
BULLETIN

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June 19, 2014

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CONTENTS

DOCKET	435
CALENDAR of June 24, 2014	
Morning	438/439

CONTENTS

**MINUTES of Regular Meetings,
Tuesday, June 10, 2014**

Morning Calendar440

Affecting Calendar Numbers:

457-56-BZ	152-154 India Street, Brooklyn
192-96-BZ	1832 86 th Street, aka 1854 86 th Street, 1-29 Bay Street, 2-6 Bay 20 th Street, Brooklyn
178-99-BZ	8973/95 Bay Parkway, Brooklyn
322-05-BZ	69-69 Main Street, Queens
174-07-BZ	1935 Coney Island Avenue, Brooklyn
173-09-BZ	839-845 Broadway, aka 12-14 Park Street, Brooklyn
247-09-BZ	123 East 55 th Street, Manhattan
245-32-BZ	123-05 101 th Avenue, Queens
24-96-BZ	213 Madison Street, Manhattan
186-96-BZ	145-21/25 Liberty Avenue, Queens
47-97-BZ	7802 Flatbush Avenue, Brooklyn
160-00-BZ	244-04 Francis Lewis Boulevard, Queens
280-01-BZ	663-673 2 nd Avenue, Manhattan
341-02-BZ	231 East 58 th Street, Manhattan
164-13-A	307 West 79 th Street, Manhattan
45-07-A	1472 East 19 th Street, Brooklyn
266-07-A	1602-1610 Avenue S, Brooklyn
80-11-A, 84-11-A & 85-11-A & 103-11-A	335, 333, 331, 329 East 9 th Street, Manhattan
277-12-BZ	1776 Eastchester Road, Bronx
179-13-BZ	21-41 Mott Avenue, Queens
233-13-BZ	2413 Avenue R, Brooklyn
250-13-BZ	3555 White Plains Road, Bronx
251-13-BZ	1240 Waters Place, Bronx
316-13-BZ	210 Joralemon Street, Brooklyn
319-13-BZ	1800 Park Avenue, Manhattan
331-13-BZ	2005 86 th Street, aka 2007 86 th Street, Brooklyn
7-14-BZ	1380 Rockaway Parkway, Brooklyn
16-14-BZ	1648 Madison Place, Brooklyn
20-14-BZ	312 East 23 rd Street, Manhattan
216-13-BZ & 217-13-A	750 Barclay Avenue, Staten Island
254-13-BZ	2881 Nostrand Avenue, Brooklyn
256-13-BZ thru 259-13-BZ, 260-13-A thru 263-13-A	25, 27, 31, 33 Sheridan Avenue, Staten Island
279-13-BZ	218-222 West 35 th Street, Manhattan
284-13-BZ	168-42 Jamaica Avenue, Queens
286-13-BZ	2904 Voorhies Avenue, Brooklyn
299-13-BZ	4299 Hylan Boulevard, Staten Island
310-13-BZ	459 East 149 th Street, Bronx
324-13-BZ	78-32 138 th Street, Queens
15-14-BZ	12-03 150 th Street, Queens
27-14-BZ	496 Broadway, Manhattan
39-14-BZ	97 Reade Street, Manhattan

Correction474

Affecting Calendar Numbers:

124-05-BZ	482 Greenwich Street, Manhattan
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DOCKETS

New Case Filed Up to June 10, 2014

105-14-BZ

1224 East 27th Street, West side of East 27th Street, 175 feet South from Avenue L, Block 7644, Lot(s) 55, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district. R2 district.

106-14-A

84 William Street, situated at the northeast corner of the intersection of William Street and Maiden Lane, Block 68, Lot(s) 16, Borough of **Manhattan, Community Board: 10**. Appeals filed pursuant to MDL Section 310(2) (c) for variance of court requirements under MDL Sections 26 (7) & 30 for the construction of a residential apartments to an existing building . C5-5 (LM) zoning district C5-5 district.

107-14-A

55-57 West 44th Street, Located on West 44th Street between 5th Avenue and Avenue of the Americas, Block 1260, Lot(s) 10, Borough of **Manhattan, Community Board: 5**. Appeals filed pursuant to MDL Section 310(2)(a) proposed an addition to the existing building which will require a waiver of MDL Section 26(7)pursuant to Section 310. C6.45 SPD zoning district . C6-4.5SMD district.

108-14-BZ

736 Broadway, Located on the east side of Broadway approximately 117 feet southwest of the intersection formed by Astor Pace and Broadway, Block 545, Lot(s) 22, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to allow Use Group 6 commercial uses on the first floor and cellar of the existing building, located within an M1-5B zoning district. M1-5B district.

109-14-A

44 Marjorie Street, Marjorie Street, south of Sharrotts Road and East of Arthur Kill Road, Block 7328, Lot(s) 645, Borough of **Queens, Community Board: 3**. Appeal to permit the construction of a proposed two story commercial building which does not front on a legally ,mapped street contrary to GCL Section 36 .M1-1 SRD Zoning District . M1-1 district.

110-14-A

115 Roswell Avenue, North side of Roswell Avenue, 149.72 feet east of Wild Avenue, Block 2642, Lot(s) 88, Borough of **Staten Island, Community Board: 2**. Proposed construction of a buildings that does not front a legally mapped street, pursuant the Article 3, Section 36 of the General City Law.R3A R32 district.

111-14-A

109 Roswell Avenue, North side of Roswell Avenue, 149.72 feet east of Wild Avenue, Block 2641, Lot(s) 91, Borough of **Staten Island, Community Board: 2**. Proposed construction of a building that do not front on a legally mapped street pursuant Article 3 Section 36 of the General City Law.R3A R32 district.

112-14-A

105 Roswell Avenue, North side of Roswell Avenue, 149.72 feet east of Wild Avenue, Block 2642, Lot(s) 92, Borough of **Staten Island, Community Board: 2**. Proposed construction of a building that front an a legally mapped street, pursuant to Article 3 of the General City Law. R3A R38 district.

113-14-A

86 Bedford Street, Northeastern side of Bedford Street between Barrow and Grove Streets, Block 588, Lot(s) 3, Borough of **Manhattan, Community Board: 10**. Appeal seeking revocation of a permit issued that allows a non conforming use eat/drink establishment to resume after being discontinued for several years . Ance of a permit ranting a Type 1 Alteration permit no. 120174658-01-AL to 86 Bedford Street, M R6 district.

114-14-BZ

2442 East 14th Street, East 14th Street, between Avenue X and Avenue Y, Block 7415, Lot(s) 24, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to enlarge an existing two story dwelling and to vary the floor area ratio, open space lot coverage side yard and rear yard requirements. R4 zoning district. R4 district.

115-14-BZ

85 Worth Street, Worth Street, between Church Street and Broadway, Block 173, Lot(s) 2, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow for a physical culture establishment in an existing building located in C6-2A zoning district. C6-2A district.

DOCKETS

116-14-BZ

188 East 9rd Street, West side of 3rd Avenue on the corner of 3rd Avenue and east 93rd Street, Block 1521, Lot(s) 40, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to allow the legalization of an Physical Cultural Establishment on the first floor level of an existing five story mixed commercial & residential building in a C1-9 zoning district. C1-9 district.

117-14-BZ

101 W 91st Street, bounded by West 91st and 92nd street and Amsterdam and Columbus Avenues, Block 1222, Lot(s) 17,29,40,90,29, Borough of **Manhattan, Community Board: 7**. Variance (§72-21) to permit the enlargement of a school (Trinity School) including construction of a 2-story building addition containing classrooms and other facilities. Located within a R7-2 zoning district. R7-2,C1-9 district.

118-14-BZ

1891 Richmond Road, NW side of Richmond 2667.09' southwest of the corner of Four Corners road and Richmond Road, Block 895, Lot(s) 61,63.65.67(61 tent), Borough of **Staten Island, Community Board: 2**. Variance (§72-21) proposed to construct a three story sixteen Dwelling Unit Condominium with accessory parking for thirty six cars. Located within R1-2 zoning district. R1-2,R3X NA1 district.

119-14-BZ

1151 3rd Avenue, North East corner of 3rd Avenue and East 67th Street, Block 1422, Lot(s) 1, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to allow the operation of a physical culture establishment of the second and third floor of the existing building. Located within a C1-9 zoning district. C1-9 district.

120-14-BZ

1151 3rd Avenue, North East corner of 3rd Avenue and East 67th Street, Block 1422, Lot(s) 1, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to allow the operation of a physical culture establishment on the fifth floor of the existing building located within a C1-9 zoning district. C1-9 district.

121-14-BZ

1151 Third Avenue LLC, North East corner of 3rd Avenue and East 67th Street, Block 1422, Lot(s) 1, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to allow for the operation of a physical culture establishment on the 4th floor of the existing building, located within an C1-9 zoning district. C1-9 district.

