00 p.m.; and

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

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

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

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

WHEREAS, at hearing, the Board directed the applicant to amend the plans to reflect complying signage; and

WHEREAS, in response, the applicant submitted amended plans that reflect signage in complying with the applicable district regulations; and

WHEREAS, 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, the Board finds that, under the conditions

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 13SA015R dated August 3, 2012; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issued a Negative Declaration 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 M3-1 zoning district, within the Special South Richmond Development District, the legalization of an existing PCE on the first story of a two-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 18, 2014" Two (2) – sheets and "Received July 24, 2014" One (1) – sheet; and *on further condition*:

THAT the term of the PCE grant will expire on August 1, 2020;

THAT parking for all uses within the building including the PCE will be as reviewed and approved by DOB;

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, July 29, 2014.

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## 256-13-BZ thru 259-13-BZ

### CEQR #14-BSA-034R

APPLICANT – Eric Palatnik PC, for Block 3162 LLC, owner.

SUBJECT – Application August 15, 2013 – Variance (§72-21) to permit four detached and semi-detached homes, contrary to side yard (§23-461) and open area (§23-891) regulations, and bulk non-compliances resulting from the location of a mapped street (§23-45).

PREMISES AFFECTED – 25, 27, 31, 33, Sheridan Avenue aka 2080 Clove Road, between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot 22, 23, 24, 25, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 19, 2014, and acting on DOB Application No. 520074035, reads, in pertinent part:

ZR 23-00 – Proposed new building has bulk non-compliances resulting from the location of mapped streets; and

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 19, 2014, and acting on DOB Application No. 520141980, reads, in pertinent part:

ZR 23-00 – Proposed new building has bulk non-compliances resulting from the location of mapped streets; and

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 19, 2014, and acting on DOB Application No. 520141999, reads, in pertinent part:

ZR 23-00 – Proposed new building has bulk non-compliances resulting from the location of mapped

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streets; and

ZR 23-461 – Proposed new construction is required to comply with required 20 foot side yard as the subject lot is the corner lot by definition from record line; and

ZR 23-891 – Proposed new construction is required to comply with required 30 foot open area when measured perpendicular to each rear wall; and

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 19, 2014, and acting on DOB Application No. 520142006, reads, in pertinent part:

ZR 23-00 – Proposed new building has bulk non-compliances resulting from the location of mapped streets; and

ZR 23-461 – Proposed new construction is required to comply with required 20 foot side yard as the subject lot is the corner lot by definition from record line; and

ZR 23-891 – Proposed new construction is required to comply with required 30 foot open area when measured perpendicular to each rear wall; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of three semi-detached, two-story, single-family homes (Use Group 2), and one semi-detached, three-story, two-family home (Use Group 2) that do not comply with the underlying zoning district regulations for front yards, side yards, and open area perpendicular to a rear wall, contrary to ZR §§ 23-00, 23-45, 23-461 and 23-891; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2014, and then to decision on July 29, 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 2, Staten Island, recommends disapproval of this application, citing general concerns regarding construction within the bed of a mapped but unimproved street; and

WHEREAS, companion applications to waive General City Law (“GCL”) § 35 for the portions of the proposal within the beds of a mapped but unimproved streets were filed, pursuant to ZR § 72-01(g), under BSA Cal. Nos. 260-13-A, 261-13-A, 262-13-A, and 263-13-A, and decided at the same hearing; and

WHEREAS, the subject site is a trapezoidal lot bounded Sheridan Avenue, Giles Place, Clove Road, and a right of way for the Staten Island Rapid Transit line, within an R3-2 zoning district; and

WHEREAS, the site, which is vacant, has 148 feet of frontage along Sheridan Avenue, 100 feet of frontage along Giles Place, 72 feet of frontage along Clove Road, and 11,000 sq. ft. of lot area; the site will be divided into four tax lots (Lots 22, 23, 24, and 25) in connection with the proposed development; and

WHEREAS, the applicant notes that portions of the site are within proposed street widening areas for Sheridan Avenue (which has an improved width of 30’-0” and a mapped width of 40’-0”) and Clove Road (which has an improved width of 40’-0” and a mapped width of 80’-0”); in addition, the site is encumbered by an easement for the Staten Island Rapid Transit line; and

WHEREAS, the applicant proposes to construct three semi-detached, two-story, 1,530 sq.-ft. single-family homes (Use Group 2) and one semi-detached, three-story, two-family home (use Group 2) with 2,010 sq. ft. of floor area, for a total proposed floor area of 6,600 sq. ft. (0.6 FAR); and

WHEREAS, the applicant states that all four homes will front on Sheridan Avenue and provide a front yard depth of 15’-0” as measured from the built street (a front yard depth of 15’-0”—as measured from the street widening line—is required, per ZR § 23-45); two homes will have side yard widths of 20’-0”, one home (on Lot 24) will have a side yard width of 17’-0”, and one home (on Lot 25) will have a side yard width of 10’-0” (a minimum side yard width of 20’-0” is required, per ZR § 23-461); and

WHEREAS, in addition, the applicant states that two homes will provide open areas with depths of 40’-0”, one home (on Lot 24) will have an open area with a depth of 28’-1”, and one home (on Lot 25) will have an open area of with a depth of 21’-0”, all measured perpendicular from the improved street line to the rear wall (a minimum depth of 30’-0” is required, per ZR § 23-891, and the depth is measured from the street widening line); and

WHEREAS, the applicant notes that the widening line for Clove Road extends to a depth of 40’-0” within the site; as such, absent relief pursuant to ZR § 72-01(g) and GCL § 35, the rear open areas proposed for the four buildings would be effectively 0’-0”; and

WHEREAS, the applicant states that the proposed measurement of the buildings’ front yards from the improved width of Sheridan Avenue and the buildings’ rear open areas from the improved width of Clove Road are permitted by the Board pursuant to ZR § 72-01(g) pursuant to the above-referenced GCL § 35 waiver applications; and

WHEREAS, accordingly, the applicant seeks a variance pursuant to ZR § 72-21 to allow the proposed side yards and rear open areas for the buildings on Lots 24 and 25, which are contrary to ZR §§ 23-461 and 23-891, respectively, which exist even in the absence of the mapped unimproved street, and, thus, which the Board does not waive pursuant to ZR § 72-01(g); and

WHEREAS, the applicant states that the site’s trapezoidal shape and three street frontages, and the presence of a transit easement and widening lines for two streets within are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying zoning regulations, in accordance with ZR § 72-21(a); and

WHEREAS, the applicant states that the site’s trapezoidal shape—formed by the intersection of the railroad tracks for the Staten Island Rapid Transit line with an

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otherwise rectangular parcel—is both unique in the surrounding neighborhood and an impediment to complying development of the site; and

WHEREAS, as to the uniqueness, the applicant represents that the site is one of only four sites within a 400-foot radius that have a trapezoid shape; additionally, the other three sites have significantly less lot area, front on only one street (instead of three) and are not reduced in buildable as-of-right lot area by street widening lines; and

