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# BULLETIN

OF THE  
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## DIRECTORY

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74-49-BZ	515 Seventh Avenue, Manhattan
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**Affecting Calendar Numbers:**

75-13-A	5 Beekman Street, Manhattan
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# DOCKETS

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New Case Filed Up to January 14, 2014

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**321-13-BZ**

37-19 104th Street, Between 37 Avenue and 37 Road, Block 1771, Lot(s) 42, Borough of **Queens, Community Board: 3**. Variance (§72-21) application seeks to vary the side yard requirements of §23-462(a) and the parking space requirements of §25-32. R5 zoning district. R5 district.

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**322-13-BZ**

42-01 Main Street, Located on the southeast corner of the intersection of Main Street and Maple Avenue., Block 5135, Lot(s) 1, Borough of **Queens, Community Board: 7**. Reinstatement (§11-411) of a previously approved variance which permitted accessory parking on the zoning lot for the use Group 6 commercial building; Waiver of the Rules. R6/C1-2 and R6 zoning district. R6/C1-2 and R6 district.

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**323-13-BZ**

127 East 71st Street, East 71st Street between Park and Lexington Avenues, Block 1406, Lot(s) 12, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-621) to permit the proposed alteration, which will enlarge the footprint and include a vertical enlargement at the rear portion of the existing four story, plus cellar and basement contrary to lot coverage §23-145. R8B (LH-1A) zoning R8b, LH-1-A district.

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**324-13-BZ**

78-32 138th Street, Located on the southwest corner of the intersection of 138th Street and 78th Road., Block 6588, Lot(s) 25, Borough of **Queens, Community Board: 8**. Special Permit (§73-621) to request an amended special permit to allow the enlargement of a single-family residence located within an R2 zoning district, contrary to floor area and open space regulations. R2 zoning district. R2 district.

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**325-13-BZ**

3170 Webster Avenue, East side of Webster Avenue at intersection with East 205th Street, Block 3357, Lot(s) 37, Borough of **Bronx, Community Board: 7**. Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (PCE) within a portions of commercial building, contrary to §32-10. C2-4/R7D zoning district. C2-4(R7D) district.

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**326-13-BZ**

16-16 Whitestone Expressway, West Side of Whitestone Expressway(service road), 920.47 ft. north of 20th Avenue, Block 4148, Lot(s) 50,65, Borough of **Queens, Community Board: 7**. Special Permit (§73-44) to reduce required off-street parking accessory to office building. M1-1(CP) district.

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**327-13-BZ**

1504 Coney Island Avenue, Property occupies the northwest corner of Coney Island Avenue and Avenue L, Block 6536, Lot(s) 28,30,34,40,41,42,43, Borough of **Brooklyn, Community Board: 12**. Special Permit (§73-44) to reduce the required number of accessory parking spaces stipulated by Section 36-21(ZR) for ambulatory diagnostic or treatment facility use and Use Group 6 uses with Parking Requirement Category B1 fro one space per 400sf. Of flo C8-2 R5/C2-3 district.

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**328-13-BZ**

8 Berry Street, Northeast corner of Berry Street and North 13th Street, Block 2279, Lot(s) 26, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (PCE) in a manufacturing zoning district. M1-1 zoning district. M1-1 district.

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**329-13-BZ**

145 Girard Street, Located on the East side of Girard Street, approx 600 ft South of intersection with Hampton Avenue., Block 8750, Lot(s) 386, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to legalize a three-story single family residence, with total 6,234 sq. ft. floor area. R3-1 zoning district. R3-1 district.

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**330-13-BZ**

2801 Brown Street Located on the East side of Brown Street, approx,230 ft South of intersection with Shore Parkway., Block 8800, Lot(s) 0095, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit a two- story (one story plus mezzanine) single family residence, with total 1142 sq. ft. floor area. R4-1 zoning district. R4-1 district.

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# DOCKETS

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## 331-13-BZ

2005 86th Street, Premises is located on the north side of 86th street just west of its intersection with 20th Avenue., Block 6346, Lot(s) 5, Borough of **Brooklyn, Community Board: 11**. Special Permit (§73-36) to allow the operation of a physical culture establishment (fitness center) within the existing building at the Premises. C4-2 zoning district. C4-2 district.

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## 1-14-BZ

525 West 42nd Street, Northerly side of West 42nd Street 325 feet easterly of Tenth Avenue, Block 1071, Lot(s) 42, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to allow the operation of a physical culture establishment (PCE) spa at the building contrary to (ZR)32-31. C6-4 zoning district. C6-4 district.

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## 2-14-BZ

555 6th Avenue, Westerly side of 6th Avenue between West 15th Street and West 16th Street, Block 79, Lot(s) 36, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to allow the operation of a physical culture establishment/health club in portions of the cellar and first floor of the building. C6-2A/R8B zoning district. C6-2A/R8B district.

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**3-14-BZ** 12-18 East 89th St., situated on the South side of East 89th St, 0 feet west of the corner formed by the intersection of Madison Avenue and East 89th Street., Block 1500, Lot(s) 62, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to permit the enlargement of St David's School. R8B/R10/C1-5MP zoning district. R8B/R10/C1-5MP district.

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## 4-14-BZ

1065 Avenue of The Americas, NWC of Avenue of the Americas and West 40th St, Block 993, Lot(s) 29, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow physical culture establishment within portions of an existing commercial building contrary to (ZR)32-10 zoning resolution. C5-3(mid)(T) zoning district. C5-3(Mid)(T) district.

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## 5-14-BZ

1807 East 22nd Street, East side of East 22nd Street between Quentin Road and Avenue R, Block 6805, Lot(s) 64, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to allow the enlargement of an existing single family residence located in a residential (R3-2) zoning district. R3-2 district.

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## 6-14-BZ

2525 Victory Boulevard, Northwest corner of Victory Boulevard and Willowbrook Road, Block 1521, Lot(s) 1, Borough of **Staten Island, Community Board: 1**. Special Permit (§73-211) to permit for an existing Use Group 16, automotive service station on an R3-2C-21 zoning district seeks to convert the existing automotive service bays into an accessory convenience store and enlarge the existing accessory buildin 73-211& 73-03 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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# CALENDAR

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**FEBRUARY 4, 2014, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 4, 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**

**823-19-BZ**

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

SUBJECT – Application April 20, 2012 – Amendment of a previously approved variance which permitted a one story warehouse (UG 16) within a residential zoning district. The application seeks to amend the previously approved plans to reflect the proposed construction of an as-of-right 2 story community facility (UG 4) and an alteration pursuant to (§11-412) to reduce the ground floor warehouse space to accommodate 13 required accessory parking spaces for the proposed community facility use. R5 zoning district.

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

**COMMUNITY BOARD #7BK**

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**5-28-BZ**

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

SUBJECT – Application August 20, 2013 – Amendment (§11-413) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B). The amendment seeks to change the use to a Car Rental Establishment (UG 8). R6 zoning district.

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

**COMMUNITY BOARD #9BK**

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**923-77-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1899-1905 McDonald Avenue Associates, LLC, owner.

SUBJECT – Application November 14, 2013 – Extension of Term of a previously approved Variance (§72-21) which permitted a one story manufacturing building which expired on May 31, 2013. R5 (OP) zoning district.

PREMISES AFFECTED – 1905 McDonald Avenue, east side of McDonald Avenue, 105 ft. south of Quentin Road, Block 6658, Lot 86, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**16-93-BZ**

APPLICANT – Carl A. Sulfaro, for 110 Christopher Street, LLC, owner.

SUBJECT – Application November 15, 2013 – Extension of Term (§11-411) of a previously approved Variance (§72-21) which permitted retail (UG 6) in the cellar of an existing five (5) story and cellar multiple dwelling, which expires on February 23, 2014. R6 zoning district.

PREMISES AFFECTED – 110 Christopher Street, south side of Christopher street 192'-6.26 West of Bleeker Street, Block 588, Lot 51, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**APPEALS CALENDAR**

**164-13-A**

APPLICANT – Slater & Beckerman, for Grand Imperial, LLC, owner.

SUBJECT – Application May 31, 2013 – Appeal seeking to reverse DOB determination not to issue a Letter of No Objection that would have stated that the use of the premises as Class A single room occupancy for periods of no less than one week is permitted by the existing Certificate of Occupancy. R10A zoning district.

PREMISES AFFECTED – 307 West 79th Street, northside of West 79th Street, between West End Avenue and Riverside Drive, Block 1244, Lot 8, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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**ZONING CALENDAR**

**211-12-BZ**

APPLICANT – Rothkrug Rohkrug & Spector LLP, for Jessica and Matthew Sheehan, owners.

SUBJECT – Application July 27, 2012 – Variance (§72-21) to permit the proposed re-establishment of residential building contrary to §42-00. M1-1 zoning district.

PREMISES AFFECTED – 164 Coffey Street, east side of Coffey Street, 100' northeast of intersection of Coffey Street and Conover Street, Block 585, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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**64-13-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Norma Chakkalo and Abdo Chakkalo, owners.

SUBJECT – Application February 11, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R4 (OP) zoning district.

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# CALENDAR

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PREMISES AFFECTED – 712 Avenue W, south side of Avenue W between East 7th Street and Coney Island Avenue, Block 7184, Lot 5, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**179-13-BZ**

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

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

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

**COMMUNITY BOARD #14BK**

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**234-13-BZ**

APPLICANT – Sheldon Lobel, P.C., for Dov Lipschutz, owner.

SUBJECT – Application August 16, 2013 – Variance (§72-21) for the enlargement of an existing two-family detached residence to be converted to a single-family home contrary to minimum front yard (§23-45(a)); and less than the required rear yard (ZR §23-47) minimum rear yard. Special Permit (§73-621) for an enlargement which is contrary to floor area (ZR 23-141). R3-2 zoning district.

PREMISES AFFECTED – 1653 Ryder Street, aka 1651 Ryder Street, Located on the northeast side of Ryder Street between Quentin road and Avenue P, Block 7863, lot 18, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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**272-13-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 78-14 Roosevelt LLC, owner; Blink 78-14 Roosevelt, Inc., lessee.

SUBJECT – Application September 18, 2013 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within a portions of an existing commercial building contrary to §32-10 zoning resolution. C2-3/R6 & R5 zoning district.

PREMISES AFFECTED – 78-02/14 Roosevelt Avenue aka 40-41 78<sup>th</sup> Street and 40-02 79<sup>th</sup> Street, south side of Roosevelt Avenue between 78th Street and 79th Street, Block 1489, Lot 7501, Borough of Queens.

**COMMUNITY BOARD #4Q**

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*Jeff Mulligan, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, JANUARY 14, 2014  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**360-65-BZ**

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Dalton Schools, Inc., owner.

SUBJECT – Application July 19, 2013 – Amendment of previously approved Variance (§72-21) and Special Permit (§73-64) which allowed the enlargement of a school (*Dalton School*). Amendment seeks to allow a two-story addition to the school building, contrary to an increase in floor area (§24-11) and height, base height and front setback (§24-522, §24-522)(b)) regulations. R8B zoning district.

PREMISES AFFECTED – 108-114 East 89th Street, midblock between Park and Lexington Avenues, Block 1517, Lot 62, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an amendment to a previously-granted variance pursuant to ZR § 72-21 and special permit pursuant to ZR § 73-641 which authorized the enlargement of the Dalton School (“Dalton”) contrary to bulk regulations; and

WHEREAS, a public hearing was held on this application September 24, 2013, after due notice by publication in the *City Record*, with a continued hearing on October 29, 2013, and then to decision on January 14, 2014; and

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

WHEREAS, Community Board 8, Manhattan, recommends disapproval of this application; and

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

WHEREAS, a representative of the Board of Directors of 1095 Park Avenue provided testimony that included neither support nor opposition to the application; the representative did note Dalton’s cooperation and ongoing efforts to mitigate the expansion’s impact on 1095 Park Avenue; and

WHEREAS, representatives from Carnegie Hill Neighbors, the Board of Managers of 111 East 88<sup>th</sup> Street, the Board of Directors of 1105 Park Avenue, and certain members of the surrounding community provided testimony in opposition to the application (the “Opposition”) citing the following concerns: (1) the effect of the expansion on neighboring properties with respect to natural light, ventilation, solar glare, shadows, noise, aesthetics, traffic during construction, and long-term property values; (2) the scale of the expansion in comparison to other mid-block, R8B buildings; (3) the fact that the site is already non-complying and has previously obtained bulk variances; (4) the absence of community outreach and Community Board support for the application; (5) the lack of an initial environmental assessment study (“EAS”) and the lack of time to review and respond to the EAS that was prepared; (6) the failure to address the (a), (c), and (e) findings of ZR § 72-21; (7) the misapplication of the Cornell doctrine for educational and religious institutions; (8) the precedent being set for other educational institutions within the mid-block contextual districts and citywide; and (9) the failure of Dalton to examine alternative sites and proposals; and

WHEREAS, the subject site is located mid-block on the south side of East 89<sup>th</sup> Street between Park Avenue and Lexington Avenue, in an R8B zoning district; and

WHEREAS, the site has 101.67 feet of frontage along East 89<sup>th</sup> Street and 10,235 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 12-story building (“the Building”) used entirely for Dalton’s school purposes; and

WHEREAS, the Building, which was constructed in 1929 for Dalton, originally had ten stories with a small four-story portion at the rear; and

WHEREAS, in 1965, due to increased enrollment primarily from the inclusion of boys in the formerly all girls’ school, Dalton sought a variance and special permit, pursuant to the subject calendar number, to permit a single-story vertical extension of fenced-in areas on the roofs of the fourth story and tenth story; the enlargements constituted 10,720 sq. ft. of floor area, and increased the existing non-compliance related to FAR, front/rear setback, and sky exposure plane regulations under the then-R8 zoning; and

WHEREAS, the applicant states that the extension on the fourth-story roof was for an art studio, and the extension on the tenth-story roof created a double-height 11<sup>th</sup> story for a regulation-size gymnasium; and

WHEREAS, in the early 1990s, due to increased enrollment, Dalton sought additional classroom space; accordingly, on March 3, 1992, pursuant to the subject calendar number, Dalton obtained an amendment to the grant (the “Prior Amendment”) to allow the expansion within the Building’s envelope of the tenth-story library mezzanine and the insertion of a floor slab into the double-height gymnasium to convert the gymnasium into two new classroom floors (the 11<sup>th</sup> and 12<sup>th</sup> stories); the Prior Amendment allowed for 7,092 sq. ft. of additional floor area and required relief from FAR regulations under the current

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R8B zoning (also height and setback relief attributed to minor work on the cornice and roof); the construction permitted by the Prior Amendment was completed in 1995; and

WHEREAS, accordingly, the applicant states that in the nearly 85 years since the Building was constructed, its envelope has been expanded only once, in 1965, pursuant to the variance; and

WHEREAS, the Building exists now within its 1965 building envelope, with the floor area increase granted by the Prior Amendment for 86,796 sq. ft. (8.48 FAR), 12 floors, and a total height of 143'-10"; and

WHEREAS, the applicant proposes to construct a two-story 12,164 sq. ft. enlargement above the 12<sup>th</sup> floor which will result in 98,960.4 sq. ft. of floor area (9.67 FAR), 14 floors, and a total height of 170'-5"; a rooftop greenhouse will add 6'-5" of height at its peak (the "Enlargement"); and

WHEREAS, the underlying R8B zoning district regulations allow for a maximum of 52,219 sq. ft. (5.1 FAR), a base height of 60 feet, and total height of 75 feet; and

WHEREAS, the applicant notes that Dalton occupies four buildings: 108-114 East 89<sup>th</sup> Street (the Building) occupied by the Upper School, comprising the Middle School (grades four through eight) and the High School (grades nine through twelve), totaling 929 students; 51-63 East 91<sup>st</sup> Street - The Lower School, comprising the First Program (kindergarten through third grade), totaling 376 students; 200 East 87<sup>th</sup> Street - The Physical Education Center; and 120 East 89<sup>th</sup> Street – offices; and

WHEREAS, the applicant represents that Dalton's enrollment has increased by only 25 students since the Board approved the Prior Amendment, but the curriculum has evolved such that it is necessary for Dalton to provide additional classroom space in the Building; and

WHEREAS, the applicant represents that the programmatic need for the enlargement is to develop Dalton's "STEM" program for science, technology, engineering and mathematics education, which is at the center of nationwide initiatives to transform education, from the primary grades through graduate school, by reemphasizing the science-based fields; and