122-14-BZ

1318 East 28th Street, West side of 28th Street 140 feet of Avenue M, Block 7663, Lot(s) 56, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to allow the enlargement of a two- story single family residence located within a R2 zoning district . R2 district.

123-14-BZ

855 Avenue of the Americas,, Avenue of the Americas between 30th Street and 31st Street., Block 806, Lot(s) 34, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow the operation of physical culture establishment in portion of the cellar and first floor of the existing building located within a C6-4X and M1-6 zoning district. C6-4X, M1-6 district.

124-14-BZ

1112 Gilmore Court, Located on the southern side of Gilmore Court between East 11th Street and East 12th Street, Block 7455, Lot(s) 74, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to allow the enlargement of a single-family detached residence and conversion to a two-family residence located within an R4 zoning district. R4 district.

125-14-BZ

11 Avenue C, Between East 2nd Street & East Houston Street, Block 384, Lot(s) 33, Borough of **Manhattan, Community Board: 3**. Variance (§72-21) to facilitate the construction of a ten-story mixed-use forty -six (46) residential dwelling units and retail on the ground floor and cellar, located within an R8a zoning district. R8A district.

126-14-A

3153 Richmond Terrace, North side of Richmond Terrace at intersection of Richmond Terrace and Grandview Avenue, Block 1208, Lot(s) 15, Borough of **Staten Island, Community Board: 1**. GCL 35: proposed construction of a warehouse building located partially within the bed of mapped unbuilt street, pursuant Article 3 Section 35 of the General City Law. M3-1 district.

127-14-BZ

32-41 101st Street, east side of 101st, 180 feet north of intersection with Northern Boulevard, Block 1696, Lot(s) 48, Borough of **Queens, Community Board: 3**. Variance (§72-21) to permit construction of a cellar and two-story, two-family dwelling on a vacant lot that does not provide two required side yards, and does not provide two off street parking spaces, located within an R4 zoning district.. R4 district.

DOCKETS

128-14-A

47 East 3rd Street, East 3rd Street between First and Second Avenues, Block 445, Lot(s) 62, Borough of **Manhattan, Community Board: 10**. Final Determination to allow an off-street loading berth as accessory to a medical office for want of evidence that the loading berth is clearly incidental to and customarily found in connection with a medical office. C2-5, R7A/R8B district.

129-14-BZ

2137 East 12th Street, Located on the east side of East 12th Street between Avenue U and Avenue V, Block 7344, Lot(s) 62, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to allow the enlargement of a single-family detached residence located within an R5 zoning district. R5 district.

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

CALENDAR

JUNE 24, 2014, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 24, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

391-80-BZ

APPLICANT – Sheldon Lobel, P.C., for The NY Community Hospital of Brooklyn, INK., owner.
SUBJECT – Application April 16, 2014 – Amendment of a previously approved Variance (§72-21) to permit an enlargement and enclosure of a ramp for a hospital. R7A zoning district.
PREMISES AFFECTED – 2525 Kings Highway, south side of Avenue O approximately 175 feet northeast of the intersection formed by Bedford Avenue and Kings Highway, Block 6772, Lot 4, Borough of Brooklyn.
COMMUNITY BOARD #14BK

248-03-BZ

APPLICANT – Troutman Sanders LLP, for Ross & Ross, owner; Bally Total Fitness of Greater NY., lessee.
SUBJECT – Application April 28, 2004 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (72-21) for the operation of a Physical Culture Establishment (*Bally's Total Fitness*) which expired on May 10, 2014.
C1-5(R8A) & R7A zoning district.
PREMISES AFFECTED – 1915 Third Avenue, southeast corner of East 106th Street and Third Avenue, Block 1655, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #11M

ZONING CALENDAR

28-12-BZ

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

243-12-BZ

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

188-13-BZ & 189-13-A

APPLICANT – Rothkrug Rothkrug & Spector, for Linwood Avenue Building Corp., owner.
SUBJECT – Application June 25, 2013 – Special Permit (§73-125) to permit an ambulatory diagnostic or treatment health care facility contrary to §22-14. Proposed construction for a three-story building not fronting on legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1 zoning district.
PREMISES AFFECTED – 20 Dea Court, south side of Dea Court, 101' West of intersection of Dea Court and Madison Avenue, Block 3377, Lot 100, Borough of Staten Island.
COMMUNITY BOARD #2SI

265-13-BZ

APPLICANT – Eric Palatnik P.C., for St. Albans Presbyterian Church, owner.
SUBJECT – Application September 6, 2013 – Variance (72-21) to permit a proposed community facility and residential building (*St. Albans Presbyterian Church*) contrary to zoning bulk regulations. R3A zoning district.
PREMISES AFFECTED – 118-27/47 Farmers Boulevard, east side of Farmers Boulevard, 217.39 feet north of intersection of Farmers Boulevard and 119th Avenue, Block 12603, Lot(s) 58 & 63, Borough of Queens.
COMMUNITY BOARD #12Q

311-13-BZ

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

CALENDAR

317-13-BZ

APPLICANT – Law office of Lyra J. Altman, for Michelle Schonfeld & Abraham Schonfeld, owners.

SUBJECT – Application December 10, 2013 – Special Permit (§73-622) the enlargement of an existing two family home, to be converted to a single family home, contrary to floor area and open space (23-141); side yards (23-461) and less than the required rear yard (23-47). R2 zoning district.

PREMISES AFFECTED – 1146 East 27th Street, west side of 27th Street between Avenue K and Avenue L, Block 7626, Lot 63, Borough of Brooklyn.

COMMUNITY BOARD #14BK

17-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Cong Chasdei Belz Beth Malka, owner.

SUBJECT – Application January 28, 2014 – Variance (§72-21) proposed to add a third and fourth floor to an existing school building, contrary to §24-11 floor area and lot coverage, §24-521 maximum wall height, §24-35 side yard, §24-34 requires a 10' front yard and §24-361 rear yard of the zoning resolution. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue aka 14 Avenue C, aka 377 Dahill Road, south west corner of Avenue C and McDonald Avenue 655', 140'W, 15'N, 100'E, 586'N, 4"E, 54'N, 39.67'East, Block 5369, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #12BK

Jeff Mulligan, Executive Director

MINUTES

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

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

SPECIAL ORDER CALENDAR

457-56-BZ

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

SUBJECT – Application November 19, 2013 – Extension of
Term of variance permitting accessory parking of motor
vehicles, customer parking, and loading and unloading in
conjunction with adjacent factory building. R6B zoning
district.

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

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening and
an extension of term for a variance permitting a commercial
parking lot within a residence district, which expired on
February 13, 2014; and

WHEREAS, a public hearing was held on this
application on April 8, 2014, after due notice by publication in
The City Record, with a continued hearing on May 13, 2014,
and then to decision on June 10, 2014; and

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

WHEREAS, the subject site is located on the south side
of India Street, between Manhattan Avenue and McGuinness
Boulevard, within an R6B zoning district; and

WHEREAS, the Board has exercised jurisdiction over
the subject premises since December 4, 1956, when it granted
an application under the subject calendar number to permit
accessory and consumer parking, loading and unloading in
connection with a factory building located on an adjoining lot;
and

WHEREAS, the grant has been extended and amended
over the years, most recently on January 11, 2005, when,
under the subject calendar number, the Board granted an

extension of term for ten years, to expire on February 13,
2014; and

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

WHEREAS, at hearing, the Board directed the applicant
to: (1) remove the barbed wire along the fence on the India
Street frontage; and (2) submit proof that the subject parking
lot and adjacent warehouse building are in common
ownership; and

WHEREAS, in response, the applicant submitted: (1)
photos depicting the removal of the barbed wire; and (2) the
deed for each lot, which reflects that the lots are in common
ownership; and

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

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

Therefore it is Resolved, that the Board of Standards and
Appeals *reopens* and *amends* the resolution, dated December
4, 1956, so that as amended the resolution reads: “to permit
the extension of the term of the variance for an additional ten
(10) years from February 13, 2014 expiring on February 13,
2024; *on condition* that all work shall substantially conform to
drawings as they apply to the objections above noted, filed
with this application marked “Received November 19, 2013” -
(1) sheet; and *on further condition*;

THAT the term of the variance will expire on February
13, 2024;

THAT barbed wire will not be installed atop the fence
on the India Street frontage;

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

THAT any graffiti located on the premises shall be
removed within 48 hours;

THAT a 100-percent opaque fence with a height of eight
feet will be installed and maintained along the easterly lot line;

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

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

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

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

(DOB Application #301801904)

Adopted by the Board of Standards and Appeals, June
10, 2014.