WHEREAS, as to the shape's impact on complying development, the applicant states that such shape, in combination with the R3-2 district yard and open space requirements, prevents efficient use of the site's available floor area, resulting in significant underdevelopment; and

WHEREAS, specifically, the applicant states that due to the sharp angle of the southern boundary, half of the site is too shallow to accommodate residences with complying rear and front yards; and

WHEREAS, in addition, the applicant asserts that because one of the three streets (Clove Road) is a heavily-trafficked commercial thoroughfare and another (Giles Place) is unsuitably narrow, conforming uses in the R3-2 district front most appropriately on residence-oriented Sheridan Avenue, resulting in a further constraint on the configuration of any building(s) on the site; and

WHEREAS, the applicant states that the presence of the transit easement along Clove Road and the widening lines for Sheridan Avenue and Clove Road contribute to the site's uniqueness; and

WHEREAS, the applicant represents that among vacant sites within the study area, the subject site is the only site with two street widening lines; and

WHEREAS, the applicant also states that the easement and the widening lines effectively reduce the buildable lot area of the site from 11,000 sq. ft. to 6,600 sq. ft.; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

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

WHEREAS, to demonstrate the infeasibility of developing the site without the requested waivers, the applicant explored three alternative development scenarios: (1) a complying community facility use without any waivers of GCL § 35; (2) a complying residential development (two single-family homes) without any waivers of GCL § 35; (3) a complying community facility with GCL § 35 waivers to build irrespective of the widening lines along Clove Road and Sheridan Avenue; and (4) a complying residential development (four single-family homes) with GCL § 35 waivers to build irrespective of the widening lines along Clove Road and Sheridan Avenue; and

WHEREAS, the applicant states that all four scenarios result in significantly underdeveloped and financially

infeasible developments, and that only the proposal—five total dwelling units—provide a reasonable return; and

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

WHEREAS, the applicant represents that, per ZR § 72-21(c), the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by low rise detached and semi-detached one- and two-family dwellings; and

WHEREAS, the applicant notes that the use is permitted as-of-right in the subject R3-2 district; and

WHEREAS, as to bulk, the applicant states that the proposal's floor area, wall and building height comply with the subject R3-2 regulations and that open areas and yards are consistent with the built character of the area, particularly in light of the unique constraints of the site; and

WHEREAS, the applicant states that the proposal has no impact on nearby uses, which include a mixed residential and commercial building across Giles Place, a commercial building across Clove Road, and a row of single-family dwellings across Sheridan Avenue; and

WHEREAS, the Board notes that by letter dated July 23, 2014, the Department of Transportation ("DOT") indicates that it has reviewed and approved the site plan, on condition that 20 feet of unobstructed space is maintained within the driveway of 33 Sheridan Avenue and left open and available for vehicle turnaround at all times; and

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

WHEREAS, the Board also finds that this proposal is the minimum necessary to afford the owner relief, in accordance with 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

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 CEQR No. 14-BSA-034R, dated August 12, 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;

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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 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, on a site within an R3-2 zoning district, the construction of three semi-detached, two-story, single-family homes (Use Group 2), and one semi-detached, three-story, two-family home (Use Group 2) that do not comply with the underlying zoning district regulations for side yards, and open area perpendicular to a rear wall, contrary to ZR §§ 23-461 and 23-891; *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 July 25, 2014” – twenty-five (25) sheets; and *on further condition*:

THAT the parameters of the development will be as follows: three (25, 27, and 31 Sheridan Avenue) semi-detached, two-story, 1,530 sq.-ft. single-family homes; one (33 Sheridan Avenue) semi-detached, three-story, two-family home (use Group 2) with 2,010 sq. ft. of floor area; a total maximum floor area of 6,600 sq. ft. (0.6 FAR);

THAT 25 Sheridan Avenue (Lot 22) will have a minimum front yard depth of 15’-0”, a minimum side yard width of 20’-0”, a minimum rear open area depth of 40’-0”, and two parking spaces;

THAT 27 Sheridan Avenue (Lot 23) will have a minimum front yard depth of 15’-0”, a minimum side yard width of 20’-0” and a minimum rear open area depth of 40’-0”, and two parking spaces;

THAT 31 Sheridan Avenue (Lot 24) will have a minimum front yard depth of 15’-0”, a minimum side yard width of 17’-0”, a minimum rear open area depth of 28’-1”, and two parking spaces;

THAT 33 Sheridan Avenue (Lot 25) will have a minimum front yard depth of 15’-0”, a minimum side yard width of 10’-0”, a minimum rear open area depth of 20’-0”, and three parking spaces;

THAT 20 feet of unobstructed space is maintained within the driveway of 33 Sheridan Avenue (Lot 25) and left open and available for vehicle turnaround at all times;

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;

THAT substantial construction will be completed

pursuant to ZR § 72-23;

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, July 29, 2014.

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## 260-13-A thru 263-13-A

APPLICANT – Eric Palatnik PC, for Block 3162 LLC, owner.

SUBJECT – Application August 15, 2013 – The proposed buildings are also located within the bed of a mapped street, contrary to General City Law Section 35. R3-2 zoning district.

PREMISES AFFECTED – 25, 27, 31, 33, Sheridan Avenue aka 2080 Clove Road, between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot 22, 23, 24, 25, Borough of Staten Island.

## COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”), dated March 19, 2014, acting on DOB Application Nos. 520074035, 520141980, 520141999, and 520142006 read in pertinent part:

Proposed construction located within the bed of a mapped street is contrary to section 35 of the General City Law; and

ZR 23-00 – Proposed new building has bulk non-compliances resulting from the location of mapped streets; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2014, and then to decision on July 29, 2014; and

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

WHEREAS, this is an application to allow on a site located within an R3-2 zoning district, the construction of three semi-detached, two-story, single-family homes, and one semi-detached, three-story, two-family home within the bed of two mapped but unbuilt portions of Clove Road and Sheridan Avenue, contrary to General City Law § 35; and

WHEREAS, the site is also subject to a variance application pursuant to ZR § 72-21 to resolve zoning objections not associated with the presence of the mapped street, which was decided on the same date; and

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WHEREAS, the subject site is a trapezoidal lot bounded by Sheridan Avenue, Giles Place, Clove Road, and a right of way for the Staten Island Rapid Transit line, within an R3-2 zoning district; and

WHEREAS, the site, which is vacant, has 148 feet of frontage along Sheridan Avenue, 100 feet of frontage along Giles Place, 72 feet of frontage along Clove Road, and 11,000 sq. ft. of lot area; the site will be divided into four tax lots (Lots 22, 23, 24, and 25) in connection with the proposed development; and

WHEREAS, the applicant notes that portions of the site are within proposed street widening areas for Sheridan Avenue (which has an improved width of 30'-0" and a mapped width of 40'-0") and Clove Road (which has an improved width of 40'-0" and a mapped width of 80'-0"); in addition, the site is encumbered by an easement for the Staten Island Rapid Transit line; and