WHEREAS, the applicant represents that Dalton is currently unable to offer the programming, particularly in technology and engineering to satisfy the goals of a competitive STEM curriculum; and

WHEREAS, specifically, for example, Dalton states that only 30 high school students are enrolled in the robotics course, which combines elements of engineering and computer science; and

WHEREAS, the applicant asserts that the modest enrollment is attributed to the lack of a specialized engineering space which would allow students to construct and test projects during the school day; instead, such work now must take place after school or on Saturdays, which deters students who are on a team sport or play an

instrument and have practices and games or other activities scheduled after school; and

WHEREAS, the applicant states that the need to construct and test robots after school causes additional difficulties; the robots are tested on a 12-ft. by 12-ft. robotics movement "field" where they perform their designed tasks; the applicant notes that because this activity occurs after normal school hours in the computer science classroom, the first and last half hours of each after-school session is spent setting up and dismantling the movement field; and

WHEREAS, the applicant states that the Enlargement would allow for a permanent movement field and eliminate the wasted set-up and dismantling time; also, without a specialized engineering space, robots have to be stored on the floor in the computer science classroom which limits the size of the robots that can be constructed and curtails Dalton's participation in FIRST, a not-for-profit organization devoted to helping young people discover and develop a passion for STEM; and

WHEREAS, as to computer science, the applicant states that a basic computer science class requires a room with computer stations and a space for group work on problems; Dalton currently has one such combined room for its entire computer science program thus it is occupied by classes during every available period and is used for Lab meetings during the other periods, such as lunch periods – Lab periods are especially critical in computer science classes due to the need for incremental adjustments to projects that require meetings between student and teacher with access to the equipment; and

WHEREAS, Dalton represents that in 2005, 43 of its high school students took computer science; in 2012, 203 of the 455 high school students signed up to take the course, but only 184 were able to be enrolled in 2013 due to space limitations; for 2014, 254 students have signed up and they expect even more students to sign up in the future; and

WHEREAS, the applicant states that with the complete utilization of Dalton's one computer science classroom, no additional students can take computer science, nor can Dalton offer any computer science classes to middle school students, or provide new computer science classes in a greater variety of subareas; and

WHEREAS, the applicant represents that to meet the demand for additional computer science classroom space, the Enlargement would have computer science classrooms adjacent to both the High School and Middle School Facilities; and

WHEREAS, additionally, Dalton cites to deficiencies in its science program with insufficient space for students to participate in long-term in-house research projects that can be performed in the Building; in 2013 only 12 of the 48 students who signed up to perform long-term in-house research projects could be so placed; the other 36 students could not perform experiments and had to limit their work to theory; and

WHEREAS, the applicant states that the proposed

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Enlargement would contain two specialized robotics and engineering facilities, each of which takes up the space of approximately three regular classrooms, a long-term science research lab (approximately the size of two-to-three regular classrooms), and a greenhouse (approximately the size of three regular classrooms) (collectively, the “New Facilities”), which Dalton needs in order to correct the deficiencies in its STEM program; and

WHEREAS, the applicant submitted a matrix that shows the occupancy of each regular classroom, for each period, in each day of a typical school week during the most recent school year to support its point that the Building’s existing classrooms are fully utilized and there is no classroom space in the Building for new courses or additional sections of existing courses; thus, the Building’s classroom space cannot be converted into the New Facilities; and

WHEREAS, the matrix reflects that regular classrooms are occupied during 74.88 percent of the periods in a school week, but notes that in the periods in which these classrooms are not being used for a class, students who would otherwise use these rooms are at lunch, gym or assembly, so that when accounting for these periods, the adjusted weekly-utilization rate for regular classrooms is 89.83 percent; and

WHEREAS, the applicant represents that during the approximately 10 percent of periods when the rooms could be used by classes, they are usually occupied by teachers and students engaged in Lab meetings, either because access to materials in the classroom is needed, or because there is insufficient faculty office space for these meetings to occur elsewhere; and

WHEREAS, the applicant represents that the nearly 90 percent adjusted-utilization rate of Dalton’s regular classrooms is very high and it would be difficult to increase the rate because it would be very hard to match the scattered room availability with both student and teacher availability; and

WHEREAS, the applicant also states that there is not any other non-classroom space that can be converted for the STEM use and there is not any space in Dalton’s other buildings available for the STEM use; and

WHEREAS, the applicant notes the following specific use of the Enlargement: two stories with approximately 12,200 sq. ft. of floor area; the 13<sup>th</sup> floor, containing approximately 6,100 sq. ft. of floor area, would have an approximately 480 sq. ft. machine room (the “Machine Room”), an approximately 1,200 sq. ft. high school robotics/engineering laboratory (the “High School Engineering Lab,” and together with the Machine Room, collectively, the “High School Facility”), an approximately 420 sq. ft. high school computer science classroom, an approximately 950 sq. ft. middle school robotics/engineering lab (the “Middle School Facility”) and an approximately 500 sq. ft. middle school computer science classroom; the 14<sup>th</sup> floor, also approximately 6,100 sq. ft., would contain an approximately 1,300 sq. ft. greenhouse, an approximately

1,200 sq. ft. science research lab, and three classrooms, each approximately 460 sq. ft.; and

WHEREAS, the applicant states that the High School Facility would include fabrication laboratory equipment (the “Fab Lab”), prototyping (assembly) space, a robotics area, engineering equipment, and a machine room; and

WHEREAS, the applicant states that the High School Facility will allow Dalton to meet the following primary goals: allow 85 to 110 high school students to take robotics if both the lecture and construction components of the course were provided during the school day, rather than after school and on weekends; allow students to enter competitions with the space to construct larger projects such as solar cars and gravity vehicles; to offer a variety of engineering electives, such as biological and electrical engineering, which require such a facility to construct and test projects; to offer, as an accredited course, participation in the Science Olympiad, a citywide competition combining engineering and science; and to integrate art into its STEM program by offering new courses such as Computer Science and Art (Graphics) which need to utilize the specialized Fab Lab equipment; and

WHEREAS, additionally, the new facility will allow middle school students access to robotics and engineering classes, including the Fab Lab; sufficient space to undertake long-term research projects; new science electives such as Quantum Mechanics, Advanced Environmental Science, Evolutionary Ecology, Astronomy II, Electronics, and Marine Biology that require lab projects; and

WHEREAS, finally, the Enlargement will include a greenhouse to be used for (1) Dalton’s Environmental Science class for food and agricultural studies and experiments with nutrient recycling and energy conservation, (2) biology classes, for studies on plant function and growth, (3) other classes that have units on plants or sunlight, and (4) Middle School and High School environmental clubs; and

WHEREAS, the applicant represents that the proposal will further Dalton’s programmatic needs without affecting any of the findings of the original variance grant; and

WHEREAS, the applicant further represents that the proposed facility is unable to be accommodated within Dalton’s other buildings: specifically (1) in 200 East 87<sup>th</sup> street where Dalton leases the lowest five floors, an enlargement is infeasible as the floors above are occupied by co-op apartments; (2) in 120 East 89<sup>th</sup> street where Dalton leases office space, the lease expires in 2020, and any additional space would be in doubt at the time the lease expires; and (3) expansion space off-site would not meet the programmatic needs because travelling to off-site location diminishes class time; and

WHEREAS, , the applicant states that the New York State Court of Appeals has held that in a residential district educational institutions cannot be required to show an affirmative need to expand as a condition precedent to the issuance of a discretionary approval by a zoning board. *See, e.g., Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986);

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Lawrence School Corp. v. Lewis, 578 N.Y.S.2d 627 (N.Y.A.D. 2 Dept., 1992); and

WHEREAS, the applicant adds that the Cornell court also held that because “schools, public, parochial, and private, by their very nature, singularly serve the public’s welfare and morals,” zoning boards in New York should allow schools to expand into residential areas unless a particular proposed expansion “would unarguably be contrary to the public’s health, safety or welfare.” Id. at 593, 595; and

WHEREAS, the applicant asserts that Cornell crystallized the Court of Appeals’ long-standing presumption in favor of educational and religious uses in residential areas. See Diocese of Rochester v. Planning Bd. of Town of Brighton, 1 N.Y.2d 508, 526 (1956) (“schools and accessory uses are, in themselves, clearly in furtherance of the public morals and general welfare”); and

WHEREAS, further, the applicant asserts that under the State’s standard, the court has held that, for example, the potential adverse impacts on “use, enjoyment and value of properties in the surrounding areas” and on “the prevailing character of the neighborhood” are “insufficient bas[e]s on which to preclude” the substantial expansion of a religious facility in a residential neighborhood. Westchester Reform Temple v. Brown, 22 N.Y.2d 488, 494 (1968); and

WHEREAS, the applicant asserts that the proposed variance would allow Dalton to add 12,200 sq. ft. of instructional and research space in two additional floors at the top of the Building; the Enlargement will not lead to an increase in enrollment, nor will it result in additional traffic in the area; the principal affect will be on the eastern views of apartments on the top floors of 1095 Park Avenue, the building to the immediate west; and

WHEREAS, the applicant states that the Building’s configuration constitutes a unique physical condition on the zoning lot, which causes Dalton practical difficulties and unnecessary hardship that prevent Dalton from being able to carry out its proposed program in the Building, particularly in the STEM areas; and

WHEREAS, the applicant notes that construction of the Enlargement would increase the Building’s non-compliance with, and requires relief from, the applicable maximum base height, maximum building height, front setback, rear setback, and FAR requirements of the Zoning Resolution, but that strict application of the Zoning Resolution would serve no public purpose and would operate as a severe constraint on Dalton’s functioning as an academic institution; and

WHEREAS, the applicant asserts that its hardship is not one that is generally applicable to uses located in the neighborhood in which the zoning lot is located, which is predominately residential in nature; and

WHEREAS, specifically, the applicant notes that there is only one other school within 400 feet of the site, PS M169 (Robert F. Kennedy School), directly south of the site, at 110 East 88th Street, which occupies the lower floors of a 38-story residential tower; and

WHEREAS, the applicant asserts that the proposed Enlargement would not be contrary to the public’s health, safety or welfare and that it would not alter the essential visual character of the neighborhood; and

WHEREAS, the applicant asserts that because the Enlargement is designed to serve the existing school enrollment, there will be no resulting increase in the use of the Building, and thus no increase in pedestrian or vehicular traffic in the area; and

WHEREAS, as to bulk, the applicant notes that increasing the stories in the Building from 12 to 14 would raise its height by 26’-7” to 170’-5”;

WHEREAS, the applicant submitted an area map and a table which identify other buildings with comparable heights within a 400-ft. radius of the site; and

WHEREAS, the analysis reflects that of the 152 buildings shown, from 85<sup>th</sup> Street to 91<sup>st</sup> Street between Lexington and Madison avenues, there are 45 buildings with more than 13 stories, including two on the Building’s block—the property immediately to the west of the Building, 1095 Park Avenue, which has 18 stories and extends approximately 50 feet into the R8B district, and the building on the southeast corner of the Building’s block, 1085 Park Avenue, which is 15 stories; there are also five buildings with more than ten stories, and nine with more than seven stories; and

WHEREAS, the applicant asserts that the development of adjacent property will not be substantially impaired should the amendment be granted because the principal impact of the Enlargement will be on the eastern views from and light and air to the windows on the upper stories of 1095 Park Avenue, the building immediately to the west; and

WHEREAS, the applicant notes that 1095 Park Avenue is an 18-story building, with its zoning lot having 159 feet of frontage on East 89<sup>th</sup> Street, the western 100 feet are in an R10 district, and the remaining 59 feet, including the portion in which the affected windows are located, are in the same R8B district as the Building; and

WHEREAS, the applicant notes that the Enlargement and the elevator bulkhead would be between 9’-0” and 14’-10” from the affected windows in 1095 Park Avenue and the acoustic screen on the roof of the Enlargement would be approximately 25 feet away from the affected windows; and

WHEREAS, the applicant notes that the Enlargement, the elevator bulkhead, and the presence of the screen would adversely affect the views from and light and air to windows on the 15<sup>th</sup> through 18<sup>th</sup> floors, and would obstruct the light and air to some windows on the 14<sup>th</sup> floor of 1095 Park Avenue; and

WHEREAS, however, the applicant asserts that under the relevant legal standards the obstruction of the views from and light and air to the affected windows should not be considered contrary to the public’s health, safety or welfare; and

WHEREAS, the applicant notes that the Enlargement will also be visible from 13 other comparably-sized buildings; and

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WHEREAS, the applicant notes that the Enlargement will be fully enclosed and no student access will be permitted on the roof; therefore, there will be no affect with respect to noise from the Enlargement on adjacent properties; and

WHEREAS, the applicant asserts that the Enlargement will contain aspects that will contribute positively to the neighborhood, aesthetically and environmentally including an attractive brick façade to replace the current stucco-facing of the 11<sup>th</sup> and 12<sup>th</sup> floors, to match the façade of the Enlargement and the rest of the Building; and

WHEREAS, at the Board's request, the applicant identified all of its mitigation measures for sound and other potential impacts to surrounding buildings; such measures include: (1) replacement of stucco with brick on the existing top two stories, (2) enclosure of existing exposed ductwork, (3) installation of more efficient mechanical equipment and acoustic screens for noise reduction, (4) elimination of west-facing windows on the enlargement in response to 1095 Park Avenue's concerns, (5) lighting controls within the building to turn off lights when unoccupied and use of the greenhouse grow lights only during daylight hours, (6) elimination of the western stair bulkhead and water tower and reduction in height of the elevator bulkhead from 15 feet to 13 feet, (7) prohibition of the use of the roof by children, and (8) the provision of green roof and plantings on vertical surfaces visible from 1095 Park Avenue; and

WHEREAS, the applicant states that in granting the Prior Amendment, the Board made the required findings under ZR §§ 72-21, 73-03, 73-64 and 73-641 of the Zoning Resolution and that the proposed amendment does not disturb any of the prior findings; and

WHEREAS, the Opposition asserts that the application should have been filed as a new variance application instead of as an amendment on the Special Order Calendar, and it cites Westwater v. New York City Bd. of Stds. and Appeals, 2013 N.Y.Misc Lexis 4707 (1st Dept 2013) and Fisher v. New York City Bd. of Stds. and Appeals, 71 AD2d 126, 127 (1st Dept 2002) for the principle that only site changes that would be permitted as-of-right but for the prior variance—"minor" or "ministerial" changes—are properly reviewed as amendments to a variance; all other changes, the Opposition states, must be reviewed as new variance applications; as such, the Opposition states that the proposal, which would not be permitted as-of-right, was improperly filed as an amendment; and

WHEREAS, additionally, the Opposition asserts that the EAS is deficient in the following respects: (1) it fails to acknowledge that the expansion results in a building that is more similar to the adjacent R10 district than to Dalton's mid-block R8B district; (2) the shadow study addressed the incremental impact of the expansion rather than the impact of the Building as a whole; (3) the urban design analysis erroneously compared Dalton to Park Avenue building rather than buildings within the mid-block R8B; (4) the air quality study did not include the effects of the expansion on buildings other than 1089 Park Avenue; (5) the construction

impacts discussion ignores the fact that work will have to be performed outside of school hours; (6) the EAS does not address that this is the third variance application filed at the site; and (7) the Opposition also takes exception with the timing of the submission of the EAS, and states that it is contrary to SEQRA's goal of incorporating environmental considerations into the decision making process at the earliest opportunity; and

WHEREAS, finally, the Opposition asserts that the application ignores the requirements of ZR § 72-21(a), (c), and (e) in that: (1) the application does not articulate a unique physical condition inherent on the zoning lot that creates a practical difficulty in developing in accordance with the zoning regulations; (2) the application does not demonstrate how the expansion outweighs the detrimental impact on the general welfare of the surrounding community; and (3) the application includes no alternative development proposals and provides no details of the use of the building that would enable to Board to make a finding that the proposal is the minimum variance necessary; and

WHEREAS, the applicant responded to the following primary concerns raised by the Opposition (1) the assertions about the requirement for, substance of, and procedure of the EAS; (2) the incompatibility of the Enlargement with the character of the neighborhood; (3) the scope of the Enlargement and its nature as a third approval for the Building; and (4) the limitations of the case law deference afforded to educational institutions; and