MINUTES

192-96-BZ

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

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

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

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a use variance to eliminate the term; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in The City Record, with a continued hearing on May 6, 2014, and then to decision on June 10, 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 11, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of 86th Street and Bay 19th Street, partially within an R5 zoning district and partially within an C1-2 (R5) zoning district; and

WHEREAS, the site has approximately 193 feet of frontage along 86th Street, approximately 254 feet of frontage along Bay 19th Street, approximately 100 feet of frontage along Bay 20th Street, and 34,269 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story commercial building with 33,875 sq. ft. of floor area (0.99 FAR); it is operated as a Marshall’s retail store; and

WHEREAS, on September 23, 1997, under the subject calendar number, the Board granted a variance to permit the renovation of the existing building, from a non-conforming movie theater (Use Group 8) and retail stores (Use Group 6) to a retail store exceeding 10,000 sq. ft. (Use Group 10), contrary to ZR § 32-15, for a term of 25 years, to expire on September 23, 2022; and

WHEREAS, the applicant now seeks to amend the grant to eliminate the 25-year term; and

WHEREAS, the applicant represents that the term has hindered the owner’s ability to refinance the property and secure a tenant for a stable lease term; the applicant states that

the lease term does not coincide directly with the variance term, which makes for uncertainty and difficulty in securing a long-term commercial lease, which typically runs at least 20 years; and

WHEREAS, the applicant contends that commercial use of the site without a term is appropriate and will have no negative impacts on the surrounding neighborhood; and

WHEREAS, the applicant notes that the majority of the site is within an C1-2 (R5) district, where commercial uses are permitted as-of-right; as for the mid-block R5 portion of the site, the applicant notes that the subject building was constructed in the 1920s and occupied as a theater for decades; as such, commercial use is well-established in the R5 portion of the site; and

WHEREAS, the applicant states that nearly all nearby sites along 86th Street—a major commercial thoroughfare—are used for commercial purposes; and

WHEREAS, the applicant also notes that the current tenant is popular in the community and provides jobs for community residents; and

WHEREAS, at hearing, the Board directed the applicant: (1) provide proof that all property owners within 400 feet of the site were notified of the proposal; and (2) remove the barbed wire atop the fence that encloses the building’s parking lot; and

WHEREAS, in response, the applicant submitted: (1) proof of the required notifications; and (2) photographs showing the removal of the barbed wire; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 23, 1997, to permit the elimination of the 25-year term of the variance, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘January 7, 2014’-(7) sheets; and *on further condition*:

THAT barbed wire will not be installed at the site;

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

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

(DOB Application No. 300554905)

Adopted by the Board of Standards and Appeals, June 10, 2014.

MINUTES

178-99-BZ

APPLICANT – Eric Palatnik, P.C., for Saltru Associates Joint Venture, owner.

SUBJECT – Application November 30, 2012 – Amendment (§§72-01 & 72-22) of a previously granted variance (§72-21) which permitted an enlargement of an existing non-conforming department store (UG 10A). The amendment seeks to replace an existing 7,502 sq. ft. building on the zoning lot with a new 34,626 sq. ft. building to be occupied by a department store (UG 10A) contrary to §42-12. M3-1 zoning district.

PREMISES AFFECTED – 8973/95 Bay Parkway, 1684 Shore Parkway, south side of Shore Parkway, 47/22' west of Bay Parkway, Block 6491, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

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

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

WHEREAS, the subject site is located on the southeast corner of the intersection of Bay Parkway and Shore Parkway, within an M3-1 zoning district; and

WHEREAS, the site fronts on Bay Parkway, Shore Parkway, and Gravesend Bay, and it has 692,110 sq. ft. of upland lot area and 136,982 sq. ft. of seaward lot area, for a total lot area of 829,110 sq. ft.; and

WHEREAS, the site is occupied by six commercial buildings (Buildings A, B, C, D, E, and F) with a total of 307,644 sq. ft. of floor area (0.44 FAR); large non-conforming retail stores (Use Groups 10 and 12) occupy 93 percent of the floor area (285,437 sq. ft.) three percent of the floor area (8,119 sq. ft.) is devoted to conforming uses, and four percent of the floor area (14,089 sq. ft.) is vacant; and

WHEREAS, the applicant represents that Building A is occupied by retail stores (Use Group 6), department stores (Use Group 10), and toy stores (Use Group 12), Building B is occupied by retail stores (Use Group 6), Building C is occupied as an automotive service establishment (Use Groups 16 and 17), Building D is occupied by retail stores (Use

Group 6), Building E is occupied by a bank (Use Group 6), and Building F is an accessory structure that contains a transformer; and

WHEREAS, the site has been under the Board's jurisdiction since February 8, 1977, when, under BSA Cal. No. 730-76-A, the Board granted the application of the Fire Commissioner to modify Certificate of Occupancy No. 197540 to require an automatic wet sprinkler system within Building A at the site; and

WHEREAS, subsequently, on June 7, 1983, under BSA Cal. No. 235-83-BZ, the Board granted a special permit for the operation of an amusement arcade Use Group 15A for a term of one year; on August 7, 1984, the Board extended the term of the grant; however, on April 8, 1986, the Board denied a request for an additional extension of term; the applicant states that the arcade no longer occupies any space at the site; and

WHEREAS, most recently, on June 27, 2000, under the subject calendar number, the Board granted a variance to permit the legalization of an enlargement of a non-conforming department store (Use Group 10) at Building A, contrary to ZR §§ 52-22 and 52-41; and

WHEREAS, the applicant now seeks to amend the grant to permit the demolition of Building C, which has 7,502 sq. ft. of floor area occupied as an automotive service establishment (Use Groups 16 and 17), and construction of a new two-story building with 34,626 sq. ft. of floor area to be occupied as a department store (Use Group 10A); and

WHEREAS, the applicant states that the proposal will result in a net increase in floor area from 307,644 sq. ft. (0.44 FAR) to 334,768 sq. ft. (0.47 FAR); the applicant notes that site is significantly underdeveloped (the maximum FAR is 2.0) and that even with the proposed increase in floor area of 0.03 FAR, the site is developed to less than 25 percent of its maximum floor area; and

WHEREAS, the applicant asserts that the unique physical conditions cited by the Board in its prior grant, including the topographic abnormalities and history of development of the site, remain and that the proposed enlargement is necessary for the owner to achieve a reasonable return; and

WHEREAS, in support of this assertion, the applicant submitted a financial analysis, which concluded that Building C could not be profitably used for conforming uses such as small, Use Group 6 retail stores, and that only another Use Group 10 retailer would be appropriate for the site given the site's M3-1 designation, its isolation from pedestrian traffic, and the predominant existing Use Group 10 and 12 retail use on the site; and

WHEREAS, turning to neighborhood impacts, the applicant asserts and the Board agrees that the construction of an additional Use Group 10 retailer at this site will have no negative impacts on the surrounding neighborhood; and

WHEREAS, at hearing, the Board directed the applicant to: (1) verify that the proposal complies with the applicable parking and loading requirements; and (2) examine, in consultation with the Department of Transportation ("DOT"),

MINUTES

the potential traffic effects of the proposal upon the surrounding neighborhood; and

WHEREAS, in response, the applicant stated that the proposal complies in all respects with the applicable bulk regulations; and

WHEREAS, at to traffic, the applicant submitted a memorandum from DOT, which states that signal timing adjustments may be necessary to manage traffic surrounding site the during weekday evening and Saturday midday hours; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 27, 2000, to permit the noted modifications, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received November 25, 2013'-(6) sheets and 'April 11, 2014'-(1) sheet; and *on further condition*:

THAT the bulk parameters of the new Building C will be two stories and 34,626 sq. ft. of floor area;

THAT the floor area of the zoning lot will not exceed 334,768 sq. ft. (0.47 FAR);

THAT parking and loading will be as reviewed and approved by DOB;

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

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

Adopted by the Board of Standards and Appeals, June 10, 2014.

322-05-BZ

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

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

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

COMMUNITY BOARD #8Q

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of an enlargement of an existing single-family home and its change in use from residential to community facility use, which expired on March 7, 2014; and

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

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

WHEREAS, the subject site is located on the northeast corner of the intersection of Main Street and 70th Avenue, within an R4B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 7, 2006 when, under the subject calendar number, the Board granted a variance to permit the enlargement of an existing two-story plus cellar single-family home and the change in use from residential to community facility; and

WHEREAS, substantial construction was to be completed by March 7, 2010, in accordance with ZR § 72-23; however, it was anticipated that substantial construction would not be completed by that date and the applicant sought and obtained on July 28, 2009 an extension of time to complete construction until March 7, 2014; and

WHEREAS, the applicant represents that, subsequent to the 2009 extension of time to complete construction, it encountered delays in obtaining permits from the Department of Buildings; among the delays was an audit of the application in which several objections were raised; and

WHEREAS, therefore, the applicant requests an extension of time to complete construction; and

WHEREAS, the applicant represents that it has resolved all outstanding audit objections and is prepared to obtain permits and commence construction; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated March 7, 2006, so that as amended the resolution reads: "to grant an extension of the time to complete construction for a term of three years from the expiration of the previous grant, to expire on March 7, 2017; *on condition*:

THAT substantial construction will be completed by March 7, 2017;

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

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

MINUTES

(DOB Application No. 402213993)

Adopted by the Board of Standards and Appeals, June 10, 2014.