WHEREAS, by letter dated October 23, 2013, the Fire Department states that it has reviewed the proposal and offers no objection, provided that; (1) as noted on the site plan, the exterior walls abutting the outdoor parking area of Units 2, 3, and 4 be constructed to minimum one-hour fire rating; and (2) all proposed units are to fully-sprinklered; and

WHEREAS, by letter dated October 30, 2013, the Department of Environmental Protection ("DEP") states that: (1) there are no existing City sewers in the bed of Clove Road between the Staten Island railroad and Giles Place; (2) there is an existing eight-inch city water main in the bed of Clove Road at the above referenced location; (3) there is also an existing six-inch diameter sanitary drain, an existing 24-inch diameter water main and an existing eight-inch water main in the bed of Sheridan Avenue between the Staten Island Railroad and Giles Place; (4) City Drainage Plan No. PRD-2D, sheet 2 of 9, dated November 21, 1973, calls for a future ten-inch diameter sanitary sewer, and a 12-inch diameter storm sewer to be installed in Clove Road between the Staten Island Railroad and Giles Place; and (5) there will be a future ten-inch diameter sanitary sewer and a 12-inch diameter storm sewer in Sheridan Avenue between Staten Island Railroad and Giles Place; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing: (1) the width of mapped Clove Road, the width of the widening portion and the distance between the easterly lot line and the existing eight-inch diameter City Water main in Clove Road between the Staten Island Road and Giles Place; (2) the width of mapped Sheridan Avenue, the width of the widening portion and the distances between the westerly lot line and existing six-inch diameter sanitary drain, the 24-inch diameter and the eight-inch diameter City Water main in Sheridan Avenue between Staten Island Railroad Road and Giles Place; and

WHEREAS, by letter dated December 10, 2013, DEP also requires information regarding the size, type, and distance from the property line to the manholes on the existing drain in the westerly sidewalk of Clove Road; and

WHEREAS, in response to DEP's request, by letter dated December 2, 2014 and on January 14, 2014 the

applicant has submitted a revised survey and site plan addressing DEP issues; and

WHEREAS, by letter dated February 7, 2014, DEP states that it has reviewed the submission and notes that the revised site plan shows (1) the 40-foot width of the travel portion of Clove Road between the Staten Island Railroad and Giles Place, which will be available for the maintenance and or reconstruction of the existing sewer, water mains and the installation of the future sewers and (2) the 30-foot width of the travel portion of Sheridan Avenue between the Staten Island Railroad and Giles Place, which will be available for the maintenance and or reconstruction of the existing and future sewers and existing water mains; and

WHEREAS, the DEP has no objections to the proposal; and

WHEREAS, by email correspondence dated December 13, 2013 and May 7, 2014, the Department of Transportation ("DOT") states that because Sheridan Avenue is a dead end street, on-street parking requirements and minimum allowable street widths must be met on Sheridan Avenue to provide the ability for vehicles to turn around; therefore, Sheridan Avenue must be widened to a minimum of 28 feet (20 feet for two moving lanes, and eight feet for parking).

WHEREAS, the applicant asserts that: (1) there is "No parking" permitted on either side of Sheridan Avenue and (2) the Fire Department has reviewed the proposal and has not requested either a turnaround or a street widening because the existing street system is adequate to meet its needs to provide life safety services; and

WHEREAS, by letter dated June 11, 2014, DOT requires the applicant to provide 20 feet of unobstructed space in front of Tentative Lot 25 to allow for vehicles to turn around at the dead end of Sheridan Avenue; and

WHEREAS, by letter dated July 3, 2014, the applicant submitted a revised site plan depicting a 20-foot area of unobstructed space within the driveway of Tentative Lot 25; and

WHEREAS, by letter dated July 23, 2014, DOT states that it has reviewed the revised proposal and has no objections; and

WHEREAS, DOT also states that according to the Staten Island Borough President Topographical Bureau, Sheridan Avenue from the north side of Giles Place to a point approximately 150 feet south of the Staten Island Rapid Transit Operating Authority is mapped at a 40-foot width on the Final City Map; in addition, the city has an Opinion of Dedication for 30 feet, as-in-use, dated October 26, 1916; lastly, Clove Road from the north side of Giles Place to a point approximately 102 feet south of the Staten Island Rapid Operating Transit Authority is mapped at an 80-foot width on the Final City Map and the City has an Opinion of Dedication for 40 feet as-in-use, dated May 9, 1975; and

WHEREAS, the Board also notes that DOT has not represented that construction within the widening areas of Sheridan Avenue and Clove Road would conflict or interfere with its Capital Improvement Program; and

WHEREAS, the Board notes that pursuant to GCL § 35,

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the Board may authorize construction within the bed of the mapped street subject to reasonable requirements; and

WHEREAS, the Board notes that pursuant to ZR § 72-01-(g), the Board may waive bulk regulations where construction is proposed in part within the bed of a mapped street; such bulk waivers will be only as necessary to address non-compliances resulting from the location of construction within and outside of the mapped street, and the zoning lot will comply to the maximum extent feasible with all applicable zoning regulations as if the street were not mapped; and

WHEREAS, consistent with GCL § 35 and ZR § 72-01-(g), the Board finds that applying the bulk regulations across the portion of the subject site within the mapped street and the portion of the subject lot outside the mapped streets as if the portions were a lot unencumbered by mapped streets is both reasonable and necessary to allow the proposed construction; and

WHEREAS, as noted, zoning objections not associated with the presence of the mapped unbuilt street are resolved by separate application, pursuant to ZR § 72-21; 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 decisions of the DOB, dated March 19, 2014, acting on DOB Application Nos. 520074035, 520141980, 520141999, and 520142006 by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuilt streets pursuant to Section 72-01(g) of the Zoning Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked “Received July 25, 2014” – one (1) sheet; 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 portions of Sheridan Avenue and Clove Road streets were not mapped;

THAT 20 feet of unobstructed space must be maintained within the driveway of 33 Sheridan Avenue (Tentative Lot 25) and left open and available for vehicle turnaround at all times;

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 July 29, 2014.

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**311-13-BZ**  
**CEQR #14-BSA-074K**

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**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 30, 2013, acting on DOB Application No. 320388120, reads, in pertinent part:

Proposed physical culture establishment is not permitted in M1-1 zoning district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a M1-1 zoning district, the legalization of an existing physical culture establishment (“PCE”) on the first story of a four-story commercial building, contrary to ZR § 42-10; 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 29, 2014; and

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

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

WHEREAS, the subject site is located on the north side of Avenue Y, between Shell Road and West Third Street, within an M1-1 zoning district; and

WHEREAS, the site has approximately 240 feet of frontage along Avenue Y and approximately 25,799 sq. ft. of lot area; and

WHEREAS, the site is occupied by a four-story commercial building and surface parking for 40 automobiles; and

WHEREAS, the applicant represents that the PCE occupies 11,976 sq. ft. of floor area on the first story; and

WHEREAS, the applicant states that the PCE is operated as *Retro Fitness*; and

WHEREAS, the applicant states that the PCE has been in operation since October 1, 2013; and

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

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management, and aerobics; and

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

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

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

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

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

WHEREAS, at hearing, the Board questioned whether the parking for the proposed PCE complies with the applicable provisions of the Zoning Resolution; and

WHEREAS, in response, the applicant represents that parking for the building will be as required by DOB; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA074K dated November 8, 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 M1-1 zoning district, the legalization of an existing physical culture establishment (“PCE”) on the first story of a four-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 29, 2014” Three (3) – sheets; and *on further condition*:

THAT the term of the PCE grant will expire on October 1, 2023;

THAT parking for all uses within the building including the PCE will be as reviewed and approved by DOB;

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, July 29, 2014.