WHEREAS, as to the Opposition's concerns about the form of the application and the requirement for an EAS, the applicant notes that such claims are rendered moot by its submission of an EAS; and

WHEREAS, specifically, the applicant notes that it submitted an EAS in a manner which afforded the Opposition and the Community Board in excess of 70 days to review and respond; and

WHEREAS, the applicant asserts that the Community Board has been afforded more time to review the EAS than if it had been submitted with the initial application because if the EAS had been submitted along with the initial application, it is unlikely that the Community Board would have had the opportunity to review critiques of the EAS as provided by the Opposition's consultants and likely that it would not have had more than 60 days to review; and

WHEREAS, the applicant notes that the Opposition reviewed and submitted a lengthy response to the EAS for the Board's consideration; and

WHEREAS, as to the Opposition's concerns related to alleged deficiencies in the EAS, the applicant asserts that they are without merit and that the EAS was conducted in full accordance with the methodologies set forth in the City's CEQR Technical Manual; and

WHEREAS, the applicant notes that it submitted the EAS to the Community Board more than 60 days prior to the Board's scheduled decision date, which is consistent with the 60-day period that the Community Board has to review new applications prior to the Board's first hearing; and

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WHEREAS, as to the Opposition's concerns about the EAS being submitted after the application had already been initially reviewed, the applicant notes that those concerns were raised prior to the revision of the submission schedule which allowed the Community Board and the Opposition more than 60 days to review and comment on the EAS; and

WHEREAS, as to the Opposition's concerns about the Land Use, Public Policy and Zoning Section of the EAS, the applicant notes that the Opposition's consultant concedes that the EAS "examines direct impacts" of the variance, but contends that it "ignores the possibility of indirect impacts" such as the potential that a variance granted for this project may lead to similar variances for other facilities in the R8B district; and

WHEREAS, the applicant notes that the CEQR Technical Manual requires a study of indirect impacts of an action only when a site-specific change "is important enough to lead to changes in land use patterns over a wider area" but does not require a study of indirect impacts that are speculative; and

WHEREAS, the applicant notes that as to the Opposition's concerns about the character of the R8B zoning in the mid-block, 11 other buildings in the midblocks between Park and Lexington avenues and East 87<sup>th</sup> Street and the north side of East 90<sup>th</sup> Street exceed the 75-ft. height limit of the R8B zoning district, with seven of them having heights of 150 feet or greater; and

WHEREAS, accordingly, the applicant asserts that the proposed Enlargement, which would increase the height of the Building from 143'-10" to 170'-5", would not be out of context with the midblocks in its vicinity; and

WHEREAS, in response to the Opposition's concerns regarding outreach, and questions raised by the Board, the applicant described its prior outreach to the community, including the neighbors at 1095 Park Avenue and performed additional outreach including displaying a model of the Building to 1105 Park Avenue; and

WHEREAS, as to the specific impact alleged by 1105 Park Avenue that the Enlargement would have a significant adverse effect on views from 1105 Park Avenue's south and east facing windows and would cast shadows on its façade, the applicant asserts that the Enlargement would only be visible from these windows at oblique angles at distances ranging from 80 to 160 feet (based on distances shown on the Sanborn Map); and

WHEREAS, as to the Opposition's claims that the applicant failed to provide an analysis of alternative sites, the applicant states that, following Cornell, such a discussion would be inappropriate; the court stated that "[a] requirement of a showing of need to expand, or even more stringently, a need to expand to the particular location chosen, however, has no bearing whatsoever upon the public's health, safety, welfare or morals. The imposition of such a requirement, or any other requirement unrelated to the public's health, safety or welfare, is, therefore, beyond the scope of the municipality's police power, and thus, impermissible" Cornell at 597 (citations omitted); and

WHEREAS, first, as to procedure, the Board notes that (1) New York State courts have recognized the Board's authority to establish which hearing calendar and application type is appropriate for proposals under its consideration; (2) the content of the application and the Board's analysis, rather than the calendar designation, guide the Board's review; (3) although the application was filed on the Special Order Calendar, the applicant satisfied the requirements of a variance application including specifically notification of neighbors and the submission of an EAS; and (4) the Board reviewed the application with the same degree of rigor it would had it been a new variance application; and

WHEREAS, the Board agrees with the applicant that the Opposition's case law cited in support of the timing concern is not persuasive as one case holds that environmental review must occur prior to the action by the governmental body, which is consistent with the Board's review here prior to acting on the subject application See City Council of City of Watervilet v. Town Board of Colonie, 3 N.Y. 3d 508 (2004); and

WHEREAS, as to the Opposition's assertion that the EAS should have examined the cumulative impacts of the subject application along with Dalton's two prior grants, which were granted 22 and 49 years ago, respectively, the Board agrees with the applicant that there is not any support for this contention in the CEQR Technical Manual or in Save the Pine Bush v. Albany, 70 N.Y. 2d 193, 206 (1987), which pertains to the cumulative impact of three actions to a single property over 49 years; and

WHEREAS, the Board notes that its Rules of Practice and Procedure do not require that an EAS be submitted for applications on the Special Order Calendar, but that the applicant volunteered to prepare an EAS to respond to concerns the Opposition raised and that it followed the requirements of the CEQR Technical Manual; and

WHEREAS, the Board notes that the applicant submitted the EAS to the Opposition and the Community Board more than 70 days in advance of the Board's decision, which is more time than the Community Board has in a standard application process; and

WHEREAS, the Board has considered the relevant findings and concludes that the proposal does not disturb any of the findings of the original variance or special permit; and

WHEREAS, the Board accepts the programmatic needs as legitimate and finds that the applicant has sufficiently described the specific needs for the proposed new floors and articulated a clear need for all of the proposed floor area; and

WHEREAS, the Board accepts the applicant's representations that the proposed space is necessary to accommodate the STEM programming, allow more students to participate in the programming, and to relieve the nearly 90 percent utility of the existing classrooms which constrains school-wide scheduling; and

WHEREAS, the Board notes that the streetwall, height and setback waivers are necessary so that the Building may

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follow the institutional model of uniform floor plates to promote efficiencies and have floor to floor heights that are appropriate for classroom and laboratory use and can accommodate building services; and

WHEREAS, the Board also agrees with the applicant that Cornell does not allow for a zoning board to require an educational institution to analyze alternate sites and finds that the applicant has sufficiently satisfied its minimum requirements to accommodate its programmatic needs; and

WHEREAS, as to the compatibility of the proposed use and bulk, the Board notes that the applicant does not propose to increase enrollment and, thus, the current use will be maintained; and

WHEREAS, the Board finds that the amendments including the additional 12,xxx square feet and the additional two stories and 27 feet in height will still allow the subject building to meet the © finding; and

WHEREAS, , the Board notes that the original ten-story building did not comply with the floor area or sky exposure plane at the sixth floor when the R8 zoning district regulations were imposed in 1961; and

WHEREAS, accordingly, as of 1961, before any Board action, there was not any as-of-right enlargement available to the pre-existing non-complying Building, which was originally constructed to a height in excess of 119'-3" and 6.5 FAR; and

WHEREAS, since its construction in 1929, the building also has never had a height of FAR that would comply with the 75-ft. of 5.1 community facility FAR R8B regulations which has been in effect since the 1985 rezoning of the mid-block; and

WHEREAS, the Board does not find that it is appropriate to measure any enlargement to the Building against the R8B building envelope since the current non-complying building envelope has existed since 1965; thus, the true incremental increase is from the existing 1965 building envelope with height of 143'-10" (the envelope was built to accommodate 7.7 FAR, which was increased to the existing 8.48 FAR); and

WHEREAS, the Board notes that if the Building's existing non-complying conditions established in 1965 are used as a base line, rather than the R8B envelope, the height increment is 27 feet versus 95 feet and thus a much more reasonable change than the Opposition suggests; and

WHEREAS, the Board notes that 1095 Park Avenue, which is adjacent to the school building, extends approximately 50 feet into the subject R8B midblock has an even greater degree of non-compliance with a height of 192 feet; and

WHEREAS, as a result, on the south side of the midblock where the subject site is located, the adjacent 1095 Park Avenue and the Building create a built condition with an existing non-compliance to FAR and height that extends 150 feet into the 200-ft. length of the East 89<sup>th</sup> Street midblock; and

WHEREAS, the Board further notes that the surrounding midblocks, particularly to the south (between East

85<sup>th</sup> and 88<sup>th</sup> streets between Lexington and Park avenues) and to the east (between East 88<sup>th</sup> and East 89<sup>th</sup> streets between Park and Madison avenues) are zoned for 10.0 FAR (R10 equivalent) and allow building heights of 185 feet under the contextual envelope; and

WHEREAS, the Board finds that because of the existing and surrounding context, which is more similar to an R10 equivalent context than R8B, the proposed total 9.67 FAR and 170-ft. height are appropriate; and

WHEREAS, as to the Opposition's concerns that the Enlargement will have a negative impact on surrounding buildings, the Board notes that the direct impact is on 1095 Park Avenue and that Dalton has worked with its neighbor to resolve concerns and to provide mitigation measures to lessen impact, to the extent that its Board of Directors did not oppose the project; and

WHEREAS, the Board notes that the affected windows at 1095 Park Avenue are themselves above the maximum building height of 75 feet in the R8B district as 1095 Park Avenue has 18 stories and, further that, 1105 Park Avenue has 15 stories with an oblique view of the Enlargement; and

WHEREAS, the Board agrees with the applicant that under the relevant legal standards, the obstruction of the views from the 1095 Park Avenue windows is not a sufficient justification for denying the subject application; and

WHEREAS, as to the question of whether the proposal represents the minimum variance, the Board reiterates that the applicant has established that the request for the Enlargement is required by Dalton's legitimate programmatic needs; and

WHEREAS, the Board while recognizing the legitimate concerns raised by the Opposition regarding the degree of waivers requested for the proposed action, does not believe that the approval of such action will set a precedent for future variance applications in the midblock; and

WHEREAS, specifically, the Board reviews each case based on its unique factors and context in determining the appropriateness of floor area and height and setback waivers as well as the neighborhood character finding; and

WHEREAS, the Board finds that proposed the Enlargement, given certain unique factors and context cited above, would not change the essential character of neighborhood; and

WHEREAS, the Board notes that the applicant represents that Dalton does not have plans to enlarge the Building again in the future, and the Board is concerned that any future enlargement may exceed an appropriate building height and floor area for the neighborhood and may disturb the variance findings; and

WHEREAS, the Board notes that the applicant states that Dalton does not plan to increase its enrollment; thus, the Board finds that the Building with the proposed Enlargement will relieve the high demand for classroom space and allow flexibility in the future to accommodate new programmatic needs as they arise such that additional enlargements would not be warranted; and

WHEREAS, based upon the above, the Board has

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determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

*Therefore it is Resolved*, that the Board of Standards and Appeals reopens and amends the resolution, dated June 8, 1965, to grant the noted modifications to the previous approval; *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 October 9, 2013'- (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the enlarged Building: a maximum of 14 stories, a height of 170'-5", and 98,960 sq. ft. of floor area (9.67 FAR), as reflected on the BSA-approved plans;

THAT all proposed mitigation measures, including (1) replacement of stucco with brick on the existing top two stories, (2) enclosure of existing exposed ductwork, (3) installation of more efficient mechanical equipment and acoustic screens for noise reduction, (4) elimination of west-facing windows on the enlargement, (5) installation of lighting controls within the building to turn off lights when unoccupied and use of the greenhouse grow lights only during daylight hours, (6) elimination of the western stair bulkhead and water tower and reduction in height of the elevator bulkhead from 15 feet to 13 feet, (7) prohibition of the use of the roof by children, and (8) the provision of green roof and plantings on vertical surfaces visible from 1095 Park Avenue will be installed and maintained in accordance with the BSA-approved plans;

THAT any change in the use or operator of the Building is subject to Board approval;

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 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, January 14, 2014.

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## 68-94-BZ

APPLICANT – Troutman Sanders LLP, for Bay Plaza Community Center, LLC, owner; Bally's Total Fitness of Greater New York

SUBJECT – Application September 10, 2013 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*Bally's Total Fitness*) which expires on November 1, 2014; Extension of Time to obtain a Certificate of Occupancy which expired on September 11, 2013; waiver of the Rules. C4-3/M1-1 zoning district.

PREMISES AFFECTED – 2100 Bartow Avenue, bounded

by Bay Plaza Blvd. Co-Op City Blvd, Bartow Avenue and the Hutchinson River Parkway, Block 5141, Lot 810, Borough of Bronx.

## COMMUNITY BOARD #10BX

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an amendment, an extension of term for a physical culture establishment ("PCE"), which expires on November 1, 2014, and an extension of time to obtain a certificate of occupancy, which expired on September 11, 2013; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Bartow Avenue, between Baychester Avenue and the Hutchinson River Parkway, within a C4-3 zoning district; and

WHEREAS, the PCE is located on a portion of the first and second floors of the Co-Op City Bay Plaza shopping center and occupies 20,350 sq. ft. of floor area; and

WHEREAS, the PCE is operated as Bally Total Fitness; and

WHEREAS, on November 1, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C4-3 district, the operation of a PCE for a term of ten years; and

WHEREAS, on April 12, 2005, the grant was extended for a term of ten years, to expire on November 1, 2014; and

WHEREAS, subsequently, the grant has been amended on various occasions; and

WHEREAS, most recently, on September 11, 2012, the Board granted a one-year extension of time to obtain a certificate of occupancy, which expired on September 11, 2013; and

WHEREAS, the applicant now seeks to extend the term of the PCE special permit for ten years and to extend the time to obtain a certificate of occupancy for one year; and

WHEREAS, in addition, the applicant seeks an amendment to reflect a minor increase in the size of the PCE from the previously-approved 20,290 sq. ft. of floor area to 20,350 sq. ft. of floor area; and

WHEREAS, as to the extension of time, the applicant represents that its application to the Department of Buildings

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for a certificate of occupancy for the PCE is pending and that it has been delayed by the existence of open violations within the shopping center unrelated to the PCE; and

WHEREAS, as to the amendment, the applicant states that the discrepancy was recently discovered and is reflected in the proposed plans; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term for ten years, an extension of time to obtain a certificate of occupancy, and the noted amendment to the plans are appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 1, 1994, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years, to expire on January 14, 2024 and to grant an extension of time to obtain a certificate of occupancy to January 14, 2015”; *on condition* that all work and site conditions shall comply with drawings marked ‘Received December 13, 2013’- (3) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on November 1, 2024;

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

THAT all massages must be performed only by New York State licensed massage professionals;

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

THAT a certificate of occupancy will be obtained by January 14, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; 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, January 14, 2014.

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## 358-02-BZ

APPLICANT – Law Office of Fredrick A. Becker, 200 Park, LLP, for TSI Grand Central Incorporated d/b/a New York Sports Club, lessee.

SUBJECT – Application September 23, 2013 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment in a multi-story commercial, retail and office building, which expired on June 3, 2013; Waiver of the Rules. C5-3 (MID) zoning district.

PREMISES AFFECTED – 200 Park Avenue, south side of East 45th Street, between Vanderbilt Avenue and Dewey Place, Block 1280, Lot 10, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a physical culture establishment (“PCE”), which expired on June 3, 2013; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 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 5, Manhattan, declined to issue any recommendation regarding this application; and

WHEREAS, the subject site is located on the south side of East 46th Street, between Park Avenue and Depew Place, within a C5-3 zoning district within the Special Midtown District (MiD); and

WHEREAS, the site is occupied by a 59-story commercial building, which is commonly known as the MetLife Building; and

WHEREAS, the PCE is located on a portion of the first and second floors of the building and occupies 20,835 sq. ft. of floor area; and

WHEREAS, the PCE is operated as New York Sports Club; and

WHEREAS, on June 3, 2003, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C2-5 zoning district, the operation of a PCE for a term of ten years; and

WHEREAS, the applicant now seeks to extend the term of the PCE special permit for ten years; and

WHEREAS, at hearing, the Board requested clarification regarding whether massages were being performed at the PCE; and

WHEREAS, in response, the applicant submitted amended plans noting that no massages would be performed at the PCE; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated June 3, 2003, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years, to expire on June 3, 2023; *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 December

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# MINUTES

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23, 2013’ - (4) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on June 3, 2023;

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

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

THAT a certificate of occupancy will be obtained by January 14, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; 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, January 14, 2014.