174-07-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Bolla EM Realty, LLC, owner.

SUBJECT – Application November 12, 2013 – Extension of Time to complete construction of an approved Special Permit (§73-211) which permitted the reconstruction of an existing auto service station (UG 16B), which expired on June 17, 2012; Amendment to permit changes to the canopy structure, exterior yard and interior accessory convenience store layout. C2-3/R7-A zoning district.

PREMISES AFFECTED – 1935 Coney Island Avenue, northeast corner of Avenue P. Block 6758, Lot 51. Borough of Brooklyn.

COMMUNITY BOARD #12BK

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete renovation of an existing automotive service station, and an amendment to permit certain modifications to the convenience store accessory to the station; and

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

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

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

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

WHEREAS, the Board has exercised jurisdiction over the subject site since June 26, 1919, when, under BSA Cal. No. 368-19-BZ, it approved a variance for the construction of a one-story parking garage in what was then a residential zoning district; and

WHEREAS, subsequently, on September 14, 1982, under BSA Cal. No. 215-82-A, the Board granted an appeal to permit self-service gasoline pumps at the site; and

WHEREAS, most recently, on June 17, 2008, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-211 to permit site modifications to an existing automotive service station, including a new metal canopy and new fuel dispensing pumps, contrary to ZR §§ 52-

22 and 52-41, for a term of ten years, to expire on June 17, 2018; and

WHEREAS, under the 2008 grant, substantial construction was to be completed by June 17, 2012, in accordance with ZR § 73-30; however, work was not even commenced by that date and the site has since been acquired by a new owner; and

WHEREAS, accordingly, the applicant seeks an extension of time to complete construction; and

WHEREAS, in addition, the applicant seeks an amendment to permit certain modifications to the accessory convenience store on the site; the applicant notes that although the proposal will result in a minor increase the size of the accessory convenience store, the store remains in compliance with Department of Buildings Technical Policy and Procedure Notice No. 10/1999; and

WHEREAS, at hearing, the Board expressed concerns regarding: (1) the hours of garbage collection; (2) the illumination of the site and its effects on adjacent residential sites; (3) the location of the bus stop along Coney Island Avenue; and (4) a non-permitted advertising sign at the site; and

WHEREAS, as to the hours of garbage collection, the applicant represents that garbage collection will be limited to three times per week and between the hours of 7:30 a.m. and 7:30 p.m.; and

WHEREAS, as to the illumination of the site, the applicant reduced the number of lighting fixtures on the canopy from 18 to 12, which will minimize the light spillage into the adjacent residential sites; and

WHEREAS, as to the location of the bus stop, the applicant states that the Metropolitan Transit Authority (“MTA”) has endorsed its proposed relocation of the bus stop, however, Department of Transportation (“DOT”) approval has not yet been secured; and

WHEREAS, finally, as to the advertising sign, the applicant submitted a photograph that demonstrates that the sign has been removed; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 17, 2008, so that as amended the resolution reads: “to permit the noted modifications and to grant an extension of the time to complete construction for a term of four years from the expiration of the previous grant, to expire on June 17, 2016; *on condition* that all work shall substantially conform to drawings filed with this application marked ‘Received May 20, 2014’ - (9) sheets; *on further condition*:

THAT DOT, MTA, and any other required approvals for the relocation of the bus stop along Coney Island Avenue will be obtained prior to the issuance of a DOB permit;

THAT lighting, signage, and site circulation will in accordance with the BSA-approved plans;

THAT garbage collection will be limited to three days

MINUTES

per week between the hours of 7:30 a.m. and 7:30 p.m.;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT substantial construction will be completed by June 17, 2016;

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

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

Adopted by the Board of Standards and Appeals, June 10, 2014.

173-09-BZ

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

SUBJECT – Application March 25, 2014 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a four-story mixed use building, which expires on December 14, 2014. C8-2/M1-1 zoning district.

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

COMMUNITY BOARD #4BK

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction on a conversion of an existing three-story building to a four-story mixed residential and commercial building with 33 affordable housing units, which will expire on December 14, 2014; and

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

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

WHEREAS, the subject site is located on the northeast corner of the intersection of Park Street and Broadway, partially within a C8-2 zoning district and partially within an M1-1 zoning district; and; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 10, 2010, when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing three-story building to a

four-story mixed residential and commercial building, contrary to ZR §§ 32-00 and 42-00; and

WHEREAS, pursuant to ZR § 72-23, substantial construction was to be completed by December 14, 2014; however, the applicant states that construction has yet commence due to difficulties obtaining financing and a change in control of the site; and

WHEREAS, therefore, the applicant requests an extension of time to complete construction; and

WHEREAS, at hearing, the Board inquired as to whether, consistent with the original grant, the development will include affordable housing units; and

WHEREAS, in response, the applicant confirmed that the development will include affordable housing units; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 10, 2010, so that as amended the resolution reads: “to grant an extension of the time to complete construction for a term of four years from the expiration of the previous grant, to expire on December 10, 2018; *on condition*:

THAT substantial construction will be completed by December 10, 2018;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 320003474)

Adopted by the Board of Standards and Appeals, June 10, 2014.

247-09-BZ

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

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

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

COMMUNITY BOARD #5M

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 Montanez5
Negative:.....0

MINUTES

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, a reopening, and an extension of time to complete construction for the enlargement of an existing Use Group 4 community facility building, which does not comply with floor area and initial setback regulations, which expired on February 23, 2014; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

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

WHEREAS, the subject is located within a C5-2 zoning district and a C5-2.5 zoning district within the Special Midtown District (MiD); and

WHEREAS, this application was brought on behalf of Congregation Ahawath Chesed Shaar Hashomayim, also known as Central Synagogue (the "Synagogue") a not for profit religious institution; and

WHEREAS, the Board has exercised jurisdiction over the site since February 23, 2010 when, under the subject calendar number, the Board granted a variance to permit the proposed two-story enlargement of an existing nine-story Use Group 4 community facility building, which does not comply with applicable zoning requirements for floor area and initial setback, contrary to ZR §§ 33-12, 33-432, and 81-211; and

WHEREAS, substantial construction was to be completed by February 23, 2014, in accordance with ZR § 72-23; however, the applicant states that the Synagogue has been unable to raise sufficient funds to proceed with the proposal; and

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

WHEREAS, the site occupied by the subject building (Tax Lot 10), the Synagogue's community house (the "Community House"), is part of a combined zoning lot that was created in 1981, pursuant to a Zoning Lot Declaration Agreement, and includes Tax Lots 9, 12, and 63; and

WHEREAS, Tax Lot 9 is immediately to the west of the Community House and is occupied by a townhouse (the "Townhouse"); Tax Lot 12 is immediately to the east of the Community House and is occupied by a Hotel; and Tax Lot 63 is located to the north of the Community House, with frontage on East 56th Street, and is occupied by a commercial tower (the "Commercial Tower"); and

WHEREAS, pursuant to the Board's Rules of Practice and Procedure § 1-09.4 (*Owner's Authorization*), every owner of record on a zoning lot which is the subject of an application must execute and submit the Board's Affidavit of Ownership and Authorization form; and

WHEREAS, accordingly, at the April 8, 2014 public hearing, the Board inquired whether the Synagogue had obtained Affidavits from all owners on the zoning lot; and

WHEREAS, in response, the applicant stated that it had obtained Affidavits from the Townhouse and Hotel and

anticipated one from the Commercial Tower; and

WHEREAS, the Board directed the applicant to submit all Affidavits by April 15, 2014 and to document the process of seeking the Affidavit from the Commercial Tower if it had not been obtained; and

WHEREAS, further, the Board noted that if the final Affidavit had not been received, the Board would re-open the hearing on April 29, 2014 to allow testimony from the Commercial Tower owner; and

WHEREAS, the applicant submitted executed Affidavits of Ownership and Authorization forms from the Synagogue, Townhouse, and Hotel; and

WHEREAS, by submission dated April 15, 2014, the applicant states that it did not obtain an executed form from the Commercial Tower and, thus, seeks a waiver of the Board's rule; and

WHEREAS, in support of its waiver request, the applicant submitted documents to establish its efforts to obtain the Commercial Tower's authorization; and