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## **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**

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**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated September 30, 2013, acting on DOB Application No. 320828217, reads in pertinent part:

Proposed floor area is contrary to ZR 23-141;

Proposed open space is contrary to ZR 23-141;

Proposed rear yard is contrary to ZR 23-47;

Proposed side yard is contrary to ZR 23-461; and

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

WHEREAS, a public hearing was held on this application on June 24, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 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 the application; and

WHEREAS, the subject site is located on the west side of East 27th Street, between Avenue K and Avenue L, within an R2 zoning district; and

WHEREAS, the site has 40 feet of frontage along East 27th Street and 4,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-family home with 2,719 sq. ft. of floor area (0.68 FAR); and

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

WHEREAS, the applicant now seeks to convert the building to a single-family home and increase its floor area from 2,719 sq. ft. (0.68 FAR) to 4,131 sq. ft. (1.03 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to decrease the open space from 92 percent to 56.7 percent; the minimum required open space is 65 percent; and

WHEREAS, the applicant seeks to maintain an existing side yard width of 1’-7” and decrease the site’s existing side yard width of 9’- 8½” to 8’-0”; the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 29’-9” to 20’-0”; a rear yard with a minimum depth of 30’-0” is required; and

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

WHEREAS, the applicant asserts that the proposed lot 1.03 FAR is consistent with the bulk in the surrounding area; and

WHEREAS, in support of this assertion, the applicant identified thirteen homes on the subject block and the blocks directly east and west with FARs ranging from 1.0 to 1.26; the applicant notes that three of the thirteen homes were enlarged pursuant to a special permit from the Board; and

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

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

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

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,131 sq. ft. (1.03 FAR), a minimum open space of 56.7 percent, side yards with minimum widths of 1’-7” and 8’-0”, and a minimum rear yard depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, July 29, 2014.

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## 324-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Eli Rowe, owner.  
SUBJECT – Application December 20, 2013 – Special Permit (§73-621) to allow the enlargement of a single-family residence, contrary to floor area and open space regulations (§23-141). R2 zoning district.

PREMISES AFFECTED – 78-32 138th Street, southwest corner of the intersection of 138th Street and 78th Road, Block 6588, Lot 25, Borough of Queens.

### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 27, 2014, acting on DOB Application No. 420230422, reads in pertinent part:

Proposed FAR and open space ratio contrary to ZR 23-141; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”) and open space ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in *The City Record*, with a continued hearing on July 15, 2014, and then to decision on July 29, 2014; and

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

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

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

WHEREAS, the subject site is located on the southwest corner of the intersection of 78th Road and 138th Street, within an R2 zoning district; and

WHEREAS, the site has approximately 71 feet of frontage along 78th Road, approximately 102 feet of frontage along 138th Street, and 5,400 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story, single-family home with approximately 2,527 sq. ft. of floor area (0.47 FAR); and

WHEREAS, the applicant proposes enlarge the building by filling in an existing double-height space, resulting in an increase in floor area from 2,527 sq. ft. (0.47 FAR) to 2,774 sq. ft. (0.51 FAR); the maximum permitted floor area is 2,700 sq. ft. (0.5 FAR); and

WHEREAS, in addition, the applicant seeks a decrease in open space ratio from 150 percent to 137 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the special permit authorized by ZR § 73-

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

WHEREAS, the applicant submitted a copy of the current certificate of occupancy for the building (No. 108877, dated April 20, 1956) to demonstrate that the building existed as a residence before December 15, 1961, which is the operative date within the subject R2 zoning district; and

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

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed FAR does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space, the applicant represents that the proposed reduction in the open space results in an open space that is at least 90 percent of the minimum required; and

WHEREAS, as to the FAR, the applicant represents that the proposed floor area does not exceed 110 percent of the maximum permitted; and

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

WHEREAS, at hearing, the Board directed the applicant to clarify: (1) the extent to which the floor space in the attic is under a sloping roof; (2) the status of construction at the site; and (3) whether the open patio is included in floor area; and

WHEREAS, in response, the applicant submitted a plan clarifying the extent to which the floor space in the attic is under a sloping roof; and

WHEREAS, as to the status of construction, the applicant represents that as-of-right construction at the site is substantially completed; and

WHEREAS, as to the proposed open patio, the applicant provided a copy of a DOB determination, which classifies the space in question as excluded from floor area; and

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

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the

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community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-621 and 73-03, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR and open space ratio, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received April 15, 2014”– (11) sheets and “July 22, 2014”–(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of to 2,774 sq. ft. (0.51 FAR) and a minimum open space ratio of 137, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

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

Adopted by the Board of Standards and Appeals, July 29, 2014.

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## **36-14-BZ CEQR #14-BSA-107M**

APPLICANT – Rothkrug Rothkrug & Spector, LLP., for 201 Pearl LLLC., owner; Soulcycle Maiden Lane, LLC., lessee.

SUBJECT – Application February 27, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Soulcycle*) within a mixed use. C5-5(LM) zoning district. PREMISES AFFECTED – 101 Maiden Lane aka 201 Pearl Street, northeast corner of Maiden Lane and Pearl Street, Block 69, Lot 1, 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 Montanez .....4  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 25, 2014, acting on DOB Application No. 104430359, reads, in pertinent part:

Proposed physical culture establishment in a C5-5 (Lower Manhattan) zoning district is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-5 zoning district, within the Special Lower Manhattan District, the operation of a physical culture establishment (“PCE”) in portions of the first and second stories of a 28-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in the *City Record*, and then to decision on July 29, 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 northwest corner of the intersection of Maiden Lane and Pearl Street, within a C5-5 zoning district, within the Special Lower Manhattan District; and

WHEREAS, the site is occupied by a 28-story mixed residential and commercial building; and

WHEREAS, the proposed PCE will occupy 380 sq. ft. of floor area on the first story and 5,803 sq. ft. of floor area on the second story, for a total PCE floor area of 6,183 sq. ft.; and

WHEREAS, the PCE will be operated as SoulCycle; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:30 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

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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. 14BSA107M dated February 3, 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 C5-5 zoning district, within the Special Lower Manhattan District, the operation of a PCE in portions of the first and second stories of a 28-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 8, 2014” Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on July 29, 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 Saturday, from 5:30 a.m. to 11:00 p.m. and Sunday, from 7:00 a.m. to 9:00 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 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

29, 2014.