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## 206-03-BZ

APPLICANT – Law Office of Fredrick A. Becker, Esq., for 980 Madison Owner LLC, owner; Exhale Enterprises, Inc., lessee.

SUBJECT – Application September 12, 2013 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*Exhale Spa*) which expired on November 5, 2013. C5-1 (MP) zoning district.

PREMISES AFFECTED – 980 Madison Avenue, west side of Madison Avenue between East 76th Street and East 77th Street, Block 1391, Lot 14, Borough of Manhattan.

### COMMUNITY BOARD #5M

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

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for an extension of term for a physical culture establishment (“PCE”), which expired on November 5, 2013; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

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

WHEREAS, the subject site is located on the west side of Madison Avenue, between East 76th Street and East 77th

Street, within a C5-1 zoning district within the Special Madison Avenue Preservation District within the Upper East Side Historic District; and

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

WHEREAS, the PCE is located on a portion of the second floor of the building and occupies 7,700 sq. ft. of floor area; and

WHEREAS, the PCE is operated as Exhale Spa; and

WHEREAS, on November 5, 2003, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C5-1 district, the operation of a PCE for a term of ten years; and

WHEREAS, the applicant now seeks to extend the term of the PCE special permit for ten years; and

WHEREAS, at hearing, the Board requested clarification regarding an open elevator violation from the Department of Buildings (“DOB”); and

WHEREAS, in response, the applicant submitted a DOB record indicating that the elevator violation was dismissed on December 10, 2013; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 5, 2003, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years, to expire on November 5, 2023; *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 December 23, 2013’ - (5) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on November 5, 2023;

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

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

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

THAT a certificate of occupancy will be obtained by January 14, 2015;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; 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, January 14, 2014.

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# MINUTES

## 265-08-BZ

APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 70 Wyclkoff LLC, owner.

SUBJECT – Application October 23, 2013 – Extension of Time to Obtain a Certificate of Occupancy for a previously granted Variance (§72-21) for the legalization of residential units in a manufacturing building, which expired on September 27, 2013. M1-1 zoning district.

PREMISES AFFECTED – 70 Wyckoff Avenue, southeast corner of Wyckoff Avenue and Suydam Street, Block 3221, Lot 31, Borough of Brooklyn.

### COMMUNITY BOARD #4BK

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a four-story residential building; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

WHEREAS, the site is located on the southeast corner of Wyckoff Avenue and Suydam Street, within an M1-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 23, 2009 when, under the subject calendar number, the Board granted a variance to legalize the residential conversion of an existing four-story manufacturing building; a condition of the grant was that a new certificate of occupancy be obtained by December 23, 2009; and

WHEREAS, most recently, on September 27, 2011, the Board granted an extension of time to obtain a certificate of occupancy, which expired on September 27, 2013; and

WHEREAS, the applicant now seeks an additional extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that delays resulting from the need to resolve Department of Buildings (“DOB”) objections, obtain permits to implement DOB requirements, complete the required physical changes, and schedule the required DOB inspections prevented the owner from obtaining a new certificate of occupancy within the prescribed time frame; and

WHEREAS, the applicant states that the latest delay is due to DOB’s requirement of a full overhaul of the central boiler system, including the installation of separate systems

for hot water and for baseboard heating and all related piping; and

WHEREAS, accordingly, the applicant now requests an additional three years to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board requested clarification regarding whether permits had already been obtained for the required work and whether tenants would be displaced during such work; and

WHEREAS, in response, the applicant stated that permits have been obtained for the required work and that tenants will not be displaced while the work proceeds; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 23, 2009, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to September 27, 2016; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy will be obtained by September 27, 2016;

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

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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. 310199969)

Adopted by the Board of Standards and Appeals January 14, 2014.

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## 20-12-BZ

APPLICANT – Herrick Feinstein LLP by Arthur Huh, for LNA Realty Holdings LLC, owner; Brookfit Ventures LLC, lessee.

SUBJECT – Application October 21, 2013 – Amendment to a previously granted Special Permit (§73-36) for the legalization of a physical culture establishment (*Retro Fitness*) to obtain additional time to obtain a public assembly license. M1-2/R6B Special MX-8 zoning district. PREMISES AFFECTED – 203 Berry Street, northeast corner of N. 3rd Street and Berry Street, Block 2351, Lot 1087, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

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

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# MINUTES

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condition.

## THE VOTE TO GRANT –

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

## THE RESOLUTION –

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

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

WHEREAS, the subject site is located on the northeast corner of the intersection of Berry Street and North Third Street, within an M1-2/R6B (MX-8) zoning district; and

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

WHEREAS, the Board has exercised jurisdiction over the subject site since July 10, 2012 when, under the subject calendar number, the Board granted a special permit to legalize the operation of the PCE on the first floor and sub-cellar of the building; a condition of the grant was that a Public Assembly Permit (“PA”) be obtained by January 10, 2013; and

WHEREAS, the applicant states that it has not yet obtained the PA due to a series of administrative delays at the Department of Buildings (“DOB”); in addition, the applicant represents that DOB policy requires that the special permit grant reference DOB Application No. 302334597 (a New Building application filed at the site) instead of Application No. 320411256 (an Alteration Type-1 application), which was noted in the prior grant; and

WHEREAS, as such, the applicant now seeks an amendment permitting: (1) additional time to obtain the PA; and (2) a change to the DOB application noted on the grant to Application No. 302334597; and

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

*Therefore it is Resolved, reopens and amends the resolution, dated July 10, 2012, so that as amended the resolution reads: “the applicant will obtain a Public Assembly permit from the Department of Buildings by January 10, 2015”; on condition that all work and site conditions will comply with the previously-approved drawings; and on further condition:*

THAT the applicant will obtain a Public Assembly permit from DOB by January 10, 2015;

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

THAT DOB must ensure compliance with all 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.

(DOB Application No. 302334597)

Adopted by the Board of Standards and Appeals,  
January 14, 2014.

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**74-49-BZ**

APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Avenue, LLC, owner.

SUBJECT – Application August 26, 2013 – Extension of Time to obtain a Certificate of Occupancy for an existing parking garage, which expired on January 11, 2012; Waiver of the Rules. M1-6 (*Garment Center*) zoning district.

PREMISES AFFECTED – 515 Seventh Avenue, southeast corner of 7th Avenue and West 38th Street, Block 813, Lot 64, Borough of Manhattan.

## COMMUNITY BOARD #5M

### THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.

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**13-78-BZ**

APPLICANT – Sheldon Lobel, P.C., for 2K Properties Inc., owner.

SUBJECT – Application July 23, 2013 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a plumbing supply establishment (*Jamaica Plumbing and Heating Supply, Inc.*) which expired on June 27, 2013. R4-1 & R6A/C2-4 zoning districts.

PREMISES AFFECTED – 144-02 Liberty Avenue, east side of Liberty Avenue between Inwood Street and Pinegrove Street, Block 10043, Lot 6, Borough of Queens.

## COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to February 11, 2014, at 10 A.M., for continued hearing.

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**327-88-BZ**

APPLICANT – Eric Palatnik, P.C., for George Hui, owner.

SUBJECT – Application October 4, 2012 – Amendment to a previously granted variance (§72-21) to legalize the addition of a 2,317 square foot mezzanine in a UG 6 eating and drinking establishment (*Jade Asian Restaurant*). C4-3 zoning district.

PREMISES AFFECTED – 136-36 39th Avenue aka 136-29 & 136-35A Roosevelt Avenue, between Main Street and Union Street, Block 4980, Lot 14, Borough of Queens.

## COMMUNITY BOARD #7Q

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

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# MINUTES

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Commissioner Hinkson and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Ottley-Brown .....1  
**ACTION OF THE BOARD** – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.  
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## **239-02-BZ**

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Babbo Realty LLC, owner.  
SUBJECT – Application November 9, 2012 – Extension of Term of a previously-granted Variance (§72-21) for the continued operation of a Use Group 6A eating and drinking establishment (*Babbo*) located at the cellar level, ground floor, and second floor of the subject premises, which expired on December 17, 2012. R7-2 zoning district.  
PREMISES AFFECTED – 110 Waverly Place, south side of Waverly Place, between Sixth Avenue and Washington Square West/MacDougal Street, Block 552, Lot 53, Borough of Manhattan.

### **COMMUNITY BOARD #2M**

THE VOTE TO CLOSE HEARING –  
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Ottley-Brown .....1  
**ACTION OF THE BOARD** – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.  
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## **42-03-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for 1221 Avenue holdings LLC, owner; TSI West 48, LLC dba New York Sports Club, lessee.  
SUBJECT – Application October 2, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on July 22, 2013; Amendment to the hours of operation; Waiver of the Rules. C6-5, C6-6 (MID) zoning district.  
PREMISES AFFECTED – 1221 Avenue of the Americas, western block front of the Avenue of Americas between West 48th Street and West 49th Street, Block 1001, Lot 29, Borough of Manhattan.

### **COMMUNITY BOARD #5M**

THE VOTE TO CLOSE HEARING –  
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Ottley-Brown .....1  
**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.  
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## **381-04-BZ**

APPLICANT – Sheldon Lobel, P.C., for 83 Bushwick Place, LLC, owner.  
SUBJECT – Application December 6, 2013 – Extension of time to complete construction of a previously-granted variance (§72-21) for a residential building, which expired on September 12, 2006. Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 83 Bushwick Place aka 225-227 Boerum Street, northeast corner of the intersection of Bushwick Place and Boerum Street, Block 3073, Lot 97, Borough of Brooklyn.

### **COMMUNITY BOARD #1BK**

THE VOTE TO CLOSE HEARING –  
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Ottley-Brown .....1  
**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.  
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## **297-06-BZ**

APPLICANT – Eric Palatnik, for Montgomery Avenue Properties, LLC, owner.  
SUBJECT – Application November 15, 2013 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of a four-story residential building with ground and cellar level retail, which expired on October 16, 2011; Waiver of the Rules. C4-2 (HS) zoning district.

PREMISES AFFECTED – 130 Montgomery Avenue, between Victory Boulevard and Fort Place, Block 17, Lot 116, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

THE VOTE TO CLOSE HEARING –  
Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Ottley-Brown .....1  
**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.  
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## **25-08-BZ**

APPLICANT – Eric Palatnik, P.C., for Torah Academy for Girls, owner.  
SUBJECT – Application February 14, 2013 – Amendment to a Variance (§72-21) which permitted bulk waivers for the construction of a school (*Torah Academy for Girls*). The proposed amendment seeks to enlarge the school to provide additional classrooms. R4-1 zoning district.

PREMISES AFFECTED – 444 Beach 6th Street, Beach Street and Meehan Avenue, Block 15591, Lot 1, Borough of Queens.

### **COMMUNITY BOARD #14Q**

THE VOTE TO CLOSE HEARING –

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# MINUTES

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

**ACTION OF THE BOARD** – Laid over to February  
4, 2014, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 58-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for  
Sylvaton Holdings LLC, owners.

SUBJECT – Application February 5, 2013 – Proposed  
construction of a twelve-family residential building located  
partially within the bed of a mapped but unbuilt street  
contrary to General City Law Section 35. R4/M3-1 zoning  
district.

PREMISES AFFECTED – 4 Wiman Place, west side of  
Wiman Place, south of Sylvaton Terrace and north of  
Church Lane, Block 2827, Lot 205, Borough of Staten  
Island.

### COMMUNITY BOARD #1SI

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

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, the decision of the Staten Island  
Commissioner Borough Commissioner, dated July 15, 2013,  
acting on Department of Buildings Application No.  
520118596, reads in pertinent part:

Proposed construction on a 12-10 (a) Zoning Lot  
located within the bed of a mapped street is  
contrary to Section 35 of the General City Law.  
Therefore, Board of Standards and Appeals  
approval is required; and

WHEREAS, this is an application to allow the  
construction of a three-story, 12-unit residential building with  
eight accessory off-street parking spaces; the westerly portion  
of the building will be located partially in the bed of the  
mapped Wiman Place; and

WHEREAS, a public hearing was held on this  
application on August 13, 2013, after due notice by  
publication in *The City Record*, with continued hearings on  
October 22, 2013, November 26, 2013, and December 17,  
2013, and then to decision on January 14, 2014; and

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

WHEREAS, the subject site is located on the west side  
of Wiman Place, south of Sylvaton Terrace and north of  
Church Lane, partially within an R4 zoning district and

partially within an M3-1 zoning district within Community  
Board 1, Staten Island; and

WHEREAS, pursuant to ZR § 77-11, the use regulations  
applicable to the R4 zoning district may be applied to the  
entire subject zoning lot as the subject lot existed on  
December 15, 1961, more than 50 percent of the lot area is  
within the R4 zoning district, and the greatest distance from  
the mapped district boundary (17 feet) is less than 25 feet; and

WHEREAS, by letter dated May 2, 2013, the Fire  
Department states that it has reviewed the proposal and has  
offered no further objections provided that: (1) the entire  
building be fully sprinklered in conformity with the sprinkler  
provisions of the NYC Fire Code Section 503.8.2, Local Law  
10 of 1999 and Reference Standard 17-2B of the New York  
City Building Code and (2) the entire building be provided  
with interconnected smoke alarms designed and installed in  
accordance with NYC Building Code Section 907.2.10; and

WHEREAS, by letter dated February 25, 2013, the  
Department of Environmental Protection (“DEP”) states that  
(1) there are no existing City sewers or existing City water  
mains in the bed of Wiman Place between Sylvaton Terrace  
and Church Lane at the site and (2) City Drainage Plan No.  
PRD-A, Sheet 3 of 6, dated July 1968, for the above  
referenced location calls for a future 10-inch diameter sanitary  
sewer and a 12-inch/15-inch storm sewer in the bed of Wiman  
Place between Sylvaton Terrace and Church Lane; and

WHEREAS, DEP further states that it requires the  
applicant to submit a survey/plan showing (1) the width of  
mapped Wiman Place and the width of the widening portion  
of the street at the above referenced location and (2) a 32-ft.  
wide sewer corridor in the bed of Wiman Place along Lot 205  
for the installation, maintenance, and/or reconstruction of the  
future 10-inch diameter sanitary sewer and the 12-inch/15-  
inch diameter storm sewer; and

WHEREAS, in response to DEP’s request, the applicant  
submitted a drawing showing a 32-ft. wide sewer corridor in  
the bed of Wiman Place along Lot 205 for the installation,  
maintenance and or reconstruction of the future 10-inch  
diameter sanitary sewer and the 12-inch/15-inch diameter  
sewer; and

WHEREAS, by letter dated November 26, 2013, DEP  
states that, based on the drawing submitted by the applicant, it  
has no objection to the proposed application; and

WHEREAS, by correspondence dated June 10, 2013,  
the Department of Transportation (“DOT”) requested that the  
applicant provide the following information on its site plan:  
(1) sidewalks fronting Sylvaton Terrace and Wiman Place,  
with suggested widths of 5 feet for Sylvaton Terrace and a  
minimum width of 5 feet for the easterly concrete portion of  
the proposed 10-ft. sidewalk on Wiman Place; (2) the  
proposed vehicular ramp in compliance with zoning  
requirements and relocated to accommodate the sidewalk on  
Sylvaton Terrace; (3) the proposed street trees located at least  
35 feet from street intersections; and (4) the jurisdiction of the  
built roadway within the mapped street, right-of-way; and

# MINUTES

WHEREAS, in response to DOT's request, the applicant submitted a revised site plan with a 5-ft. wide sidewalk along Sylvaton Terrace, a 5-ft. wide sidewalk along Wiman Place, the proposed vehicular ramp in compliance with zoning requirements and relocated to accommodate the sidewalk on Sylvaton Terrace, a notation about the jurisdiction of the built roadway within the mapped street right of way, and noted that because of the sidewalk configuration, street trees will be provided off -site; and

WHEREAS, by letter dated December 18, 2013, DOT states that according to the Staten Island Borough President's Topographical Bureau, Wiman Place between Sylvaton Terrace and Church Lane is a mapped street to a 60-ft. width on the Final City Map; and

WHEREAS, DOT notes that the City does not have title to the mapped street, but there is a Corporation Counsel Opinion of Dedication, dated March 8, 1985, for 14 to 15 feet as in use, on the easterly portion of Wiman Place (known as Church Lane); and

WHEREAS, DOT also notes that the improvement of Wiman Place at this location (Block 2827, Lot 207) is not presently included in DOT's Capital Improvement Program; and

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

*Therefore it is Resolved*, that the decision of the Staten Island Borough Commissioner, dated July 15, 2013, acting on Department of Buildings Application No. 520118596, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawing filed with the application marked "Received January 13, 2014" (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations will be complied with; and *on further condition*:

THAT the building will be fully sprinklered and provided with interconnected smoke alarms in accordance with BSA approved plans;

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

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution, including planting strip requirements;

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

Adopted by the Board of Standards and Appeals on January 14, 2014.