WHEREAS, specifically, those efforts include: (1) a letter dated February 21, 2014 to representatives of the Commercial Tower explaining the need for the subject application and requesting the execution and return of the Board's Affidavit of Ownership and Authorization form; (2) an April 7, 2014 email and phone call to the current representative of the Commercial Tower (who replaced the earlier representatives) indicating that a public hearing would be held on April 8, 2014 and stating that absent the receipt of the Affidavit of Ownership and Authorization, the Synagogue would request a waiver of the Board's rule; (3) an April 10, 2014 email to the Commercial Tower representative informing him that the Board sought the document by April 15, 2014 and the final hearing was set for April 29, 2014; and (4) April 14 and 15, 2014 follow up emails and letters to the Commercial Tower representative, notifying him of the opportunity to appear and provide testimony at the April 29, 2014 hearing; and

WHEREAS, the applicant notes that the Commercial Tower owner consented to the underlying variance application; and

WHEREAS, further, the applicant notes that only the Synagogue site is subject to the discretionary relief provided by the variance and no construction is proposed for any other tax lot; and

WHEREAS, the Board notes that the Commercial Tower's representative appeared at the April 29, 2014 public hearing and requested additional time to make a submission; and

WHEREAS, the Board granted the Commercial Tower's representative time to make a submission after the hearing and set a new decision date of June 10, 2014; and

WHEREAS, subsequently, the Commercial Tower's representative communicated to Board staff that he would not be making a submission; and

WHEREAS, the Board notes that the Townhouse and the Commercial Tower provided Affidavits of Ownership and Authorization in the context of the underlying variance, but

MINUTES

the Hotel did not; and

WHEREAS, accordingly, the applicant sought and obtained a waiver of the Board's rule (formerly § 1-03(g)) for the underlying variance application, based on the evidence it provided and the Board's conclusion about the spirit of its rule being maintained; and

WHEREAS, the Board has determined that the spirit of the Rule, to provide notification to owners on the zoning lot and to require authorization from an owner whose site is the subject of discretionary relief, is maintained, even in the absence of the Commercial Tower's authorization, because (1) the applicant sought authorization from all of the owners, in good faith; (2) all owners were notified of the application and kept apprised of the hearing schedule; (3) only the Synagogue Site was the subject of the requested discretionary relief as no construction was proposed for any of the other tax lots; and (4) pursuant to its Rule § 1-14.2 (*Waiver of the Rules of Practice and Procedure*), the Board may waive its own rules in appropriate circumstances; and

WHEREAS, the Synagogue's proposal is limited to the enlargement of its Community House, which it owns and operates; and

WHEREAS, accordingly, the request for an extension of term focuses on the Community House Site; and

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

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolution, dated February 23, 2010, so that as amended the resolution reads: "to grant an extension of the time to complete construction for a term of four years from the date of this grant, to expire on June 10, 2018; *on condition*:

THAT substantial construction will be completed by June 10, 2018;

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

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

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

(DOB Application No. 120097849)

Adopted by the Board of Standards and Appeals, June 10, 2014.

245-32-BZ

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

PREMISES AFFECTED – 123-05 101 Avenue, Block 9464, Lot 30, Borough of Queens.

COMMUNITY BOARD #9Q

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

24-96-BZ

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

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

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

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

186-96-BZ

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

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

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

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over July 15, 2014, at 10 A.M., for adjourned hearing.

47-97-BZ

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

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

PREMISES AFFECTED – 7802 Flatlands Avenue, corner and through lot located on the east side of Flatlands Avenue

MINUTES

between East 78th Street and East 79th Street, Block 8015, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over July 15, 2014, at 10 A.M., for continued hearing.

160-00-BZ

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

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

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

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over July 15, 2014, at 10 A.M., for adjourned hearing.

280-01-BZ

APPLICANT – Akerman, LLP, for S&M Enterprises, owner.

SUBJECT – Application April 25, 2014 – Extension of Time to Complete Construction and obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for construction of a mixed use building, which expires on May 7, 2014. C1-9 zoning district.

PREMISES AFFECTED – 663-673 2nd Avenue, west side of 2nd Avenue between East 36th and East 37th Streets, Block 917, Lot(s) 21, 24, 30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

341-02-BZ

APPLICANT – Sheldon Lobel, P.C., for 231 East 58th Street Associates LLC, owner.

SUBJECT – Application March 25, 2014 – Amendment of previously approved Variance (§72-21) which permitted retail stores (UG 6) on the first floor of an existing five story building. The amendment seeks to eliminate the term, which expires in April 8, 2023. R8B zoning district.

PREMISES AFFECTED – 231 East 58th Street, north side of East 58th Street between Second and Third Avenues, Block 1332, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

164-13-A

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

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

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

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

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

This Department regrets it cannot issue a Letter of No Objection for New Law Tenant Class A M.D. & Single Room Occupancy to [be] occupied or rented for less than 30 days as per Chapter 225 of the Laws of 2010, which clarified existing provisions related to occupancy of Class A Multiple Dwellings.

In order to allow such use, an Alteration Application must be filed with the Department to change use and Certificate of Occupancy obtained if permitted by zoning; and

WHEREAS, a public hearing was held on this application on February 4, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on June 10, 2014; and

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

WHEREAS, New York State Assemblymember Linda

MINUTES

B. Rosenthal and New York City Council Member Helen Rosenthal provided testimony in opposition to the appeal, citing concerns about illegal transient hotel use including occupancy periods of just days at a time, which are disruptive to the permanent tenants and the surrounding residential uses; and

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

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

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

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

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

Building History

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

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

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

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

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

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

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

WHEREAS, the Appellant states that since 1979, all of the 64 Statutory Units and all of the 163 non-Statutory Units have been rented for periods of no less than seven days, in compliance with the CO and the MDL; the Appellant submitted occupancy logs for 2008, 2009, 2010, and 2011 in support of this claim; and

Procedural History

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

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

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

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

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

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

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

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

The Relevant Statutory Provisions

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

1939 Text

MDL § 248 (*Single Room Occupancy*)

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

1946 Text

MINUTES

(Definitions)

MDL § 4

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

MDL § 4

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

MDL § 4

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

1960 Text

MDL § 248 (*Single Room Occupancy*)

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

MDL § 4 (*Definitions*)

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

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

2011 MDL Amendment (Chapter 225 of 2010)

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

MDL § 248

(1). . . A dwelling occupied pursuant to this section shall be deemed a class A dwelling and dwelling units occupied pursuant to this section shall be occupied for permanent residence

purposes, as defined in paragraph a of subdivision eight of section four of this chapter.

(16) (*removed*); and

The Appellant’s Position

WHEREAS, the Appellant asserts that the LNO should be issued for the following primary reasons: (1) the use of the Building for short-term occupancy of no less than one week was permitted at the time the CO was issued and MDL § 248 allowed Class A SRO units to be rented for periods of one week or more; and (2) Chapter 225 of 2010, an amendment to the MDL which requires that short-term residences may not be less than 30 days, applies prospectively and, therefore, not to the Building; and

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

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

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

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

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

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

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

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

MINUTES

occupancy; and

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

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

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

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

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

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

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

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

WHEREAS, the Appellant represents that after January 2013, Imperial Court’s policy was changed to conform to DOB’s interpretation and therefore rooms are rented and

occupied for periods of no less than one month; and

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

WHEREAS, the Appellant asserts that it has accrued a right to rent and occupy the SRO units on a weekly basis as of 1943, and again in 1960, when the COs were issued based on compliance with the MDL then in effect; and

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

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

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

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

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

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

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

MINUTES

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

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

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

WHEREAS, DOB notes that under both the 1939 MDL and the 1960 MDL, Class A use was distinguished from "transient" use; weekly occupancy is more appropriately associated with transient use; and

WHEREAS, thus DOB cites to the 1958-2011 text of MDL § 248 (16): "it shall be unlawful to *rent* [an SRO room] for less than a week." (emphasis added); and

WHEREAS, DOB's position is that the former MDL § 248 (16) restricts the payment term to a minimum of one week but does not similarly identify the minimum occupancy period; and

WHEREAS, DOB also notes that the term "occupancy" appears throughout the MDL and could have been used in lieu of "rental" if the weekly rental minimum requirement were intended to authorize weekly occupancy; and

WHEREAS, DOB asserts that the weekly rental provision of the 1939 Pack Bill explained that the bill's weekly rental provision governed only rental payments and not occupancy; and

WHEREAS, DOB states that while there is no definition of the term "rental" in the MDL, the common understanding of the word is that it governs payment, and not occupancy and in the definition of "Class A" the MDL does not provide that it should be "rented" for permanent residence purposes, but uses the term "occupied;" and

WHEREAS, DOB states that there is nothing in the statute to suggest that rental and occupancy should be treated as equivalents; and

WHEREAS, DOB notes that in 1958, the MDL contained the term "permanent residence purposes" and defined a "Class A multiple dwelling as a multiple dwelling which is occupied, as a rule, for permanent residence purposes;" it defined a "Class B multiple dwelling" as "a multiple dwelling which is occupied as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals;" and