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## 55-14-BZ

### CEQR #14-BSA-136K

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for RK&G Associates LLC., owner; 388 Athletic Club, LLC, c/o Stah Real Estate Com., lessee.

SUBJECT – Application April 8, 2014 – Special Permit (§73-36) to allow a physical culture establishment (388 Athletic Club) to operate on the fifth and sixth floors of a new 53 Story commercial and residential building. C6-45 zoning district.

PREMISES AFFECTED – 388 Bridge Street, aka 141 Lawrence Street, Block 152, Lot 1001/06, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 20, 2014, acting on DOB Application No. 320903572, reads, in pertinent part:

Proposed physical culture establishment is not permitted as of right in a C6-4.5 district; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4.5 zoning district within the Special Downtown Brooklyn District, the operation of a physical culture establishment (“PCE”) in portions of the cellar, first, fifth, and sixth stories of a 53-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in the *City Record*, and then to decision on July 29, 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 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on a through lot within the block bounded by Fulton Street, Lawrence Street, Willoughby Street, and Bridge Street, within a C6-4.5 zoning district within the Special Downtown Brooklyn District; and

WHEREAS, the site has 67,788 sq. ft. of lot area, with frontages along Fulton Street, Lawrence Street, and Willoughby Street; and

WHEREAS, under construction at the site is a 53-story mixed residential and commercial building with 599,205 sq. ft. of floor area (8.8 FAR); and

WHEREAS, the proposed PCE will occupy 232 sq. ft. of floor space in the cellar, 927 sq. ft. of floor area on the first

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story, 6,203 sq. ft. of floor area on the fifth story, and 7,282 sq. ft. of floor area on the sixth story; and

WHEREAS, the PCE will be operated as 388 Athletic Club; and

WHEREAS, the hours of operation for the PCE will be seven days per week, from 5:30 a.m. to 11:00 p.m.; and

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

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

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

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

WHEREAS, at hearing, the Board requested clarification regarding: (1) whether the terrace on the sixth story would be accessed by patrons of the PCE; (2) whether the fire alarm would be connected to a central station; and (3) whether the PCE complies with the applicable provisions of the ADA; and

WHEREAS, in response, the applicant submitted amended plans noting that: (1) the sixth-story terrace would not be accessed by patrons of the PCE; (2) the fire alarm would be connected to a central station; and (3) the PCE complies with the applicable provisions of the ADA; 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 No. 14-BSA-136K dated May 19, 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 C6-4.5 zoning district within the Special Downtown Brooklyn District, the operation of a physical culture establishment (“PCE”) in portions of the cellar, first, fifth, and sixth stories of a 53-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work

shall substantially conform to drawings filed with this application marked “Received July 18, 2014,” six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on July 29, 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 seven days per week, from 5:30 a.m. to 11:00 p.m.;

THAT accessibility 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, July 29, 2014.

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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

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1

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zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front yards, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

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

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

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the west side of Father Capodanno Boulevard, between Doty Avenue and Alex Circle, within an R3-1 zoning district; and

WHEREAS, the site has 25 feet of frontage along Father Capodanno Boulevard and 2,025 sq. ft. of lot area; the site is also within the widening line for Doty Avenue, making it a corner lot with two required front yards; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 875 sq. ft. of floor area (0.43 FAR); and

WHEREAS, the applicant proposes to demolish the existing home and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.53 FAR); and

WHEREAS, the applicant states that the proposed building complies in all respects with the bulk regulations of the subject R3-1 district except that a front yard depth of 0’-6” is proposed along Doty Avenue (a minimum front yard depth of 10’-0” is required, per ZR § 23-45); and

WHEREAS, the applicant notes that the proposed front yard depth of 0’-6” along Doty Avenue is actually a deeper front yard than is currently provided at the site; due to the location of the street widening line along Doty Avenue, the existing building provides no front yard along Doty Avenue; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying

with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space and comply with all yard regulations except the front yard; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested front yard waiver; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is entirely consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, wider side yards, and a deeper front yard along Father Capodanno Boulevard than the existing building; therefore, the proposal will provide significantly more open space on the site than is currently provided; and

WHEREAS, in addition, as noted above, the proposed front yard waiver along Doty Avenue is an improvement

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upon the existing condition in which no front yard is provided and the building protrudes into the street widening line for Doty Avenue; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for front yards, contrary to ZR § 23-45; *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 June 16, 2014"-(3) sheets and "July 11, 2014"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.53 FAR) and a minimum front yard depth of 0'-6" along Doty Avenue, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

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

Adopted by the Board of Standards and Appeals, July 29, 2014.

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## 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

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear yards, contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

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

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

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the west side of north side of Doty Avenue, between Father Capodanno Boulevard and Alex Circle, within an R3-1 zoning district; and

WHEREAS, the site has 27 feet of frontage along Doty Avenue and 2,187 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 590 sq. ft. of floor area (0.27 FAR); and

WHEREAS, the applicant proposes to demolish the existing home and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.49 FAR); and

WHEREAS, the applicant states that the proposed building complies in all respects with the bulk regulations of the subject R3-1 district except that a rear yard depth of 26'-

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5” is proposed (a minimum rear yard depth of 30’-0” is required, per ZR § 23-47); and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space and comply with all yard regulations except the rear yard; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested rear yard waiver; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the

neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a wide side yard along the northern lot line, and a deeper front yard than the existing building; therefore, the proposal will provide significantly more open space on the site than is currently provided; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for rear yards, contrary to ZR § 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received June 16, 2014”-(3) sheets and “July 11, 2014”-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.49 FAR) and a minimum rear yard depth of 26’-5” along Doty Avenue, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

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

Adopted by the Board of Standards and Appeals, July 29, 2014.

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**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**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, this is an application to permit the construction of a single-family home that does not front a mapped street, contrary to General City Law § 36; and

WHEREAS, a public hearing was held on this application on July 22, 2014 after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

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

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

WHEREAS, this application is applicant is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located along an access road within Sunnymeade Village, within an R3-1 zoning district; and

WHEREAS, the site has 31 feet of frontage along an unmapped right-of-way within Sunnymeade Village and 2,542 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 1,120 sq. ft. of floor area (0.22 FAR); and

WHEREAS, the applicant proposes to build a single-family home with 1,309 sq. ft. of floor area (0.26 FAR); and

WHEREAS, because the site is located along an unmapped access road, the applicant request a waiver of General City Law § 36; and

WHEREAS, by letter dated July 21, 2014, Fire Department states that it has reviewed the proposal and has no objections, subject to the following conditions: (1) the entire building will be fully-sprinklered in conformity with

provisions of Chapter 9 of the 2008 Building Code; (2) interconnected smoke alarms will be installed in accordance with Section 907.2.10 of the 2008 Building Code; (3) the height of the building will not exceed 35 feet above the grade plane as defined by Section 502.1 of the 2008 Building Code; and (4) the building will be a “like-for-like replacement” that does not increase the intensity of the use; and

WHEREAS, the Board notes that, at hearing, the applicant agreed to conditions set forth by the Fire Department and later submitted amended plans reflecting the proposal’s compliance with the conditions; and

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

*Therefore it is Resolved*, the appeal is granted by the power vested in the Board by Section 36 of the General City Law and on condition that construction shall substantially conform to the drawing filed with the application marked “July 28, 2014”-(1) sheet, and on further condition:

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

THAT the entire building will be fully-sprinklered in conformity with provisions of Chapter 9 of the 2008 Building Code;

THAT interconnected smoke alarms will be installed in accordance with Section 907.2.10 of the 2008 Building Code;

THAT the height of the building will not exceed 35 feet above the grade plane as defined by Section 502.1 of the 2008 Building Code;

THAT changes to the use or occupancy of the building will be subject to Board review and approval; and

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

Adopted by the Board of Standards and Appeals, July 29, 2014.