## 41-11-A

APPLICANT – Eric Palatnik, P.C., for Sheryl Fayena, owner.

SUBJECT – Application April 12, 2011 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development under the prior R-6 zoning district. R4 Zoning District.

PREMISES AFFECTED – 1314 Avenue S, between East 13th and East 14th Streets, Block 7292, Lot 6, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

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## 143-11-A thru 146-11-A

APPLICANT – Philip L. Rampulla, for Joseph LiBassi, owner.

SUBJECT – Application September 16, 2011 – Appeal challenging the Fire Department's determination that the grade of the fire apparatus road shall not exceed 10 percent, per NYC Fire Code Section FC 503.2.7. R2 zoning district. PREMISES AFFECTED – 20, 25, 35, 40 Harborlights Court, east side of Harborlights Court, east of Howard Avenue, Block 615, Lot 36, 25, 35, 40, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to February 25, 2014, at 10 A.M., for Adjourned hearing.

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## 68-13-A

APPLICANT – Bryan Cave LLP, for ESS PRISA LLC, owner; OTR 330 Bruckner LLC, lessee.

SUBJECT – Application February 13, 2013 – Appeal challenging Department of Buildings' determination that the existing sign is not entitled to non-conforming use status. M3-1 zoning district.

PREMISES AFFECTED – 330 Bruckner Boulevard, Bruckner Boulevard between E. 141 and E. 149 Streets, Block 2599, Lot 165, Borough of Bronx.

### COMMUNITY BOARD #1BX

**ACTION OF THE BOARD** – Laid over to January 28, 2014, at 10 A.M., for deferred decision.

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## 123-13-A

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

SUBJECT – Application April 29, 2013 – Appeal challenging the determination of the Department of

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Buildings' to revoke a permit on the basis that (1) a lawful commercial use was not established and (2) even assuming lawful establishment, the commercial use discontinued in 2007. R6 zoning district.

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

## COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to February 11, 2014, at 10 A.M., for adjourned hearing.

## 191-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for McAllister Maritime Holdings, LLC, owner.

SUBJECT – Application June 28, 2013 – Proposed construction of a three-story office building within the bed of a mapped street, pursuant to Article 3 of General City Law 35. M3-1 zoning district.

PREMISES AFFECTED – 3161 Richmond Terrace, north side of Richmond Terrace at intersection of Richmond Terrace and Grandview Avenue, Block 1208, Lot 15, Borough of Staten Island.

## COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to February 11, 2014, at 10 A.M., for adjourned hearing.

## 287-13-A & 288-13-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for BIRB Realty Inc., owner.

SUBJECT – Application October 15, 2013 – Proposed construction of a building that does not front on a legally mapped street, contrary to General City Law Section 36. R3X SRD district.

PREMISES AFFECTED – 525 & 529 Durant Avenue, north side of Durant Avenue, 104-13 ft. west of intersection of Durant Avenue and Finlay Avenue, Block 5120, Lot 64, Borough of Staten Island.

## COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to February 11, 2014, at 10 A.M., for adjourned hearing.

## 296-13-A

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

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

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

## COMMUNITY BOARD #3BK

**ACTION OF THE BOARD** – Laid over to March 25,

2014, at 10 A.M., for continued hearing.

## ZONING CALENDAR

### 16-12-BZ

#### CEQR #12-BSA-070K

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application January 23, 2012 – Special Permit (§73-19) to allow for a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). M1-2 zoning district. PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 1753, Lot 42, 43, Borough of Brooklyn.

#### COMMUNITY BOARD #4BK

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

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 3, 2012, acting on Department of Buildings Application No. 320416867, reads in pertinent part:

Proposed school building cannot be built in M1-2 zoning district, as per Section 42-00; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site in an M1-2 zoning district, the construction of a three-story Use Group 3 school, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 10, 2012, after due notice by publication in the *City Record*, with continued hearings on August 21, 2012, October 16, 2012, January 15, 2013, and April 23, 2013, and then to decision on January 14, 2014; and

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

WHEREAS, Community Board 3, Brooklyn, recommends disapproval of this application, primarily based on concerns regarding traffic; and

WHEREAS, certain members of the surrounding community testified in opposition to the application, expressing particular concerns about its impact on traffic and parking, and about its estimates regarding the number of buses anticipated based on the projected size of the student body; and

WHEREAS, certain members of the surrounding community submitted statements in support of the application; and

WHEREAS, the application is brought on behalf of the

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Congregation Adas Yereim (the "School"), a not-for-profit girls' school; and

WHEREAS, the subject site is located at the northwest intersection of Nostrand Avenue and Willoughby Avenue; it comprises Tax Lots 42 and 53; the site has 119.75 feet of frontage along Willoughby Avenue and 200 feet of frontage along Nostrand Avenue with a lot area of 21,481 sq. ft.; and

WHEREAS, Lot 42 is currently occupied by a one-story commercial building with 20,000 sq. ft. of floor area (1.00 FAR); Lot 53 is vacant; and

WHEREAS, the applicant proposes to demolish the existing building and construct a Use Group 3 school with three stories, 55,509 sq. ft. of floor area (2.58 FAR) and a building height of 48 feet; and

WHEREAS, the applicant notes that on January 13, 2009, under BSA Cal. No. 46-08-BZ, the School obtained a bulk variance to construct a six-story new building with 39,361 sq. ft. of floor area at 491 Bedford Avenue, Brooklyn; however, the building was never constructed and the School has endeavored to find a suitable site for its needs since 2009; and

WHEREAS, the applicant represents that the proposal meets the requirements of the special permit under ZR § 73-19 to permit a school in an M1-2 zoning district; and

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

WHEREAS, the applicant represents that the proposal will meet the School's programmatic needs; and

WHEREAS, the applicant represents that, currently, the School has 180 pre-kindergarten and kindergarten students, 273 first through eighth grade students, and 91 high school students, for a total of 544 students distributed throughout the School's existing facilities at 563 Bedford Avenue, 505 Bedford Avenue and 185 Wilson Street; and

WHEREAS, the applicant states that the School's program includes classroom instruction, a head start program for children from low-income families, social service programs, child care, developmental services and health and nutritional guidance; in addition, the School holds monthly assemblies for drama and song and dance groups, and has daily programs focusing on social skills, competitive Yiddish spelling, sewing, art, home economics, gymnastics and sports; and

WHEREAS, the applicant states that the new building will include an auditorium in the cellar, a lunch room, a kitchen, offices and an auditorium on the first story, classrooms, teachers' offices and a 2,145 sq. ft. outdoor play area for younger children on the second story, classrooms and teachers' offices on the third story, and a rooftop activity space for older children; and

WHEREAS, the applicant states that the new building will serve an estimated 750 students and 130 staff members; and

WHEREAS, the applicant notes that approximately 75 percent of its students live within one mile of the site; and

WHEREAS, the applicant represents that it conducted an approximately six-month search within the neighborhood and surrounding areas with the following site criteria: (1) a site with a lot area of between 7,000 and 20,000 sq. ft.; and (2) a minimum of 50,000 sq. ft. of floor area as-of-right; and

WHEREAS, the applicant states that during its search, it evaluated the feasibility of six nearby sites in Brooklyn: 55 Hope Street, 829 Kent Avenue, 520 Park Avenue, 240-246 Lynch Street, 1005 Bedford Avenue and 135 Middleton Street; the applicant notes that Use Group 3 is permitted as-of-right on each of the sites except 829 Kent Avenue and 520 Park Avenue, which are located in M1-1 zoning districts; and

WHEREAS, the applicant represents that each site was unsuitable for the School, in that: 55 Hope Street was too expensive for the School to purchase; 829 Kent Avenue and 520 Park Avenue had existing buildings that were too small to accommodate the School's programmatic needs; 240-246 Lynch Street had insufficient lot area to accommodate the School's programmatic needs in that it would not have allowed the construction of a building containing all grade levels; 1005 Bedford Street and 135 Middleton Street had similarly insufficient lot area; and 1005 Bedford Street was not for sale but for rent; and

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

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

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

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is located directly across the street from an R6 zoning district, less than 100 feet to the east and to the south, where the proposed use would be permitted as-of-right; and

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

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

WHEREAS, the applicant states the uses immediately adjacent to the site are: a Use Group 6 office building, two low-rise residential buildings and the neighborhood's only true manufacturing building, a metal stamping operation, at 151 Sandford Street; and

WHEREAS, the applicant notes that although the site is zoned M1-2, the surrounding area is predominantly characterized by brownstone-style townhouses, mixed-use residential and commercial buildings, schools and other community facilities; and

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WHEREAS, during the hearing process, the Board raised concerns about traffic, noise attenuation and air quality due to the proximity of manufacturing uses; and

WHEREAS, in response, the applicant submitted the results of a traffic study, which concluded that because the site and approximately 67 percent of the School's students live on the south side of the Brooklyn-Queens Expressway ("BQE"), buses will continue to operate along the same streets and avenues as they currently do (while transporting the students from south of the BQE to the School's three existing sites, which are north of the BQE); and

WHEREAS, further, the applicant represents that bus drivers will not idle in front of the site except during loading and unloading and will park in the facility located at 60 Nostrand Avenue; and

WHEREAS, as to noise, the applicant also represents that an eight-foot wall will be constructed between the playground and the chiller at 151 Sandford Street in order maintain acceptable outdoor noise levels; and

WHEREAS, the applicant also represents that the exterior of the building will be constructed of masonry walls and double-paned glass, which will adequately insulate the students from any noise created by the surrounding area, including the existing noises emanating from 151 Sandford Street, and any anticipated traffic noises due to the School's busing; such materials will provide at least 31 dBA of attenuation and interior noise levels will be at 45 dBA or less; and

WHEREAS, as to air quality, the applicant's consultant concluded that there are no known air quality, air toxic or HVAC impacts and no major sources of such impacts within 1,000 feet of the site; and

WHEREAS, the Board finds that the conditions surrounding the site and the building's construction will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-2 zoning district; thus, the Board finds that the requirements of ZR § 73-19(c) are met; and

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

WHEREAS, the applicant represents that the site can be controlled so as to protect children traveling to and from the School, in that: (1) there will be safety personnel on site to assist students when they arrive and depart; (2) two teachers will coordinate unloading and loading of each elementary school bus and three teachers will coordinate each pre-school bus; (3) there will be sufficient space in front of the School for four buses to queue and unload along Nostrand Avenue; and (4) the removal of parking from Nostrand Avenue to accommodate an express bus service will enhance safety by creating a no-traffic zone; and

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

WHEREAS, by letter dated March 1, 2012, DOT

states that it has no objection to the proposal and will, upon approval of the application, prepare a safe route to school map with signs and marking; and

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

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

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; as noted above, the School's impact on traffic will be minimal and will be mitigated by: (1) the creation of an express bus service along Nostrand Avenue, which will eliminate street parking and facilitate improved bus service, loading and unloading; and (2) the School's representation that buses will park offsite, rather than idling, when not they are not engaged in loading and unloading students; and

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

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 12BSA070K, dated January 9, 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, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed and accepted the October 2012 Remedial Action Plan and the October 2012 site-specific Construction Health and Safety Plan; and

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

WHEREAS, DEP reviewed the applicant's stationary source air quality screening analysis and determined that no

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significant stationary source air quality impacts to the proposed project are anticipated with respect to existing HVAC sources, future cogeneration units on 156 Sandford Street, or air toxics emissions at nearby buildings; and

WHEREAS, DEP reviewed the results of noise monitoring and the design measures proposed by the consultant in the October 2013 noise study, including an alternate means of ventilation to be provided to maintain a closed window condition, and concurred they would provide sufficient window-wall attenuation levels to achieve an interior noise level of 45 dBA or less; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 and grants a special permit, to allow, on a site in an M1-2 zoning district, the construction of a three-story Use Group 3 school, contrary to ZR § 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 10, 2014" – (11) sheets and *on further condition*:

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

THAT the school will be limited to 55,509 sq. ft. of floor area (2.58 FAR) and a building height of 48 feet;

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

THAT interior noise levels will be maintained at 45 dBA or below within the School in accordance with the noise attenuation notes on the BSA-approved plans;

THAT bus drivers will not idle in front of the building, the School or the site;

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

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

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

THAT 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, January 14, 2014.

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## 254-12-BZ

APPLICANT – Patrick W. Jones, P.C., for Salmar Properties, LLC, owner.

SUBJECT – Application August 20, 2013 – Variance (§72-21) to permit Use Group 10A uses on the first and second floors of an existing eight-story building, contrary to use regulations (§42-00). M3-1 zoning district.

PREMISES AFFECTED – 850 Third Avenue aka 509/519 Second Avenue, bounded by Third Avenue, unmapped 30th Street, Second Avenue, and unmapped 31st Street, Block 671, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

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

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 19, 2012 acting on Department of Buildings Application No. 3200499607, reads in pertinent part:

Proposed Use Group 10A in M3-1 for first and second floor is contrary to ZR 42-12; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M3-1 zoning district, the conversion of portions of the first and second floors of an existing eight-story manufacturing building to retail use with more than 10,000 sq. ft. of floor area per establishment (Use Group 10A), contrary to ZR § 42-12; and

WHEREAS, a public hearing was held on this application on October 22, 2013, after due notice by publication in the *City Record*, with a continued hearing on November 19, 2013, and then to decision on January 14, 2014; and

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

WHEREAS, Community Board 7, Brooklyn, recommends approval of the application; and

WHEREAS, United States Congresswoman Nydia M. Velazquez, United States Congressman Michael Grimm, and Councilperson Sara Gonzalez provided testimony in support of the application; and

WHEREAS, the subject site is the entire block bounded by Second Avenue, 30th Street, Third Avenue, and 31st Street; the site is located within an M3-1 zoning district; and

WHEREAS, the site has 200.33 feet of frontage along both Second Avenue and Third Avenue, 700 feet of frontage along both 30th Street and 31st Street, and 140,231 sq. ft. of lot area; and

WHEREAS, the site is occupied by an eight-story manufacturing building with approximately 1,117,166.8 sq.