WHEREAS, DOB states that according to the 1960 CO, the building is a "New Law Tenement Class 'A' Multiple Dwelling and Single Room Occupancy" which means that it

must be occupied as a Class A multiple dwelling which mandates occupancy be for "permanent residence purposes;" and

WHEREAS, DOB asserts that it is consistent with the principle of statutory construction that a statute or ordinance be construed as a whole and that its sections be considered together and with reference to each other; and

WHEREAS, accordingly, DOB asserts that MDL § 248(16) must be read in conjunction with the MDL §§ 4(8) and (9) in effect in 1960 which define Class A and Class B occupancies; and

WHEREAS, DOB cites to MDL §§ 4(8) and (9) which define the terms "Class A" and "Class B" multiple dwellings, use the term "occupied," and provide that a Class A multiple dwelling is to be occupied for "permanent residence purposes", while a Class B multiple dwelling is to be occupied transiently;" and

WHEREAS, DOB notes that MDL § 248 states that "a dwelling occupied pursuant to [section 248] shall be deemed a Class A dwelling;" the definition of "single room occupancy in MDL § 4(16) further states that "When a class A multiple dwelling is used wholly or in part for a single room occupancy, it remains a Class A multiple dwelling;" and

WHEREAS, DOB states that according to MDL § 4 (8), a Class A multiple dwelling is to be occupied for "permanent residence purposes;" and

WHEREAS, DOB consulted Merriam Webster's dictionary which defines the word "permanent" as "continuing or enduring without fundamental or marked change," while the word "transient" is defined as "not lasting long" and "passing through or by a place with only a brief stay or sojourn;" and

WHEREAS, DOB states that the plain meaning of "permanent" resident cannot be construed to include a person who occupies a hotel room for only a week; and

WHEREAS, DOB asserts that common sense supports a conclusion that one does not become a permanent resident of a location by virtue of a one-week stay and that such stay is more consistent with a "transient" occupancy See Connors v. Boorstein, 4 N.Y. 2d 172, 175(1958) (interpreting statutory terms as matter of common sense.); 440 East 102nd Street Corp. v. Murdock, 285 N.Y. 298, 309 (1941)(citing "common use and understanding" in defining statutory terms); Kupelian v. Andrews, 233 N.Y. 278, 284 (1922) (statutory terms construed in a manner consistent with "common experience"); and

WHEREAS, DOB notes that pursuant to NYC Charter § 643, DOB is the agency responsible for interpreting the MDL in the first instance and DOB has consistently interpreted Class A permanent residence to require a minimum occupancy of 30 days, treating Class A "permanent" occupancy as the equivalent of J-2 Building Code occupancy and Class B "transient" occupancy as the equivalent of J-1 day-to-day or weekly occupancy; and

WHEREAS, DOB asserts that its interpretation is consistent with the principles of statutory interpretation that a statute be interpreted consistent with common sense - in this

MINUTES

case weekly turnover would not commonly be understood to be permanent occupancy – and that a statute must be construed as a whole such that MDL § 248(16) which prohibits rental of any room in and Class A SRO for a period of less than one week must be interpreted in conjunction with MDL §§ 4(8) and (9) which define Class A and Class B occupancies in terms of occupancy and not rental; and

WHEREAS, DOB notes that single room occupancy units are suitable only for permanent residence purposes, because while MDL § 248 required some upgrades, there was no requirement that these units comply with the more stringent fire safety requirements applicable to transient units; and

WHEREAS, DOB also notes that MDL § 248 was enacted in 1939, during the Great Depression, when weekly rates might be preferred over daily rates which would likely result in a higher weekly cost and that weekly rates would be preferred to monthly rates, because those sums would be potentially easier for people to save than a higher monthly sum; and

WHEREAS, DOB states that the Court’s decision in City of New York v. 330 Continental LLC was not a decision on the merits and the Appellant’s citations are *dicta*; and

WHEREAS, DOB states that the decision issued in Continental was issued in response to the City’s request for a preliminary injunction to enjoin the defendants in that case from using the disputed premises transiently, pending final determination of the action of the case and that the excerpts cited from that case are non-binding *dicta* used to explain the court’s determination that the City had failed to establish a right to a preliminary injunction; and

WHEREAS, DOB notes that the court stated that, “[i]n view of the as-yet unresolved vagueness and ambiguity of the language of the MDL and the ZR that the City seeks to enforce, it cannot be said that the City has demonstrated a clear right to the drastic remedy of preliminary injunction;” the decision was not a final ruling on the case which ultimately settled with the defendants agreeing to use the subject premises for “permanent residence purposes” consistent with the City’s interpretation of the term, meaning for thirty consecutive days or longer; and

WHEREAS, DOB concludes that since the Continental litigation settled and since it was only a decision on the preliminary injunction motion and not a decision on the merits of the case, the City had no basis to appeal; the City then clarified this historical interpretation in Chapter 225 of the Laws of 2010; and

WHEREAS, as to the MDL Amendment, DOB asserts that the amendments contained in Chapter 225 of the Laws of 2010 (and the 1960 change to MDL § 248) did not change what had been its interpretation (for at least 40 years) of what “permanent residence purposes” meant, which was the occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more;” and

WHEREAS, DOB states that, instead, the purpose of the amendments was as stated in the law, a “clarification” of the DOB’s historical interpretation relating to occupancy of Class

A multiple dwellings;” and

WHEREAS, DOB notes that the bill was enacted “to fulfill the original intent of the law as construed by enforcing agencies, including the New York City Department of Buildings” (See “New York State Senate Introducer’s memorandum in Support, reprinted in New York State Archives’ Legislative History/Bill Jacket for the Laws of 2010, Chapter 225); and

WHEREAS, finally, DOB notes that Section 8 of the amendments provides that it “shall apply to all buildings in existence on such effective date and to buildings constructed after such effective date;” therefore, as clarifying amendments, the amendments are not to be applied only prospectively; and

WHEREAS, DOB asserts that since the Building was required to be occupied permanently (for 30 days or more) both prior to Chapter 225 and after, no existing right to rent for seven or more days has been lost or impaired as a result of the MDL amendments and transient use which was never permitted cannot be continued pursuant to the MDL savings clauses; and

WHEREAS, DOB states that prior to the adoption of Chapter 225, MDL §§ 4(16) and 248(1), the Building was a Class A multiple dwelling subject to MDL § 4(8)’s requirement that it be occupied for permanent residence purposes with “permanent residence” meaning occupancy of 30 days or more and not weekly occupancy; and

WHEREAS, DOB notes that it issued violations for illegal transient occupancy prior to the 2011 enactment of the MDL Amendment; and

The Board’s Conclusion

WHEREAS, the Board agrees with DOB that the Multiple Dwelling Law and the Building’s COs never permitted occupancy of the premises for weekly stays, and therefore there is no “existing right or remedy that is lost,” and the MDL’s savings clauses do not apply; and

WHEREAS, the Board agrees that the provisions of the MDL must be read together and that (1) the CO classification of Class A SRO is informed by the definition of Class A occupancy as permanent occupancy; and (2) the internal MDL references, dictionary definitions, plain meaning, common sense, and the legislative intent all support DOB’s conclusion that permanent occupancy requires stays of periods of at least 30 days; and

WHEREAS, the Board agrees with DOB that the text in effect at the time of the 1960 CO issuance applies, but would reach the same conclusion even if the text in effect in 1943 applied; and

WHEREAS, the Board notes that although the relevant MDL text has been amended since 1939, the underlying principles, including common sense concepts of time and residency, have not been redefined and that a seven-day stay would have never satisfied a requirement for permanent occupancy; and

WHEREAS, the Board finds that the distinctions between Class A and Class B and permanent and transient were understood at the time the CO was issued and there is not any evidence that in 1943 or 1960, at the issuance of the

MINUTES

COs, that DOB accepted a rental term of any less than a month; and

WHEREAS, the Board does not find support for the Appellant's assertion that the MDL in effect in 1943 expressly or implicitly reflected that the SRO Units could be lawfully rented and occupied for weekly periods; and

WHEREAS, the Board does not see any indication in the legislative history that there was a greater need for transient (weekly) occupancy rather than for shorter payment terms; and

WHEREAS, further, the Board notes that DOB is the agency empowered to interpret the MDL in the first instance and that the MDL allows it to create greater restrictions; and

WHEREAS, the Board accepts DOB's interpretation of the legislative history and finds that the Appellant's focus on the fleeting goals of the World's Fair, derived from trade organizations' interests and the scholarly discussion of housing during the Great Depression is unpersuasive; and

WHEREAS, the Board notes that there are public policy reasons to require greater safety measures for transient or truly temporary accommodations and permanent accommodations and finds the fact that the Pack Bill only required that the Building comply with MDL § 248 is consistent with a finding that Class A SROs are a form of permanent occupancy rather than transient; and