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**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**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown,

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Commissioner Hinkson and Commissioner Montanez .....4

Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure a and special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for side yards, contrary to ZR §§ 23-461, 54-313, 54-41, and 64-723; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

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

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

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the south side of Mapleton Avenue, between Grimsby Street and Freeborn Street, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Mapleton Avenue and 2,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 720 sq. ft. of floor area (0.36 FAR); the existing home has the following non-compliances: a front yard depth of 6’-10” (a minimum front yard depth of 15’-0” is required, per ZR § 23-45); and side yards with widths of 4’-0” and 3’-1” (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each, per ZR § 23-461); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.54 FAR); and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged; and

WHEREAS, thus, the applicant states that a second story with the existing front and side yards is permitted at the site; however, the applicant seeks to reduce the width of the eastern side yard from 4’-1” to 3’-0”; accordingly, the applicant requests a special permit to allow this 1’-1” reduction; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space and comply with all yard regulations except the rear yard; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side yard waiver; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

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WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint and a deeper front yard than the existing building, and it maintains the existing western side yard width; therefore, the proposal will provide significantly more open space on the site than is currently provided; further, despite the 1'-1" reduction in the eastern side yard width, a distance of 8'-1" will be maintained between the proposed building and the building directly east; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for side yards, contrary to ZR §§ 23-461, 54-41 and 64-72; *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 June 16, 2014"-(3) sheets and "July 11, 2014"-(1) sheet and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.54 FAR) and side yard with minimum widths of 3'-0" and 3'-1", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

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

Adopted by the Board of Standards and Appeals, July

29, 2014.

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**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**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

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

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

WHEREAS, this application is brought by the Department of Housing Preservation and Development ("HPD") on behalf of the owner and in connection with the Mayor's Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the subject site is located on the east side of Kiswick Street, between Bedford Avenue and Midland Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Kiswick Street and 2,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 1,030 sq. ft. of floor area (0.52 FAR); the existing home has the following non-compliances: a front yard depth of 5'-0" (a minimum front yard depth of 15'-0" is required, per ZR § 23-45); and side yards with widths of 3'-4" (northern side yard) and 1'-2"

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(southern side yard) (the requirement is two side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" each, per ZR § 23-461); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.54 FAR); the new building will provide a front yard depth of 15'-0", a rear yard depth of 40'-0", a northern side yard width of 3'-2", and southern side yard width of 3'-3"; and

WHEREAS, the applicant represents that the building directly north of the proposed building is built to the both sites' common side lot line; as such, the building directly north of the site is located 3'-2" from the proposed building; in addition, the building on the adjoining zoning lot to the south of the site is located 6'-6" from the proposed building; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8'-0" is maintained between the non-complying side yards and the building on the adjoining zoning lot; and

WHEREAS, thus, the applicant the applicant seeks a special permit to allow the reduction of the width of the northern side yard from 3'-4" to 3'-2", and construction of the new building with a distance of less than 8'-0" from the buildings directly north and south of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate

conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waivers allow the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without the requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a rear yard depth of 40'-0" where a depth of only 30'-0" is required, and increase in front yard from a non-complying 5'-0" to a complying 15'-0"; in addition, it increases one side yard width by 2'-1" and decreases the other side yard width by only 0'-2"; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the

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construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received June 16, 2014”-(1) sheet and “July 11, 2014”-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.54 FAR) and side yard with minimum widths of 3’-2” and 3’-3”, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

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

Adopted by the Board of Standards and Appeals, July 29, 2014.

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## 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

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this

application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

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

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

WHEREAS, a member of the surrounding community testified in opposition to application, citing concerns about construction operations adversely affecting her property; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the west side of Olympia Boulevard, between Midland Avenue and Lincoln Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along Olympia Boulevard and 2,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 1,214 sq. ft. of floor area (0.61 FAR) (a maximum of 1,200 sq. ft. of floor area (0.60 FAR) is permitted, per ZR § 23-141; in addition to FAR, the existing home has the following non-compliances: a front yard depth of 1’-6” (a minimum front yard depth of 15’-0” is required, per ZR § 23-45); side yards with widths of 1’-11” (southern side yard) and 1’-0” (northern side yard) (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each, per ZR § 23-461); and a rear yard depth of 2’-4” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.54 FAR); the new building will provide a front yard depth of 15’-0”, a rear yard depth of 45’-0”, an southern side yard width of 3’-0”, and northern side yard width of 3’-5”; and

WHEREAS, the applicant represents that the building south of the proposed building is built to the both sites’ common side lot line; as such, the building directly west of the site is located 1’-11” from the existing building and will be located 3’-0” from the proposed building; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8’-0” is maintained between the non-complying side yards and the building on the adjoining zoning lot; and

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WHEREAS, thus, the applicant the applicant seeks a special permit to allow the construction of the new building with a distance of less than 8'-0" from the building directly west of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings: (a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development

of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a rear yard depth of 45'-0" where a depth of only 30'-0" is required, and increase in front yard from a non-complying 2'-4" to a complying 15'-0"; in addition, it increases the widths of both side yards by 1'-1" and 2'-5", for the southern and northern side yards, respectively; the applicant also notes that the proposed building will located 8'-2" from the building directly north of the site; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *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 June 16, 2014"-(3) sheets and "July 11, 2014"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.54 FAR) and side yard with minimum widths of 3'-0" and 3'-5", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

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

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Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 29, 2014.