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ft. of floor area (8.0 FAR); and

WHEREAS, the applicant states that the building was constructed by the United States Government in approximately 1918 and was used as a storage facility for the United States Navy from 1918 until around 2000, when it became vacant; ownership of the building was then transferred to the New York City Economic Development Corporation, which issued a request for proposals to redevelop the building; the applicant's response to the RFP was selected and it took ownership of the building in 2011; and

WHEREAS, the applicant notes that it purchased the building subject to deed restrictions regarding the redevelopment of the building, including: development shall be "primarily for light industrial uses," "excluding passive warehouse and/or storage," and shall include "complete roof replacement or restoration," "façade restoration," installation of "utilities, mechanical and life safety systems distributed throughout the entire building" and "at least one bank of elevators," and may include "up to 15 percent of rentable floor area . . . for retail uses"; in addition, according to the deed, the building must be made to comply with the 2008 Construction Codes prior to re-occupancy; and

WHEREAS, the applicant proposes to convert the building from storage throughout to retail (Use Group 10A) on portions of the first and second floors, and manufacturing (Use Group 17) on portions of the first and second floors and all of the third through eighth floors; the retail use will occupy 62,614.8 sq. ft. of floor area on the first floor and 104,972 sq. ft. of floor area on the second floor, for a total retail floor area of 167,586.8 sq. ft., which represents 15 percent of the total floor area of the building (1,117,166.8 sq. ft.); the manufacturing use will occupy the remaining 949,580 sq. ft. throughout the building; finally, the applicant proposes to reserve no fewer than 368 parking spaces and up to 16 loading berths for the proposed uses on the block directly south of the subject site (Block 675, Lot 10), which is separated from the site by unmapped 31st Street; and

WHEREAS, because, per ZR § 42-12, Use Group 10A retail uses are limited to 10,000 sq. ft. of floor area per establishment within the subject M3-1 district, the applicant seeks a use variance; and

WHEREAS, the applicant states that the following are the site's unique physical conditions, which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: the existing building's obsolete characteristics, including its column spacing, archaic layout, and absence of modern building systems; the historic significance of the building; and the site's limited street access; and

WHEREAS, the applicant states that the building is obsolete for its original purpose; as noted above, the building was constructed in 1918 by the federal government and used by the United States Navy as a storage facility until 2000; as such, it was built to carry substantial loads on every floor (it contains 331 structural columns per floor, with columns

located approximately every 20 feet) and to be able to efficiently catalog, distribute, and retrieve stored materials; and

WHEREAS, the applicant asserts that the ubiquitous columns hamper the use of the building for as-of-right uses; specifically, for manufacturers, the columns form narrow maneuvering lanes that inhibit the use of trucks, forklifts, pallet jacks, and hand jacks, making the space inefficient and difficult to market; for retailers, the column condition interferes with the presentation of merchandise and reduces the amount of usable floorspace, making the 10,000 sq. ft. limitation particularly burdensome; and

WHEREAS, the applicant represents that the building's systems are outmoded and in disrepair, and that, aside from its structural elements, the majority of the building is not salvageable and must be replaced and rebuilt in accordance with modern, local standards; and

WHEREAS, the applicant asserts that the building's vacancy for the past 13 years supports the conclusion that it is no longer useful as a storage facility (and, indeed, not permitted to be used for storage under the deed restrictions); and

WHEREAS, similarly, although the majority of the building (85 percent of the floor area) is proposed to be light manufacturing, the tenant spaces for such use are not ideal for typical modern manufacturers, which desire ground-level, unimpeded floorplates for their materials and equipment; as such, the light manufacturing must be offered at discounted rents and offset with the higher rents associated with retail use; and

WHEREAS, the applicant states that renovating the 96-year-old building poses unique challenges due to the building's size and the deed requirement to comply with the 2008 Construction Codes; and

WHEREAS, the applicant notes that the building is uniquely large in comparison to neighboring buildings; in particular, the applicant represents that of the 35 sites on the 13 nearest blocks, there are only eight buildings that have more than 100,000 sq. ft. of floor area and only one of the eight, the federal detention center located at 830 Third Avenue, is comparable in size (902,000 sq. ft.) to the subject building, which has over one million square feet of floor area; and

WHEREAS, the applicant states that, unlike other large existing buildings in the study area, only the subject building must be made to comply with the 2008 Construction Codes in order to be reoccupied; typically, buildings of this size from this era would be able to utilize earlier versions of the New York City Building Code to make changes to the building; accordingly, this building's renovations will be more extensive and more expensive than similar buildings in the neighborhood; and

WHEREAS, as to the historic character of the building, the applicant states that it is considered eligible to be listed in the National Register of Historic Places due to its historic use and appearance, and that its restoration and preservation are restrictions of the deed; as such, the

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applicant must undertake extensive work including: reconstruction of portions of the façade to match historic conditions; door and window replacement to historic-replacement standards; installation of non-permanent ramps (so as to preserve historic appearances), and installation of historically appropriate lighting; and

WHEREAS, to support its claim of hardship, the applicant submitted a detailed analysis of the costs of achieving code compliance and historic preservation of the building; and

WHEREAS, similarly, the applicant states that the limited street access of the building is a unique condition that creates a practical difficulty operating an as-of-right use; and

WHEREAS, specifically, the applicant represents that the building fronts on two unmapped streets (30th Street and 31st Street), one of which (30th Street) is built out but under the control of the federal detention facility center and not open to the public and the other of which (31st Street) is located entirely within Block 675, Lot 10; therefore, the applicant asserts that neither 30th Street, nor 31st Street may be used to access the site as-of-right; and

WHEREAS, the applicant also states that the site does not have any existing access points (curb cut or building entrances) along Second Avenue and its existing façade cannot be altered (due to deed restrictions) to reorient the building to have its main frontage on Second Avenue; thus, the building and the site are generally accessible only via Third Avenue in an as-of-right scenario; and

WHEREAS, as a result, a small retail use (one with less than 10,000 sq. ft. of floor area, per ZR § 42-12) with frontage solely on Second Avenue, 30th Street or 31st Street would be largely invisible to its potential customers and difficult to access, making such a space less attractive to tenants and therefore less valuable; and

WHEREAS, the applicant asserts that such limited access to the public street is unique in the surrounding area, and it supported this assertion with an analysis of the ten large buildings (100,000 sq. ft. or more of floor area) within 1,500 feet of the site and their access points; based on the analysis, only the site has one access point; of the other nine sites, one site has two access points, three sites have three access points, three sites have four access points, one site has five access points, and one site has six access points; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, the applicant assessed the financial feasibility of four scenarios: (1) an as-of-right manufacturing and retail building with retail use limited to 10,000 sq. ft. per establishment; (2) an as-of-right manufacturing building with no retail use; (3) a lesser variance in which only the first floor is permitted to exceed the 10,000 sq.-ft.-per-retail establishment limitation; and (4) the proposal; and

WHEREAS, the applicant concluded that only the

proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board directed the applicant to clarify the following: (1) its justification for the mortgage rate assumed in the financial analysis; and (2) the infeasibility of constructing a series of small retail spaces; and

WHEREAS, in response, the applicant's consultant indicated that the assumed mortgage rate is based on a 2013 survey of interest rates and is within the range for industrial rents, though on the higher end to reflect the risks of the project, which include the size of the site and its location, and the condition of the existing building and its required renovations; and

WHEREAS, as for demonstrating the impracticality of a series of small retail spaces, the applicant provided plans showing that breaking up the retail space will adversely affect retail signage, visibility, accessibility, which the applicant states are critical business elements for retailers; and

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

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

WHEREAS, the applicant represents that the immediate area, which is west of Third Avenue and the Gowanus Expressway, is characterized by a predominance of medium-density manufacturing buildings; the applicant notes that the subject area is distinct from the area east of the Gowanus Expressway, where uses are more diverse and include low- to medium-density residential, commercial, and manufacturing uses; and

WHEREAS, as for the immediately adjacent sites, the applicant states that, as noted above, there is a federal detention facility directly north of the site on Block 667, Lot 1, and a large parking lot directly south of the site on Block 675, Lot 10, which will provide loading berths and parking for the retail and manufacturing uses at the site; and

WHEREAS, the applicant states that west of the site across Second Avenue is a waterfront superblock (Block 662, Lot 1) of low-rise commercial buildings, parking and storage areas owned and operated by the Department of Small Business Services; east of the site across the Gowanus Expressway and Third Avenue, is Block 672, which includes an array of low-rise manufacturing, commercial, and residential buildings; and

WHEREAS, as to bulk, the applicant states that although the 8.0 FAR of the building is well in excess of the maximum permitted FAR in the subject M3-1 district (2.0 FAR), the building was constructed by the federal government (which is not subject to the Zoning Resolution) and, more importantly, has existed at the sight for nearly 100

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years; further, the applicant states that neither the envelope, nor the floor area of the building will change under the proposal; and

WHEREAS, the applicant notes that the site lies within an Industrial Business Zone and that its proposed use of 85 percent of the building's floor area for manufacturing uses is consistent with that designation; likewise, the applicant asserts that the proposed retail uses will complement (rather than duplicate) local commercial uses and add up to 1,300 jobs to the local economy; and

WHEREAS, at hearing, the Board directed the applicant to clarify how the parking and loading facilities will be preserved given that the facilities are located on a separate zoning lot; and

WHEREAS, in response, the applicant provided a copy of a recorded restrictive declaration, which requires the owner of Block 675, Lot 10 (and its successors and assigns) to provide for the site no fewer than 368 parking spaces and up to 16 loading berths; and

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

WHEREAS, the applicant states that the practical difficulties and unnecessary hardships associated with the site result from the peculiarities of the existing building on the lot and the site's limited street access; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, finally, the applicant asserts and the Board agrees that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief; and

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

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.2 and 617.6 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA021K, dated January 10, 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, the New York City Department of

Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential air quality impacts; and

WHEREAS, DEP reviewed the applicant's January 2014 mobile sources air quality analyses and determined that no significant adverse air quality impacts from the proposed project are anticipated; and

WHEREAS, the New York City Department of Transportation's ("DOT") Division of Traffic and Planning reviewed the project for potential traffic impacts; and

WHEREAS, the applicant identified in the 2013 EAS and Traffic Study proposed traffic improvement measures which would be implemented as part of the proposed action at the following intersections:

39<sup>th</sup> Street (E-W) and Second Avenue (N-S):

During the weekday midday peak hour, shift three seconds of green time from the northbound/southbound phase to the eastbound/westbound phase; during the weekday PM peak hour shift four seconds of green time from the westbound phase (Gowanus Expressway Exit Ramp) and allocate two seconds to the northbound/southbound phase (Second Avenue) and two seconds to the eastbound/westbound phase; and during the Saturday midday peak hour shift four seconds of green time from the westbound phase (Gowanus Expressway Exit Ramp) to the eastbound/westbound phase;

33<sup>rd</sup> Street (E-W) and Fourth Avenue (N-S):

During the Saturday midday peak hour shift one second of green time from the northbound/southbound phase to the eastbound/westbound phase;

20<sup>th</sup> Street (E-W) and Fourth Avenue (N-S): During the Saturday midday peak hour shift two seconds of green time from the eastbound/westbound phase to the northbound/westbound phase;

33<sup>rd</sup> Street (E-W) and Third Avenue: Restripe eastbound 33<sup>rd</sup> Street between northbound and southbound Third Avenue as two 15-foot travel lanes – one through lane and one left-turn lane; and

WHEREAS, DOT reviewed these measures and determined they were reasonable and feasible; 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; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to

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permit, on a site within an M3-1 zoning district, the conversion of portions of the first and second floors of an existing eight-story manufacturing building to retail use with more than 10,000 sq. ft. of floor area per establishment (Use Group 10A), contrary to ZR § 42-12, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 6, 2013" – (8) sheets; and *on further condition*:

THAT the retail use will be limited to 62,614.8 sq. ft. of floor area on the first floor and 104,972 sq. ft. of floor area on the second floor, for a total retail floor area of 167,586.8 sq. ft.;

THAT loading berths and a minimum of 368 parking spaces will be provided on Block 675, Lot 10;

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 this approval is subject to DOT investigating the need for implementing the proposed improvements as described above or similar measures when the building is completed;

THAT the applicant will notify DOT six months prior to the opening of the proposed building;

THAT substantial construction will be completed in accordance with 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, January 14, 2014.

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## 262-12-BZ

### CEQR #13-BSA-028Q

APPLICANT – Patrick W. Jones, P.C., for Canyon & Cie LLC c/o Mileson Corporation, owner; Risingsam Management LLC, lessee.

SUBJECT – Application September 4, 2012 – Variance (§72-21) to permit a hotel (UG 5), contrary to use regulations (§42-00). M2-1 zoning district.

PREMISES AFFECTED – 132-10 149th Avenue aka 132-35 132<sup>nd</sup> Street, bounded by 132nd Street, 149th Avenue and Nassau Expressway Service Road, Block 11886, Lot 12 and 21, Borough of Queens.

### COMMUNITY BOARD #10Q

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

#### THE VOTE TO GRANT –

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

WHEREAS, the decision of the Queens Borough Commissioner, dated August 6, 2012 acting on Department of Buildings Application No. 420571189, reads in pertinent part:

Use Group 5 (hotel) is not permitted in M2-1 zoning district, per ZR 42-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M2-1 zoning district, the construction of a four-story building to be occupied as a transient hotel (Use Group 5) with 101 rooms, and an accessory parking lot with six spaces, which does not conform with the use regulations pursuant to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in the *City Record*, with a continued hearing on November 26, 2013, and then to decision on January 14, 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 10, Queens, recommends disapproval of the application, asserting that the essential character of the neighborhood is residential and industrial and that the applicant failed to demonstrate that an as-of-right use does not provide a reasonable return; and

WHEREAS, the subject site is a triangular block bounded by 132nd Street, 149th Avenue, and 150th Avenue (a/k/a the Nassau Expressway Service Road) and comprising Tax Lots 12 and 21, within an M2-1 zoning district; and

WHEREAS, the site has 132.16 feet of frontage along 132nd Street, 216.1 feet of frontage along 149th Avenue, 254.9 feet of frontage along the Nassau Expressway Service Road, and 14,280.05 sq. ft. of lot area; and

WHEREAS, the applicant states that, at present, the site is used as a parking lot for shuttle vans operated by the nearby Hilton Garden Inn; and

WHEREAS, the applicant notes that, historically, the site was part of a larger tract of land that contained a sewage treatment facility; the applicant also notes that the Board previously denied bulk variances (maximum building height within two miles of an airport) pursuant to the 1916 Zoning Resolution under BSA Cal. Nos. 1907-61-BZ and 1928-61-BZ; and

WHEREAS, the applicant proposes to construct a four-story hotel (Use Group 5) with a wall height of 45'-6", 28,533 sq. ft. of floor area (2.0 FAR) and 101 rooms; the applicant notes that the maximum FAR for uses permitted as-of-right in the subject M2-1 district (and in the adjacent M1-2 district) is 2.0; and

WHEREAS, because Use Group 5 is not permitted as-of-right in the subject M2-1 district, the applicant seeks a use variance; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: (1) the site's triangular shape; and (2) contamination of the soil with hazardous materials; and

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WHEREAS, the applicant states that the triangular shape of the site is a unique physical condition that impairs its ability to develop the site for a conforming use; and

WHEREAS, the applicant states that, based on historical Sanborn maps, the triangular shape of the site results from the construction of the Nassau Expressway in the 1960s, which formed the triangular site's hypotenuse and separated the site from its historic block; and

WHEREAS, as to the uniqueness of the triangular shape, the applicant states that there is only one other triangular lot (Block 11900, Lot 75) in the study area (the area bounded by 130th Street, 130th Place, the Belt Parkway, the Nassau Expressway, and 134th Street); however, the applicant states Block 11900, Lot 75 is distinguishable because it is more than three times the size of the subject site (53,125 sq. ft. of lot area versus 14,280.05 sq. ft. of lot area); and

WHEREAS, as to the hardship created by the triangular shape, the applicant states that the lot shape results in two equally undesirable as-of-right scenarios: (1) a triangular manufacturing building; and (2) a rectangular manufacturing building; and

WHEREAS, the applicant states that a triangular building is inherently inefficient due to its acute angles, which form sharp corners that are unsuitable for manufacturing uses; the applicant notes that manufacturing and commercial buildings are nearly universally rectangular in shape in order to accommodate shelving, boxes, office space, and other standard-sized machinery and equipment that cannot be easily modified; and

WHEREAS, the applicant states that constructing a rectangular building with sufficient floor space would require constructing multiple floors with vertical transportation; the applicant asserts that constructing vertical transportation is both expensive and generally undesirable for modern manufacturers, which prefer to have operations at ground level; and

WHEREAS, as to the contamination, the applicant states that a Phase II site investigation revealed the presence of certain volatile organic compounds, semi-volatile organic compounds, metals, and pesticides, owing to the historical use of the site as a sewage treatment facility; and

WHEREAS, the applicant states that remediation of these contaminants will require soil disposal, clean fill replacement, and the creation of a vapor barrier, at significant cost; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, the applicant assessed the financial feasibility of four scenarios: (1) an as-of-right triangular manufacturing building with two stories, 28,501 sq. ft. of floor area (2.0 FAR), and a floorplate of 14,560 sq. ft.; (2) an as-of-right rectangular manufacturing building with four stories, 28,485 sq. ft. of floor area (1.99 FAR), and a

floorplate of 7,700 sq. ft.; (3) an as-of-right rectangular manufacturing building on a conceptual rectangular lot with two stories, 28,479 (1.99 FAR), and a floorplate of 14,540 sq. ft.; and (4) the proposal; and

WHEREAS, the applicant concluded that, other than the scenario involving the conceptual rectangular lot, only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board directed the applicant to clarify the calculation of costs associated with the excavation of the contaminated soil and to explain why the nearby hotels were not included as comparators for the applicant's financial analysis; and

WHEREAS, in response, the applicant submitted a revised financial analysis delineating excavation costs; as to the hotels used as comparators, the applicant explained that the nearby hotels (the Sheraton and the Hilton Garden Inn) offer more amenities than the proposed hotel, and, as such, command higher rates and are not comparable to the proposal; and