WHEREAS, the Board notes that the 1939 amendments encouraged the improvement of conditions of buildings which had been built for one form of Class A permanent use but have been converted to another much denser Class A occupancy; and

WHEREAS, the Board notes that the issuance of the CO in 1960 with the occupancy classification of Class A for the first time – meaning permanent occupancy – supports DOB's conclusion that the approval was reviewed pursuant to the 1958 MDL because if the owner at the time believed that the newly defined Class A classification changed the meaning of the operative MDL provisions then he would have had an interest in revising the classification of the Building rather than obtaining a new CO with the new Class A classification; and

WHEREAS, the Board notes that the Appellant contends that the issuance of a CO certifies that the Building "conforms substantially to the approved plans and specifications, and to the requirements of the building code and all other laws and ordinances, and of the rules and regulations of the Board of Standards and Appeals, applicable to a building of its class and kind at the time the permit was issued" and that such reliance actually supports a conclusion that DOB issued the CO pursuant to the 1958 clarified text, which the owner would have been aware of; and

WHEREAS, the Board notes that the 1943 CO only identifies the building as a New Law Tenement and Single Room Occupancy but not also as Class A; and

WHEREAS, the Board finds it logical to conclude that the 1943 CO classification and the 1960 CO classification

had the same meaning, just as the 1939 MDL text and 1958 MDL text did; and

WHEREAS, the Board finds that all three discussed versions of the MDL support the point that there is a distinction between Class A and Class B occupancy in that Class A and its regulatory provisions apply to permanent occupancy and Class B applies to transient; and

WHEREAS, the Board notes that the 1946 MDL defined "single room occupancy" as the occupancy of a single room separated from all other rooms within an apartment in a multiple dwelling and that "[w]hen a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling;" and

WHEREAS, accordingly, the Board finds that SROs were established clearly within the definition of Class A multiple dwellings and Class A multiple dwellings are to be occupied "as a rule for "permanent residence purposes," which is not satisfied by stays of one week; and

WHEREAS, as to the MDL Amendment and the Appellant's invocation of the savings clauses, the Board accepts DOB's position that the amendment served to clarify language and clearly articulate the position that it had held for decades that permanent occupancy requires a minimum stay of 30 days; the Board does not see any support for a conclusion that a Class A SRO with a minimum seven-day term is a separate protected class of occupancy; and

WHEREAS, the Board agrees with DOB that no right was ever established or accrued for seven-day occupancy and thus there is no right to save; and

WHEREAS, the Board notes that the MDL Amendment does not allow property owners to maintain transient use with permanent use fire safety conditions; transient use must meet transient use requirements; and

WHEREAS, the Board finds that there has always been a necessary distinction between transient and permanent occupancy and that is furthered by the CO identification of Class A and Class B occupancies; and

WHEREAS, the Board notes that the Building was constructed and occupied for several decades as a New Law Tenement Multiple Dwelling and that it was converted to a New Law Tenement Class A Multiple Dwelling SRO building; in both iterations, the Building accommodated permanent occupancy, identified as Class A since 1960; based on the legislative history and the economic climate, DOB's assertion that the rental payment system and not the need for more transient occupancy is the change which sparked the 1939 amendments and the Building's conversion; and

WHEREAS, the Board notes that approximately one-quarter of the Building is occupied by the Statutory Units which are permanent tenancies; and

WHEREAS, the Board notes that the Appellant sought to gather additional Building occupancy records, but the Board does not find those records to be relevant because the Building was constructed as a Class A apartment building, and has since then had COs only for a Class A SRO, there is no basis to assert that it was actually a Class B use; and

WHEREAS, the Board does not find that evidence

MINUTES

related to the occupancy of the Building is relevant to the interpretation of the MDL text; and

Therefore it is Resolved, that the Board denies the appeal and affirms DOB's denial of a request for a Letter of No Objection, which would authorize occupancy of the Building for a minimum period of seven days rather than 30 days.

Adopted by the Board of Standards and Appeals, June 10, 2014.

45-07-A

APPLICANT – Eric Palatnik, P.C., for Nader Kohanter, owner.

SUBJECT – Application April 25, 2014 – Application to permit an extension of time to complete construction and obtain a certificate of occupancy under the Common Law vested rights doctrine for a mixed- used residential community facility approved under the previous R6 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue "O" and Avenue "N", Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

266-07-A

APPLICANT – Law Office of Fredrick A. Becker, for 1610 Avenue S LLC, owner.

SUBJECT – Application January 9, 2013 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on December 9, 2012. R4-1 Zoning District.

PREMISES AFFECTED – 1602-1610 Avenue S, southeast corner of Avenue S and East 16th Street. Block 7295, Lot 3. Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

80-11-A, 84-11-A & 85-11-A & 103-11-A

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

SUBJECT – Application November 29, 2013 – An amendment to the previously approved waivers to the Multiple Dwelling Law (MDL) to address MDL objections raised by the Department of Buildings. R8B zoning district. PREMISES AFFECTED – 335, 333, 331, 329 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 47, 46, 45, 44 Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

277-12-BZ

CEQR #12-BSA-032X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1776 Eastchester Realty LLC, owner.

SUBJECT – Application September 14, 2014 – Special Permit (§73-49) to allow 130 parking spaces on the roof of an accessory parking structure. M1-1 zoning district.

PREMISES AFFECTED – 1776 Eastchester Road, east of Basset Avenue, west of Marconi Street, 385' north of intersection of Basset Avenue and Eastchester Road, Block 4226, Lot 16, Borough of Bronx.

COMMUNITY BOARD #11BX

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 Montanez5
Negative:.....0

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 23, 2012, acting on DOB Application No. 220198275, reads:

Proposed roof parking in an M1-1 zoning district is contrary to ZR Section 44-11 and requires a special permit; and

WHEREAS, this is an application under ZR § 73-49 to permit 130 parking spaces on the rooftop of a three-story parking garage located on a site partially within an M1-1 zoning district and partially within an R5 zoning district, contrary to ZR § 44-10; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 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 11, Bronx, recommends approval of this application; and WHEREAS, the subject site

MINUTES

is the Hutchinson Metro Center, an approximately 42-acre parcel bounded by the Hutchinson River Parkway, Pelham Parkway, Bassett Avenue, Eastchester Road, Loomis Street, and Waters Place, partially within an M1-1 zoning district and partially within an R5 zoning district; and

WHEREAS, the site is a single zoning lot comprising Tax Lots 16, 35, 40, 55, 70, and 73; it has 1,826,000 sq. ft. of lot area; the vast majority of the site (1,814,571 sq. ft.) is within an M1-1 zoning district and the balance (11,249 sq. ft. – all within Lot 35) is located within an R5 zoning district; and

WHEREAS, the applicant notes that a companion case has been filed to permit rooftop parking for 109 automobiles on Lot 15 (1240 Waters Place) under BSA Cal. No. 251-13-BZ; and

WHEREAS, the site is occupied by a series of buildings, both completed and under construction, which comply with the applicable bulk regulations and are used for parking, offices, retail space, and various community facility uses; and

WHEREAS, the applicant proposes to construct a three-story parking garage on Lot 16; the parking garage will include rooftop parking for 130 automobiles, which is not permitted as-of-right in an M1-1 district; accordingly, the applicant seeks a special permit pursuant to ZR § 73-49; and

WHEREAS, the applicant states that the proposed rooftop parking is not required but is permitted accessory parking for the various uses on the zoning lot; likewise, the proposed parking complies with ZR § 44-12, which limits non-required accessory parking spaces to 150; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the rooftop parking will not impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, the applicant notes that there are no buildings or open uses immediately adjacent to the proposed rooftop parking, nor are there any residential uses that would be impacted; similarly, the applicant states that the nearest uses are commercial buildings or parking facilities; and

WHEREAS, at hearing, the Board requested additional information regarding the proposed lighting of the rooftop parking area; and

WHEREAS, in response, the applicant provided a plan sheet detailing the proposed lighting, which has been designed to reflect inward and away from adjacent uses; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR § 73-49 have been met; 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, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, accordingly, 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 has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 12-BSA-032X, dated September 13, 2012; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617.5 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 application under ZR § 73-49 to permit 130 parking spaces on the rooftop of a three-story parking garage located on a site partially within an M1-1 zoning district and partially within an R5 zoning district, contrary to ZR § 44-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received June 9, 2014” - seven (7) sheets; and *on further condition*:

THAT the maximum number of parking spaces on the rooftop will be 130, as approved by DOB;

THAT all lighting on the roof will be directed down and away from adjacent uses;

THAT the rooftop parking will be screened from neighboring residences as per the BSA-approved plans;

THAT the site will be maintained safe and free of debris;

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

THAT the parking layout will be reviewed and approved by DOB;

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

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

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

MINUTES

Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

178-13-BZ

CEQR #13-BSA-157Q

APPLICANT – Jeffery A. Chester, Esq./GSHLLP for Peter Procops, owner; McDonald's Corporation, lessee.