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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

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on July 29, 2014; and

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

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

WHEREAS, a member of the surrounding community testified in opposition to application, citing concerns about construction operations adversely affecting her property; and

WHEREAS, this application is brought by the Department of Housing Preservation and Development (“HPD”) on behalf of the owner and in connection with the Mayor’s Office of Housing Recovery Operations and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HPD on behalf of the owner, the Board adopts a waiver of 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the subject site is located on the west side of Olympia Boulevard, between Midland Avenue and Lincoln Avenue, within an R3-1 zoning district; and

WHEREAS, the site has 20 feet of frontage along

Olympia Boulevard and 2,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a flood-damaged one-story, single-family home with 1,214 sq. ft. of floor area (0.61 FAR) (a maximum of 1,200 sq. ft. of floor area (0.60 FAR) is permitted, per ZR § 23-141; in addition to FAR, the existing home has the following non-compliances: a front yard depth of 1’-6” (a minimum front yard depth of 15’-0” is required, per ZR § 23-45); side yards with widths of 1’-11” (southern side yard) and 1’-0” (northern side yard) (the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each, per ZR § 23-461); and a rear yard depth of 2’-4” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant proposes to demolish the existing building and construct a two-story, single-family home with 1,082 sq. ft. of floor area (0.54 FAR); the new building will provide a front yard depth of 15’-0”, a rear yard depth of 45’-0”, an southern side yard width of 3’-0”, and northern side yard width of 3’-5”; and

WHEREAS, the applicant represents that the building south of the proposed building is built to the both sites’ common side lot line; as such, the building directly west of the site is located 1’-11” from the existing building and will be located 3’-0” from the proposed building; and

WHEREAS, the applicant notes that pursuant to ZR §§ 54-313 (Single- or Two-family Residences with Non-complying Front Yards or Side Yards), 54-41 (Permitted Reconstruction) and 64-723 (Non-complying Single- and Two-family Residences), the existing non-complying yards may be maintained in a reconstruction and vertically enlarged, provided that, per ZR § 54-313, a minimum distance of 8’-0” is maintained between the non-complying side yards and the building on the adjoining zoning lot; and

WHEREAS, thus, the applicant the applicant seeks a special permit to allow the construction of the new building with a distance of less than 8’-0” from the building directly west of the site; and

WHEREAS, pursuant to ZR § 64-92, in order to allow for alterations, developments, and enlargements in accordance with flood-resistant construction standards, the Board may permit modifications of ZR §§ 64-30 and 64-40 (Special Bulk Regulations for Buildings Existing on October 28, 2012), 64-60 (Design Requirements), 64-70 (Special Regulations for Non-conforming Uses and Non-complying Buildings), as well as all other applicable bulk regulations except floor area ratio; and

WHEREAS, in order to grant a special permit pursuant to ZR § 64-92, the Board must make the following findings:

(a) that there would be a practical difficulty in complying with flood-resistant construction standards without such modifications, and that such modifications are the minimum necessary to allow for an appropriate building in compliance with flood-resistant construction standards; (b) that any modification of bulk regulations related to height is limited to no more than ten feet in height or ten percent of the permitted height as measure from the flood-resistant construction elevation, whichever is less; and (c) the

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proposed modifications will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the Board may also prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant states that there would be a practical difficulty complying with the flood-resistant construction standards without the modification of the front yard requirement, in accordance with ZR § 64-92(a); and

WHEREAS, specifically, the applicant states that the proposed building is required to have exterior walls that are 12 inches thick, which diminishes the amount of interior floor space; thus, the proposed side yard waiver allows the construction of a flood-resistant building with a viable building footprint to compensate for the loss of interior space; and

WHEREAS, the Board agrees that there would be a practical difficulty complying with the flood-resistant construction standards without requested side yard waivers; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the ZR § 64-92(b) finding is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by one- and two-story, single- and two-family homes; as such, the applicant states that the proposal is consistent with the existing context; and

WHEREAS, the applicant also contends that the proposal reflects a smaller footprint, a rear yard depth of 45'-0" where a depth of only 30'-0" is required, and increase in front yard from a non-complying 2'-4" to a complying 15'-0"; in addition, it increases the widths of both side yards by 1'-1" and 2'-5", for the southern and northern side yards, respectively; the applicant also notes that the proposed building will located 8'-2" from the building directly north of the site; and

WHEREAS, the Board finds that the proposed modification will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the

proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 64-92; and

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3-1 zoning district, the construction of a single-family home, which does not comply with the zoning requirements for vertical extension of non-complying side yards, contrary to ZR §§ 23-461, 54-313 and 54-41; *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 June 16, 2014"-(3) sheets and "July 11, 2014"-(1) sheet; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 1,082 sq. ft. (0.54 FAR) and side yard with minimum widths of 3'-0" and 3'-5", as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

THAT this approval is limited to the Build it Back program;

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

Adopted by the Board of Standards and Appeals, July 29, 2014.

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**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**

THE VOTE TO CLOSE HEARING –

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

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

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**2-13-BZ**

APPLICANT – Alfonso Duarte, for Humberto Arias, owner.  
SUBJECT – Application January 8, 2013 – Variance (§72-21) to legalize the extension of a retail building, contrary to use regulations (§23-00). R3A zoning district.

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

**COMMUNITY BOARD #1SI**

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

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**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 August 19, 2014, at 10 A.M., for adjourned hearing.

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**208-13-BZ**

APPLICANT – Issa Khorasanchi, for Kenneth Segal, owner; Dimitriy Brailovski, lessee.

SUBJECT – Application July 8, 2013 – Special Permit (§73-36) to legalize the use of a physical culture establishment (*Fitness Gallery*) located on the second floor of a two story commercial building. C8-1/R4 zoning district.

PREMISES AFFECTED – 1601 Gravesend Neck Road, Gravesend Neck Road, between East 16th and East 17th Street, Block 7377, Lot 29, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

THE VOTE TO CLOSE HEARING –

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

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

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**271-13-BZ**

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application September 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 129 Norfolk Street, Norfolk Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 43, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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

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**283-13-BZ**

APPLICANT – Alexander Levkovich, for 100 Elmwood Realty Corp., owner.

SUBJECT – Application October 8, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*NYC Fitness Club*) on the first floor of a one story building. M1-1 zoning district.

PREMISES AFFECTED – 4930 20th Avenue, Dahill Road and 50th Street; Avenue 1 & Dahill Road, Block 5464, Lot 81, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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

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**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 August 19, 2014, at 10 A.M., for continued hearing.

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**315-13-BZ**

APPLICANT – Law office of Stuart Klein, for Flywheel 415 Greenwich, LLC., owner.

SUBJECT – Application December 6, 2013 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Flywheel Sports*). C6-2A (TMU) zoning district.

PREMISES AFFECTED – 415-427 Greenwich Street, 12-18 Hubert Street & Laight Street, Block 215, Lot 7504, Borough of Manhattan.

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## COMMUNITY BOARD #1M

### THE VOTE TO CLOSE HEARING –

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

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

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## 328-13-BZ

APPLICANT – Eric Palatnik, P.C., for Patti, owner.  
SUBJECT – Application December 26, 2013 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*Brooklyn Athletic Club*). M1-1 zoning district.

PREMISES AFFECTED – 8 Berry Street, northeast corner of Berry Street and North 13th Street, Block 2279, Lot 26, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

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

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## 5-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Israel Ashkenazi & Racquel Ashkenazi, owner.  
SUBJECT – Application January 9, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 1807 East 22nd Street, east side of East 22nd Street between Quentin Road and Avenue R, Block 6805, Lot 64, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

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

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## 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 September 9, 2014, at 10 A.M., for adjourned hearing.

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## 40-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Bill Stathakos, owner; Blink Fulton Street, Ink., lessee.