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

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

WHEREAS, the applicant represents that although the site is designated as an Industrial Business Zone, the immediate area is characterized by a mix of commercial, community facility, and industrial uses, and major thoroughfares including the Belt Parkway, South Conduit Avenue, and the Nassau and Van Wyck Expressways; and

WHEREAS, the applicant represents that there are two other hotels within 400 feet of the site and that there are 18 hotels within the greater area surrounding John F. Kennedy International Airport, which lies to the south and east of the site; and

WHEREAS, as for the immediately adjacent sites, the applicant states that a homeless shelter ("Skyway Family Center"), a Sheraton hotel, and a Hilton Garden Inn occupy the block immediately north of the site, a highway salt storage area (covered by a tarpaulin) occupies the block immediately to the south of the site; to the west of the site are a catering facility and a rental car facility; and

WHEREAS, the applicant notes that the site is within the only portion of the subject M3-1 district that is north and west of the Nassau Expressway, and that immediately north and west of the site is an M1-2 district, where less intense manufacturing uses predominate and where the proposed hotel would be permitted as-of-right; and

WHEREAS, according to the original design, the main entrance for the hotel was to be located on the 149th Avenue frontage; and

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WHEREAS, in response to the Community Board's concerns about the compatibility of the entrance with the Skyway Family Center, the applicant revised the design so that the main entrance of the hotel is located on the 150th Avenue frontage; and

WHEREAS, as to bulk, the applicant states, as noted above, that the proposal complies with the maximum 2.0 FAR permitted in the subject M2-1 district, as well as all other bulk regulations; and

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

WHEREAS, the applicant states that the practical difficulties and unnecessary hardships associated with the site result from its triangular shape (as created by the building of the Nassau Expressway) and its contamination, whose source is indeterminable; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, finally, the applicant asserts and the Board agrees that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief; and

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

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.2 and 617.6 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA028Q, dated January 6, 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, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed and accepted the September 2013 Remedial Action Plan and the site-specific Construction Health and Safety Plan; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an M2-1 zoning district, the construction of a four-story building to be occupied as a transient hotel (Use Group 5) with 101 rooms, and an accessory parking lot with six spaces, which does not conform with the use regulations pursuant to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 13, 2013" – (12 sheets; and *on further condition*:

THAT the following will be the bulk parameters of the Proposed Building: four stories, a wall height of 45'-6", 28,533.46 sq. ft. of floor area (2.0 FAR), a maximum of 101 hotel rooms, and six parking spaces;

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

THAT 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 this grant is contingent upon final approval from the Department of Environmental Protection before issuance of construction permits other than permits needed for soil remediation; and

THAT substantial construction will be completed in accordance with 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, January 14, 2014.

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## 120-13-BZ

### CEQR #13-BSA-129R

APPLICANT – Eric Palatnik, P.C., for Okun Jacobson & Doris Kurlender, owner; McDonald’s Corporation, lessee.

SUBJECT – Application April 25, 2013 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (*McDonald’s*) with an accessory drive-through facility. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, north side of Forest Avenue, 100’ west of intersection of Forest Avenue and Morningstar Road, Block 1180, Lots 6 and 49, Borough of Staten Island.

### COMMUNITY BOARD #1SI

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

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Executive Zoning Specialist, dated March 27, 2013, acting on Department of Buildings Application No. 520133105, reads:

Eating or drinking establishment with accessory drive-through facility is not permitted in C1 district; contrary to ZR 32-15; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within a C1-1 (R3-2) zoning district, the operation of an accessory drive-through facility on the site in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on September 10, 2013, with continued hearings on October 22, 2013 and November 26, 2013, and then to decision on January 14, 2014; and

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

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

WHEREAS, certain members of the surrounding community testified in opposition to the application, citing concerns about noise due to the 24-hour operation of the establishment and late-night garbage collection, and about traffic; and

WHEREAS, the subject site is an irregularly-shaped zoning lot comprising Tax Lots 6 and 49, with frontages on the north side of Forest Avenue and the west side of Morningstar Road, within a (C1-1) R3-2 zoning district; and

WHEREAS, the site has 125 feet of frontage along Forest Avenue, 169.5 feet of frontage along Morningstar Road, and a lot area of 42,788 sq. ft.; and

WHEREAS, the site is occupied by a one-story eating and drinking establishment (Use Group 6, operated by McDonald’s) with 4,410 sq. ft. of floor area (0.1 FAR), an accessory drive-through, and 62 accessory parking spaces; and

WHEREAS, the Board previously exercised jurisdiction over the site when, under BSA Cal. No. 808-94-BZ, it granted a special permit to legalize an existing accessory drive-through for a term of five years, to expire on June 3, 2002; and

WHEREAS, the applicant now seeks to obtain a new special permit for an accessory drive-through in connection with its redevelopment of the site, which will include a new, one-story McDonald’s building with 4,219 sq. ft. of floor area (0.09 FAR), a reconfiguration of the site circulation, and a reduction in the number of accessory parking spaces from 62 spaces to 42 spaces (a minimum of 26 parking spaces are required, per ZR § 36-21); and

WHEREAS, a special permit is required for the proposed accessory drive-through facility in the C1-1 (R3-2) zoning district, pursuant to ZR § 73-243; and

WHEREAS, under ZR § 73-243, the applicant must demonstrate that: (1) the drive-through facility provides reservoir space for not less than ten automobiles; (2) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; (3) the eating and drinking establishment with accessory drive-through facility complies with accessory off-street parking regulations; (4) the character of the commercially-zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle; (5) the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity; and (6) there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant submitted a site plan indicating that the drive-through facility provides reservoir space for at least 13 vehicles; and

WHEREAS, the applicant represents that the facility will cause minimal interference with traffic flow in the immediate vicinity of the subject site; and

WHEREAS, in support of this representation, the applicant states that the site has three curb cuts, two on Forest Avenue, a heavily-trafficked thoroughfare, and one along Morningstar Road, and that each curb cut is located a sufficient distance from any intersection and will not adversely affect traffic flow on the streets; and

WHEREAS, in addition, the applicant represents that the proposed reconfiguration of the site increases the reservoir spaces for vehicles using the drive-through, which will further improve the overall traffic flow of the site; and

WHEREAS, the applicant notes that an eating and drinking establishment has existed at the site since at least the mid-1970s and that a drive-through has operated since the mid-1990s; therefore, the drive-through is well-established in the neighborhood and will not create new traffic patterns in the vicinity; and

WHEREAS, the applicant submitted a site plan that demonstrates that the facility complies with the accessory off-street parking regulations for the C1-1 (R3-2) zoning district; as noted above, the proposed 42 parking spaces is well in excess of the 26 parking spaces required under ZR § 36-21; and

WHEREAS, the applicant represents that the facility

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conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward motor vehicles and is predominantly commercial in nature; and

WHEREAS, the applicant states that Forest Avenue is a heavily-travelled commercial thoroughfare occupied by a variety of uses, including restaurants, drug stores, supermarkets, banks, offices and retail stores; in addition, the portion of Morningstar Road on which the site fronts is a two-way street that includes retail uses, and

WHEREAS, the applicant states that such uses and the surrounding residential neighborhoods they support are substantially oriented toward motor vehicle use; and

WHEREAS, the Board notes that the applicant has submitted photographs of the site and the surrounding streets, which supports this representation; and

WHEREAS, the applicant represents that the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, the applicant states that the impact of the drive-through upon residences is minimal, in that most of the surrounding properties are occupied by commercial uses; and

WHEREAS, the applicant notes that while there are nearby residential uses, they are located to the north and west of the site, whereas the restaurant and the majority of its parking, are located on the southern and eastern portions of the site; likewise, the applicant states that the menu board for the drive-through will be located approximately 47 feet from the nearest residence's lot line; and

WHEREAS, the applicant represents that there will be adequate buffering between the drive-through and the nearby residences in the form of a fence, trees, shrubs, and planting beds; and

WHEREAS, accordingly, the applicant represents that the drive-through facility satisfies each of the requirements for a special permit under ZR § 73-243; and

WHEREAS, the applicant represents that the community is not adversely impacted by the legalization and modification of the existing drive-through; and

WHEREAS, the applicant states that the restaurant is well-established in the neighborhood and has existed with a drive-through for approximately 20 years; and

WHEREAS, the applicant notes that the drive-through window does not increase the number of vehicular visits to the site but rather decreases the amount of time that restaurant patrons spend at the site; and

WHEREAS, at hearing, the Board raised concerns about the enclosure of the dumpsters, the late-night garbage collection, the 24-hour operation of the drive-through, and the lack of directional signage and striping in the parking lot; and

WHEREAS, in response, the applicant submitted amended plans showing a masonry enclosure of the dumpsters and new directional signage and striping; in addition, the applicant submitted a letter from the proprietor of the McDonald's certifying that the hours of garbage collection would be limited to daily, between 8:00 a.m. and 10:00 p.m.;

and

WHEREAS, as to the 24-hour operation of the drive-through, the applicant asserts that it is essential to the operation of the restaurant; and

WHEREAS, the Board noted at hearing that the five-year term of the special permit will allow for monitoring of the site for compliance with the conditions of the grant; 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 use is outweighed by the advantages to be derived by the community; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13-BSA129R dated April 24, 2013; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a negative declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-243 and 73-03 to permit, on a site within a C1-1 (R3-2) zoning district, the operation of an accessory drive-through facility on the site in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 10, 2013"- (9) sheets; and *on further condition*:

THAT the term of this grant will expire on January 14, 2019;

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

THAT parking and queuing space for the drive-through will be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering will be maintained as indicated on the BSA-approved plans;

THAT exterior lighting will be directed away from the nearby residential uses;

THAT all signage will conform to C1-1 zoning district regulations;

THAT the hours of garbage collection will be limited to daily, between 8:00 a.m. and 10:00 p.m.;

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) 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.”

Adopted by the Board of Standards and Appeals, January 14, 2014.

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## 171-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1034 East 26<sup>th</sup> Street, LLC, owner.

SUBJECT – Application June 6, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1034 East 26th Street, west side of East 26th Street between Avenue J and Avenue K, Block 7607, Lot 63, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

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

## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 23, 2013, acting on Department of Buildings Application No. 320729075, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required;

3. Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required; and

4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, 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 November 26, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

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

WHEREAS, the subject site is located on the west side of East 26th Street, between Avenue J and Avenue K, within an R2 zoning district; and

WHEREAS, the site has a total lot area of 4,000 sq. ft. and is occupied by a single-family home with a floor area of 1,438 sq. ft. (0.36 FAR); and

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

WHEREAS, the applicant now seeks an increase in the floor area from of 1,438 sq. ft. (0.36 FAR) to 4,016 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to reduce the open space from 178 percent to 50.7 percent; the minimum required open space is 150 percent; and

WHEREAS, the applicant seeks to maintain the width of one existing side yard (2'-0”) and decrease the width of the other existing side yard from 10'-0” 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 32'-9½” to 20'-0” (a minimum rear yard depth of 30'-0” is required); and

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

WHEREAS, in particular, the applicant represents that the proposed 1.0 FAR is consistent with the bulk in the surrounding area and submitted an analysis showing that there are ten homes in the immediate vicinity (the subject block and Block 7607, which is immediately west of the subject block) with an FAR of 1.0 or greater; and

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

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, within an R2 zoning district, the proposed enlargement of a single-family home, 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; *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 October 16, 2013"- (12) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 4,016 sq. ft. (1.0 FAR), a minimum open space of 50.7 percent, a minimum rear yard depth of 20'-0", and side yards with minimum widths of 2'-0" and 8'-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, January 14, 2014.

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## **187-13-BZ CEQR #13-BSA-161X**

APPLICANT – Sheldon Lobel, P.C., for 1030 Southern Boulevard LLC, owner; 1030 Southern Boulevard Fitness Group, LLC, lessee.

SUBJECT – Application June 21, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*), and Special Permit (§73-52) to extend commercial use into the portion of the lot located within a residential zoning district. C4-4/R7-1 zoning district.

PREMISES AFFECTED – 1024-1030 Southern Boulevard, east side of Southern Boulevard approximately 134' north of the intersection formed by Aldus Street and Southern Boulevard, Block 2743, Lot 6, Borough of Bronx.

## **COMMUNITY BOARD #2BX**

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Hinkson and Commissioner Montanez .....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 6, 2013, acting on Department of Buildings ("DOB") Application No. 220259119, reads in pertinent part:

Proposed physical culture establishment, is not permitted as-of-right in a C4-4 zoning district, per ZR 32-10;

Proposed extension of physical culture establishment use into R7-1 portion of zoning lot is not permitted per ZR 22-10 and 77-11; and

WHEREAS, this is an application under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C4-4 zoning district and partially within an R7-1 zoning district, the legalization of a physical culture establishment ("PCE") in portions of the first and second floors and mezzanine level of an existing two-story commercial building, contrary to ZR § 32-10, and to permit the legalization of an extension of the proposed PCE use within the existing building into the R7-1 portion of the zoning lot, contrary to ZR § 77-11; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 14, 2014; and

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

WHEREAS, Community Board 2, Bronx, recommends approval of this application; and

WHEREAS, the subject site is an irregularly-shaped zoning lot with interior lot and through lot portions and located in the mid-block of the block bounded by Aldus Street, Southern Boulevard, Westchester Avenue, East 165 Street, and Hoe Avenue; and

WHEREAS, the site is partially within a C4-4 zoning district and partially within an R7-1 zoning district; and

WHEREAS, the site has approximately 120 feet of frontage along Southern Boulevard, 20 feet of frontage along Hoe Avenue, and a lot area of 26,300 sq. ft.; and

WHEREAS, the site is occupied by a two-story commercial building that was constructed around 1913 and used as a theater (known as "Lowe's Boulevard Theater") until the 1980s, when it was converted to retail use; and

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WHEREAS, the PCE occupies portions of the first (10,906 sq. ft. of floor area) and second floors (5,085 sq. ft. of floor area), and second floor mezzanine (1,339 sq. ft. of floor area), for a total PCE floor area of 17,330 sq. ft.; and

WHEREAS, the applicant notes that although the Board has not previously exercised jurisdiction over the site, an application similar to the instant application (a request for special permits under ZR §§ 73-36 and 73-52) was filed by another fitness center operator and withdrawn in October 2012; and

WHEREAS, the applicant notes that the PCE has been in operation since July 15, 2013; and

WHEREAS, the PCE is currently operated as a Planet Fitness; and

WHEREAS, the applicant proposes to: (1) pursuant to ZR § 73-52, extend the use regulations applicable in the C4-4 portion of the site 25 feet to the east and 25 feet to the south, thereby legalizing the PCE use in the portion of the first floor of the existing building within the R7-1 portion of the site; and (2) pursuant to ZR § 73-36, legalize the PCE use in portions of the first and second floors, and second floor mezzanine of an existing two-story commercial building at the site; and

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

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

WHEREAS, as to the 50-percent lot area requirement, the applicant submitted a site plan indicating that approximately 22,005 sq. ft. of the site's 26,300 sq. ft. of lot area (84 percent) is located within a C4-4 zoning district; and

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

WHEREAS, as to economic feasibility, the applicant represents that it would not be economically feasible to use or develop the R7-1 portion of the site for a permitted use; specifically, the applicant states that the residential portion of the site is already occupied with a portion of the existing building that is too small to accommodate an independent, viable residential or community facility tenant; and

WHEREAS, in addition, the applicant states that the portion of the site and the building within the R7-1 district

does not have access to a public street; as such, absent the requested extension of the PCE into the residential space, a substantial portion of the first floor of the building would be unusable and remain vacant; and

WHEREAS, the Board agrees that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R7-1, for a permitted use; and

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

WHEREAS, the applicant also notes that the PCE does not have any windows on entrances facing the residential district, and that commercial uses have existed at the site for approximately 100 years; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C4-4 zoning district portion of the lot into the R7-1 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; and

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

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

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

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

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

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

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

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

WHEREAS, in response, the applicant represented that the mezzanine level was not required to be made accessible

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because the amenities offered on that level are available on one or more accessible levels of the PCE; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA161X, dated June 21, 2013; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36, 73-03, and 73-52 to permit, on a site located partially within a C4-4 zoning district and partially within an R7-1 zoning district, the legalization of a physical culture establishment (“PCE”) in portions of the first and second floors and mezzanine level of an existing two-story commercial building, contrary to ZR § 32-10, and to permit the legalization of an extension of the proposed PCE use within the existing building into the R7-1 portion of the zoning lot; *on condition* that all work will substantially conform to drawings filed with this application marked “September 5, 2013” – Five (5) sheets; and *on further condition*:

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

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

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

THAT the bulk parameters of the building will be as follows: 2,443.75 sq. ft. within the R7-1 portion of the lot and 14,886.25 sq. ft. within the C4-4 portion of the lot;

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, January 14, 2014.

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## 223-13-BZ

APPLICANT – Stroock & Stroock & Lavan LLP by Ross F. Moskowitz, for NYC Department of Citywide Administrative Services, owner.

SUBJECT – Application July 24, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Kingsbridge National Ice Wellness Center*) in an existing building. C4-4/R6 zoning district.

PREMISES AFFECTED – 29 West Kingsbridge Road aka Kingsbridge Armory Building, Block 3247, Lot 10 part of 2, Borough of Bronx.

## COMMUNITY BOARD #7BX

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

## THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez .....4

Absent: Commissioner Otley-Brown.....1

Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated July 19, 2013, acting on Department of Buildings (“DOB”) Application No. 220326001, reads in pertinent part:

Proposed physical culture establishment is not permitted as of right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the sub-cellar levels of an existing commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 26, 2013, after due notice by publication in *The City Record*, and then to decision on

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January 14, 2014; and

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

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

WHEREAS, the subject site is the entire block bounded by West Kingsbridge Road, West 195th Street, Jerome Avenue, and Reservoir Avenue; and

WHEREAS, the site has approximately 297,200 sq. ft. of lot area and is occupied by two, two-story commercial buildings occupied by the United States National Guard (“USNG buildings”), and by the Kingsbridge Armory, an individual New York City Landmark, which is also listed on the New York State and National Registers of Historic Places; and

WHEREAS, the applicant represents that it has sought the necessary City Planning Commission approvals to convert the Armory building to indoor ice skating rinks and other retail and commercial spaces; and

WHEREAS, the applicant states that the converted building will be known as the Kingsbridge National Ice Center; and

WHEREAS, the PCE is proposed to occupy approximately 10,000 sq. ft. of floor space on portions of sub-cellar 1 and sub-cellar 2 of the building; and

WHEREAS, the PCE will be operated in connection with the Kingsbridge National Ice Center; and

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

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 6:00 a.m. to 9:00 p.m., and Saturday 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 PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board notes that, on October 17, 2013, the Landmarks Preservation Commission issued a Binding Report indicating its approval of the proposal; and

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

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

WHEREAS, therefore, the Board has determined that

the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 13DME013X, dated April 16, 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, 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 adopts the Type I Negative Declaration issued by the Deputy Mayor’s Office prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C4-4 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the sub-cellar levels of an existing commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 18, 2013” – Ten (10) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 14, 2024;

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

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

THAT all required City Planning Commission approvals will be obtained;

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

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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, January 14, 2014.

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

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

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

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

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

### COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over to February 25, 2014, at 10 A.M., for adjourned hearing.

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## 6-12-BZ

APPLICANT – Syeda Laila, owner.

SUBJECT – Application January 13, 2013 – Variance (§72-21) to permit a four-story residential building, contrary to floor area, (§103-211), dwelling unit (§23-22), front yard (§23-46), side yard (§23-46) and height (§23-631) regulations. R4 zoning district.

PREMISES AFFECTED – 39-06 52nd Street aka 51-24 39<sup>th</sup> Avenue, Block 128, Lot 39, 40, Borough of Queens.

### COMMUNITY BOARD #2Q

**ACTION OF THE BOARD** – Laid over to February 25, 2014, at 10 A.M., for deferred decision.

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## 43-12-BZ

APPLICANT – Raymond H. Levin, Wachtel & Masyr, LLP, for SDS Great Jones, LLC, owner.

SUBJECT – Application February 17, 2012 – Variance (§72-21) to permit a residential building, contrary to use regulations (§42-00). M1-5B zoning district.

PREMISES AFFECTED – 25 Great Jones Street, lot fronting on both Great Jones and Bond Street, between Lafayette and Bowery Streets, Block 530, Lot 19, Borough of Manhattan.

### COMMUNITY BOARD #2M

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.

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## 77-12-BZ

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

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

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

### COMMUNITY BOARD #3BK

**ACTION OF THE BOARD** – Laid over to February 25, 2014, at 10 A.M., for continued hearing.

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## 299-12-BZ

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

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

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

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to February 11, 2014, at 10 A.M., for continued hearing.

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## 6-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Yeshiva Ohr Yisrael, owner.

SUBJECT – Application January 11, 2013 – Variance (§72-21) to permit the construction of a synagogue and school (*Yeshiva Ohr Yisrael*), contrary to floor area and lot coverage (§24-11), side yard (§24-35), rear yard (§24-36), sky exposure plane (§24-521), and parking (§25-31) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2899 Nostrand Avenue, east side of Nostrand Avenue, Avenue P and Marine Parkway, Block 7691, Lot 13, Brooklyn of Brooklyn.

### COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

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Commissioner Hinkson and Commissioner Montanez.....4  
Negative:.....0  
Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

## 94-13-BZ

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

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

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

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to February 25, 2014, at 10 A.M., for deferred decision.

## 154-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Ralph Avenue Associates, LLC, owner.

SUBJECT – Application May 14, 2013 – Variance (§72-21) to allow the construction of a retail building (UG 6), contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1054-1064 Bergen Avenue, bounded by Bergen Avenue to the north, Avenue K to the east, East 73rd Street to the south, and Ralph Avenue to the west, Block 8341, Lot (Tentative lot 135), Borough of Brooklyn.

### COMMUNITY BOARD #18BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

## 192-13-BZ

APPLICANT – Jesse Masyr, Esq., Fox Rothschild, LLP, for AP-ISC Leroy, LLC, Authorized Representative, owner.

SUBJECT – Application July 2, 2013 – Variance (§72-21) to permit the construction of a residential building with accessory parking, contrary to use regulations (§42-10). M1-5 zoning district.

PREMISES AFFECTED – 354/361 West Street aka 156/162 Leroy Street and 75 Clarkson Street, West street between Clarkson and Leroy Streets, Block 601, Lot 1, 4, 5, 8, 10, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for continued hearing.

## 209-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 12 West 21 Land, O.P., owner.

SUBJECT – Application July 8, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*NY Physical Training Fitness Studio*) within the existing building, contrary to C6-4-A zoning district.

PREMISES AFFECTED – 12 West 21st Street, between 5th Avenue and 6th Avenue, Block 822, Lot 49, Borough of Manhattan.

### COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

## 220-13-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Yitzchok Perlstein, owner.

SUBJECT – Application July 22, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 2115 Avenue J, north side of Avenue J between East 21st and East 22nd Street, Block 7585, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for continued hearing.

## 243-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Henry II Thames LP c/o of Fisher Brothers, owners.

SUBJECT – Application August 21, 2013 – Variance (§72-21) to permit construction of a mixed use building, contrary to setback requirements (§91-32). C5-5 (LM) zoning district.

PREMISES AFFECTED – 22 Thames Street, 125-129 Greenwich Street, southeast corner of Greenwich Street and Thames Street, Block 51, Lot 13, 14, Borough of Manhattan.

### COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

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# MINUTES

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## 245-13-BZ

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

SUBJECT – Application August 21, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141) and less than the required rear yard (§23-47). R4 zoning district.

PREMISES AFFECTED – 2660 East 27th Street, between Voorhies Avenue and Avenue Z, Block 7471, Lot 30, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to February 11, 2014, at 10 A.M., for decision, hearing closed.

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## 249-13-BZ

APPLICANT – Eric Palatnik, P.C., for Reva Holding Corporation, owner; Crunch LLC, lessee.

SUBJECT – Application August 26, 2013 – Special Permit (§73-36) to allow a physical cultural establishment (*Crunch Fitness*) within portions of existing commercial building. C4-3 zoning district.

PREMISES AFFECTED – 747 Broadway, northeast corner of intersection of Graham Avenue, Broadway and Flushing Avenue, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to February 4, 2014, at 10 A.M., for decision, hearing closed.

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## 267-13-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 689 Fifth Avenue LLC, owner; Fit Life 5th Avenue LLC, lessee.

SUBJECT – Application September 6, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*). C5-3 (MID) zoning district.

PREMISES AFFECTED – 689 5th Avenue aka 1 East 54<sup>th</sup> Street, northeast corner of 5th Avenue and East 54th Street, Block 1290, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to February

4, 2014, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

## \*CORRECTION

This resolution adopted on October 8, 2013, under Calendar No. 75-13-A and printed in Volume 98, Bulletin Nos. 40-41, is hereby corrected to read as follows:

### 75-13-A

APPLICANT – Law Office of Fredrick A. Becker, for 5 Beekman Property Owner LLC by Ilya Braz, owner.

SUBJECT – Application February 20, 2013 – Appeal of §310(2) of the MDL relating to the court requirements (MDL §26(7)) to allow the conversion of an existing commercial building to a transient hotel. C5-5(LM) zoning district.

PREMISES AFFECTED – 5 Beekman Street, south side of Beekman Street from Nassau Street to Theater Alley, Block 90, Lot 14, Borough of Manhattan.

### COMMUNITY BOARD #1M

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Executive Director of the NYC Development Hub, dated February 7, 2013, acting on Department of Buildings Application No. 121329268 reads, in pertinent part:

Proposed conversion of an office building to a Use Group 5 transient hotel does not comply with MDL Section 26(7), in that legally required windows open onto an existing inner court; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary court requirements in order to allow for the proposed conversion of the subject building from office and adult vocational school uses (Use Groups 6 and 9) to a transient hotel (Use Group 5), contrary to MDL § 26(7); and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in *The City Record*, with a continued hearing on August 13, 2013, and then to decision on October 8, 2013; and

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

WHEREAS, the subject site is a rectangular lot located on the south side of Beekman Street and extending from Theater Alley to Nassau Street, within a C5-5 district within the Special Lower Manhattan District; and

WHEREAS, the site has approximately 100 feet of frontage along Beekman Street, approximately 146 feet of frontage along Nassau Street, approximately 150 feet of frontage along Theater Alley, and a lot area of 14,937 sq. ft.; and

WHEREAS, the site is occupied by a ten-story commercial building that was constructed between 1881 and 1890 and is known as the Temple Court Building and Annex (the “Building”); and

WHEREAS, on February 10, 1998, the Building was designated as an individual landmark by the New York City Landmarks Preservation Commission (“LPC”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 19, 2004, when, under BSA Cal. No. 383-03-A, the Board authorized the retention of an open, unenclosed access stair contrary to the 1938 Building Code and the MDL in connection with a proposed conversion from office and adult vocational school uses (Use Groups 6 and 9) to residences (Use Group 2); and

WHEREAS, in 2009, another application was filed with the Board, under BSA Cal. No. 12-09-A, seeking MDL and 1938 Building Code waivers in connection with a proposed conversion from office and adult vocational school uses (Use Groups 6 and 9) to transient hotel (Use Group 5); this application was withdrawn on July 19, 2011; and

WHEREAS, the applicant notes that, despite the Board’s action under BSA Cal. No. 383-08-A, the Building was never converted to residential use and has been vacant for many years; and

WHEREAS, the applicant now proposes to convert the Building to a transient hotel use (Use Group 5) with 287 rooms (the “Proposal”); and

WHEREAS, the applicant states that while the proposed use is permitted as-of-right in the underlying zoning district, the Building’s existing inner court, as defined by MDL § 4(32), does not comply with the applicable provisions of the MDL; and

WHEREAS, the Board notes that pursuant to MDL § 4(9), transient hotels are considered “class B” multiple dwellings; therefore the proposed hotel use must comply with the relevant provisions of the MDL; and

WHEREAS, pursuant to MDL § 30(2), every room in a multiple dwelling must have one window opening directly upon a street or upon a lawful yard, court or space above a setback located on the same lot as that occupied by the multiple dwelling; and

WHEREAS, the applicant states that of the 287 rooms proposed, 32 rooms (11 percent) would have required windows opening onto the existing inner court; and

WHEREAS, MDL § 26(7) states that, except as otherwise provided in the Zoning Resolution, (1) an inner court shall have a minimum width of four inches for each one foot of height of such court and (2) the area of such inner court shall be twice the square of the required width of the court, but need not exceed 1,200 sq. ft. so long as there is a horizontal distance of at least 30 feet between any required living room window opening onto such court and any wall opposite such window; and

WHEREAS, the applicant states that the Building’s existing inner court with a height of 121 feet does not comply with the requirements of MDL § 26(7), in that it has a width of approximately 30’-8¼” and a depth of approximately 16’-

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2¾", and an area of 514 sq. ft., but is required, per MDL § 26(7) to have a minimum width of 40'-3" and a minimum depth of 30'-0" and an area of 1,200 sq. ft.; as such, the applicant requests that the Board waive compliance with that provision pursuant to MDL § 310; 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 Building was constructed in the 1880s and completed around 1890; therefore it 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 MDL § 26(7) specifically relates to the minimum dimensions of courts; therefore the Board has the power to vary or modify the subject provision pursuant to MDL § 310(2)(a)(3); and

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

WHEREAS, the applicant states that, in order for all of the hotel units in the proposed hotel to have windows that open onto a street or a lawful yard or court, as required by MDL § 30(2), extensive structural work would be required to enlarge the inner court to a complying dimension, including construction of new foundations below the annex cellar, shoring of the two existing floor beams down to the foundation, the installation of three new beams on the edge of the new opening, the installation of a new metal deck and concrete topping between the edge beam and the remaining interior floor beam, the demolition of each floor and wall for one story below, and the installation of a new light well façade; and

WHEREAS, as an alternative to the creation of a complying court, the applicant explored the feasibility of a design in which the inner court was not altered and the rooms were configured so that no room used the inner court to satisfy MDL § 30(2); and

WHEREAS, the applicant represents that both complying configurations significantly increase costs and reduce revenue; and

WHEREAS, specifically, the applicant represents that providing a complying inner court would result in a reduction in the number of hotel rooms from 287 to 263 (24 rooms) and a loss of 6,669 sq. ft. of floor area; further, the construction cost of providing a complying court would exceed the proposed design cost by approximately \$23,000 per room; and

WHEREAS, as to the design in which the inner court is

not altered and the rooms are reconfigured, the applicant represents that such a design would result in a reduction in the number of rooms from 287 to 255 (32 rooms) and construction costs in excess of the proposed design of approximately \$27,000 per room; and

WHEREAS, further, the applicant asserts that both complying designs would generate significantly less annually than the proposal; specifically, the complying inner court design would generate approximately \$2,500,000 less than the proposal and the reconfigured rooms design would generate approximately \$3,400,000 less than the proposal; 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 MDL § 26(7); and

WHEREAS, the applicant states that the requested variance of MDL §26(7) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, the applicant represents that the Building was constructed to meet the demands of a late-19th Century office and, as such, is unsuitable to satisfy the demands of a modern office, but can be altered to provide transient accommodations to business travelers and tourists in Lower Manhattan; and

WHEREAS, the applicant notes that only 11 percent of the rooms will use the existing inner court for light and ventilation and that, because the rooms will be occupied for less than 30 days, and, presumably, by visitors who will spend a significant portion of their time touring the city or conducting business outside their room, the impact of the deficient court upon the health, safety and welfare of the occupants of the hotel will be, at most, negligible; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the building, which, as noted above, was designated by LPC as an individual landmark in 1998; and

WHEREAS, the applicant submitted a Certificate of No Effect from LPC approving the proposed interior alterations, dated April 30, 2013, and a Permit for Minor Work from LPC approving the exterior alterations, dated March 27, 2013; and

WHEREAS, based on the above, the Board finds that the proposed variance to MDL § 26(7) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure 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 MDL § 26(7) is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decision of the Executive Director of the NYC Development Hub, dated February 7, 2013, acting on Department of Buildings Application No. 121329268, is modified and that this application is granted, limited to the decision noted above, on condition that construction shall substantially conform to the

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plans filed with the application marked, "Received June 3, 2013" - twelve (12) 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;

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

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

Adopted by the Board of Standards and Appeals, October 8, 2013.

**\*The resolution has been amended to the 18<sup>th</sup> WHEREAS, and 28<sup>th</sup> WHEREAS. Corrected in Bulletin Nos. 1-3, Vol. 99, dated January 23, 2014.**