SUBJECT – Application March 4, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Blink Fitness*) within an existing commercial building. C2-4 zoning district.

PREMISES AFFECTED – 1413/21 Fulton Street, north side of Fulton Street, 246 Ft. West of Tompkins Avenue, Block 1854, Lot 52, Borough of Brooklyn.

## COMMUNITY BOARD #3BK

### THE VOTE TO CLOSE HEARING –

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

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

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## 47-14-BZ

APPLICANT – John M. Marmora, Esq., for RKR Properties, Inc., owner; McDonald's USA, LLC., lessee.

SUBJECT – Application March 26, 2014 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (*McDonald's*) with an accessory drive-through facility. C1-2/R5D zoning district.

PREMISES AFFECTED – 122-21 Merrick Boulevard, northwest corner of Merrick Boulevard and Sunbury Road, Block 12480, Lot(s) 32, 39, Borough of Queens.

## COMMUNITY BOARD #12Q

### THE VOTE TO CLOSE HEARING –

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

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

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*Jeff Mulligan, Executive Director*

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## \*CORRECTION

The resolution adopted on July 22, 2014, under Calendar No. 775-85-BZ and printed in Volume 99, Bulletin No. 30, is hereby corrected to read as follows:

### 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 Montanez .....4  
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 8:00 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

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

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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.

\*The resolution has been amended in part of the 10<sup>th</sup> WHEREAS, to add the number "8" in the section which **read**: ...*Monday through Saturday, from :00 a.m. to 6:00 p.m.; and. Now reads*: ...*Monday through Saturday, from 8:00 a.m. to 6:00 p.m.; and. Corrected in Bulletin No. 31, Vo. 99, dated August 6, 2014.*

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## \*CORRECTION

**The resolution adopted on July 15, 2014, under Calendar No. 266-07-A and printed in Volume 99, Bulletin Nos. 27-29, is hereby corrected to read as follows:**

### 266-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1610 Avenue S LLC, owner.

SUBJECT – Application January 9, 2013 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on December 9, 2012. R4-1 Zoning District.

PREMISES AFFECTED – 1602-1610 Avenue S, southeast corner of Avenue S and East 16th Street. Block 7295, Lot 3. Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Application granted.

### THE VOTE TO GRANT –

Affirmative: Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....4  
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 six-story mixed residential and community facility building at the subject site; and

WHEREAS, a public hearing was held on this application on March 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 July 15, 2014; and

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

WHEREAS, Community Board 15, Brooklyn recommends disapproval of this application, citing concerns about the lack of maintenance of the site and its effect on nearby residents; and

WHEREAS, Assemblyman Steven Cymbrowitz provided testimony in opposition to this application; and

WHEREAS, the Madison-Marine-Homecrest Civic Association provided testimony in opposition to this application; and

WHEREAS, certain members of the surrounding community provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the “Opposition”; and

WHEREAS, the Opposition raised the following concerns with respect to the instant application: (1) that a “For Sale” sign has been posted at the site recently; (2) that the owner does not have the financing to complete the project; (3) that there are open Department of Buildings (“DOB”) and

Environmental Control Board (“ECB”) violations at the site; (4) that the sidewalk along the perimeter of the building is in disrepair; (5) that the site is a dumping ground; and (6) that the site negatively affects the quality of life and property values of the surrounding neighborhood; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Avenue S and East 16th Street, within an R4-1 zoning district; and

WHEREAS, the site has 85 feet of frontage along Avenue S, 95 feet of frontage along East 16th Street, and 8,075 sq. ft. of lot area; and

WHEREAS, the applicant proposes to develop the site with a six-story mixed residential (Use Group 2) and community facility (Use Group 4) building with 25 dwelling units; and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, the applicant states that New Building Permit No. 302054568-01-NB was issued on January 11, 2006 (the “New Building Permit”), authorizing construction of the building in accordance with the R6 zoning district regulations; and

WHEREAS, on February 15, 2006 (the “Enactment Date”), the City Council voted to adopt the Homecrest Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, the New Building Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new R4-1 zoning district regulations and foundations were not complete; and

WHEREAS, the applicant notes that by letter dated November 18, 2008, DOB acknowledged that the New Building Permit was lawfully issued; and

WHEREAS, on December 9, 2008, under the subject calendar number, the Board adopted a resolution recognizing that a vested right to continue construction under the New Building Permit had accrued under the common law doctrine of vested rights, and the Board reinstated the New Building Permit for a term of four years, to expire on December 9, 2012; and

WHEREAS, the applicant represents that, subsequent to the 2008 grant, construction did not proceed due to insufficient financing; thus, as of December 9, 2012, construction had not been completed and a certificate of occupancy had not been issued for the building; and

WHEREAS, consequently, the applicant now seeks an additional four-year term in which to complete construction and obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to: (1) demonstrate that financing has been secured to complete the project; (2) clarify the status of open violations; and (3) respond to the concerns of the Opposition regarding the disrepair of the sidewalk and the lack of maintenance at the site; and

WHEREAS, as to the financing, the applicant provided an affidavit from an owner of the site, which indicates that Besyata Investment Group has committed up to \$6,000,000 to complete construction of the building; and

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WHEREAS, as to the open violations, the applicant represents that although the violating conditions have been eliminated, the fines have yet to be paid; as such, the violations remain open; and

WHEREAS, the applicant states that it will resolve all outstanding violations upon the renewal of the New Building Permit by the Board; and

WHEREAS, as to the disrepair of the sidewalk, the applicant states that because construction machinery must access the site by traversing the sidewalk, the developer did not plan to repair the sidewalk until the building is nearing completion; and

WHEREAS, the Board directs the applicant to remove the broken portions of the sidewalk and install had gravel or a similar temporary surface in order to provide a level walkway; and

WHEREAS, as to the maintenance of the site, the applicant provided an invoice and photographs of the site, which demonstrate that the site has been cleared of all debris and garbage; and

WHEREAS, as to the Opposition's concern regarding the "For Sale" at the site; in sum and substance, the Opposition is concerned that the applicant seeks renewal of the New Building Permit for the sole purpose of conveying the site to another developer, which the Opposition characterizes is inconsistent with the owner's statement that it has obtained financing to complete the building; and

WHEREAS, the Board notes, however, that under the common law doctrine of vested rights, such rights accrue not to a specific owner but rather to the real property itself; as such, a change in ownership—let alone an anticipated change in ownership or control—is not a basis for the Board to deny a request for an extension of time to complete construction; and

WHEREAS, likewise, the Board acknowledges the limitations on its authority to deny a request for an extension of time to complete construction where it has already recognized that the right to continue construction has vested, as set forth in Lefrak Forest Hills Corp. v Galvin, 40 AD2d 211, 217 [2d Dept 1972] affd, 32 NY2d 796, 298 NE2d 685 [1973]; 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. 302054568-01-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 15, 2016.

Adopted by the Board of Standards and Appeals, July 15, 2014.

**The resolution has been amended. Corrected in Bulletin No. 31, Vo. 99, dated August 6, 2014.**