SUBJECT – Application June 9, 2013 – Special Permit (§73-243) to allow an eating and drinking establishment with an existing accessory drive-through facility. C1-2 zoning district.

PREMISES AFFECTED – 21-41 Mott Avenue, Southeast corner of intersection with Beach Channel Drive, Block 15709, Lot 101. Borough of Queens.

COMMUNITY BOARD #14Q

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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 20, 2013, acting on DOB Application No. 400441143, reads:

Use Group 6 eating and drinking in C1 is contrary to drive thru section ZR 32-31; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site within a C1-2 (R5) zoning district, the operation of an accessory drive-through facility operating in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-31; and

WHEREAS, a public hearing was held on this application on April 1, 2014, with a continued hearing on May 6, 2014, and then to decision on June 10, 2014; and

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

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

WHEREAS, the subject site located on the southeast corner of the intersection of Mott Avenue and Beach Channel Drive, within a C1-2 (R5) zoning district; and

WHEREAS, the site has approximately 85 feet of frontage along Mott Avenue, approximately 212 feet of frontage along Beach Channel Drive, 19,733 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story eating and drinking establishment (Use Group 6, operated by McDonald's) with 2,728 sq. ft. of floor area (0.14 FAR), an accessory drive-through, and 21 accessory parking spaces; and

WHEREAS, the Board first exercised jurisdiction over the site when, on June 16, 1998, under BSA Cal. No. 49-94-BZ, it granted a special permit to allow an existing accessory drive-through for a term of five years, to expire on June 16, 2003; and

WHEREAS, on July 18, 2006, under BSA Cal. No. 352-05-BZ, the Board granted a special permit to allow operation of the drive-through for a term of five years, to expire on July 18, 2011; in addition, the Board authorized a reconfiguration of the site; and

WHEREAS, the applicant now seeks to reinstate the prior special permit; however, a new application is required under the Board's Rules of Practice and Procedure; and

WHEREAS, the applicant notes that the drive-through has operated continuously since the expiration of the prior special permit and that the site will remain in substantial compliance with the previously-approved plans; and

WHEREAS, the Board notes that a special permit is required for the proposed accessory drive-through facility in the C1-2 (R5) 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 ten 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 circulation—with two curb cuts on Beach Channel Drive and one on Mott Avenue—has been consistent for the past 16 years and that it causes minimal interference with existing traffic patterns; and

WHEREAS, the applicant submitted a site plan that demonstrates that the facility complies with the accessory off-street parking regulations for the C1-2 (R5) zoning district; as noted above, the proposed 21 parking spaces is well in excess of the nine parking spaces required under ZR § 36-21; and

WHEREAS, the applicant represents that the facility 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 Mott Avenue is a heavily-travelled commercial thoroughfare occupied by a variety of uses, including restaurants, drug stores,

MINUTES

supermarkets, banks, offices and retail stores; 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 exclusively commercial uses; and

WHEREAS, the applicant represents that there will be adequate buffering between the drive-through and adjacent uses 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, at hearing, the Board raised concerns about the landscaping, fencing, and excessive signage at the site; additionally, the Board directed the applicant to submit photos depicting the adjacent properties and requested additional information regarding the volume of late-night traffic at the site; and

WHEREAS, in response, the applicant submitted amended plans showing additional shrubbery and fencing along the southern lot line and signage in compliance with the C1 district regulations, and the applicant submitted photos depicting the adjacent properties; and

WHEREAS, as to volume of late-night traffic at the site, the applicant states that, on average, five to ten cars visit the site per hour throughout the night; the applicant notes that weekend nights tend to be busier than weekday night; 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-BSA-157Q dated June 17, 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 C1-2 (R5) zoning district, the operation of an accessory drive-through facility operating in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 27, 2014"- (7) sheets; and *on further condition*:

THAT the term of this grant will expire on June 10, 2019;

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 zoning district regulations;

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

Adopted by the Board of Standards and Appeals, June 10, 2014.

MINUTES

233-13-BZ

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

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

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

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated July 11, 2013, acting on DOB Application No. 320486675, 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 is less than the minimum required;
3. Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceed the maximum permitted;
4. Proposed plans are contrary to ZR 23-461 and 23-48 in that the proposed side yard is less than the minimum required;
5. 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 R3-2 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, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; and

WHEREAS, a public hearing was held on this application on April 8, 2014, after due notice by publication in *The City Record*, with a continued hearing on May 13, 2014, and then to decision on June 10, 2014; and

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

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

WHEREAS, the subject site is located on the north side of Avenue R, between East 24th Street and Bedford Avenue, within an R3-2 zoning district; and

WHEREAS, the site has 26 feet of frontage along Avenue R and 2,730 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 1,470 sq. ft. of floor area (0.54 FAR); and

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

WHEREAS, the applicant now seeks to increase the floor area of the home from 1,470 sq. ft. (0.54 FAR) to 2,754.5 sq. ft. (1.01 FAR); the maximum permitted floor area is 1,365 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to decrease the open space from 70 percent to 59 percent; the minimum required open space is 65 percent; and

WHEREAS, the applicant seeks to increase the lot coverage from 30 percent to 41 percent; the maximum permitted lot coverage is 35 percent; and

WHEREAS, the applicant seeks to maintain and extend the site’s existing side yard widths of 3’-0” and 6’-8 $\frac{3}{8}$ ”; the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 43’-6” to 26’-0”; a rear yard with a minimum depth of 30’-0” is required; and

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

WHEREAS, the applicant asserts that the proposed lot 1.01 FAR is consistent with the bulk in the surrounding area; and

WHEREAS, in support of this assertion, the applicant identified six homes on the subject block and the blocks directly east and west with FARs ranging from 1.0 to 1.06; the applicant notes that five of the six homes were enlarged pursuant to a special permit from the Board; and

WHEREAS, at hearing, the Board expressed concerns regarding proposal’s compliance with the building envelope required in an R3-2 zoning district; and

WHEREAS, in response, the applicant amended its plans to reflect a proposed envelope in accordance with the R3-2 regulations; 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

MINUTES

Quality Review and makes the required findings under ZR § 73-622, to permit, within an R3-2 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, lot coverage, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-47, and 23-48; *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 May 7, 2014"– (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of 2,754.5 sq. ft. (1.01 FAR), a minimum open space of 59 percent, a maximum lot coverage of 41 percent, side yards with minimum widths of 3'-0" and 6'-8³/₈", and a minimum rear yard depth of 26'-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, June 10, 2014.

250-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 3555 White Plains Road Corp., owner; 3555 White Plains Road Fitness Group, LLC., lessee.

SUBJECT – Application August 28, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Fitness Center*). R7A/C2-4 zoning district.

PREMISES AFFECTED – 3555 White Plains Road, west side of White Plains Road approximately 100' south of the intersection formed by East 213 Street and White plains Road, Block 4643, Lot 43, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, June 10, 2014.

251-13-BZ

CEQR #14-BSA-029X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Hutch Realty Partners, owner.

SUBJECT – Application August 29, 2013 – Special Permit (§73-49) to allow 109 parking spaces on the roof of an accessory parking structure. M1-1 zoning.

PREMISES AFFECTED – 1240 Waters Place, east side of Marconi Street, approximately 1678 ft. north of intersection of Waters Place and Marconi Street, Block 4226, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated July 30, 2013, acting on DOB Application No. 220246197, reads:

Proposed roof parking in an M1-1 zoning district is contrary to ZR Section 44-11 and requires a special permit; and

WHEREAS, this is an application under ZR § 73-49 to permit 109 parking spaces on the rooftop of a four-story parking garage located on a site partially within an M1-1 zoning district and partially within an R5 zoning district, contrary to ZR § 44-10; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 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 11, Bronx, recommends approval of this application; and

WHEREAS, the subject site is the Hutchinson Metro Center, an approximately 42-acre parcel bounded by the Hutchinson River Parkway, Pelham Parkway, Bassett Avenue, Eastchester Road, Loomis Street, and Waters Place, partially within an M1-1 zoning district and partially within an R5 zoning district; and

WHEREAS, the site is a single zoning lot comprising Tax Lots 16, 35, 40, 55, 70, and 73; it has 1,826,000 sq. ft. of lot area; the vast majority of the site (1,814,571 sq. ft.) is within an M1-1 zoning district and the balance (11,249 sq. ft. – all within Lot 35) is located within an R5 zoning district; and

WHEREAS, the applicant notes that a companion case has been filed to permit rooftop parking for 130 automobiles on Lot 16 (1776 Eastchester Road) under BSA Cal. No. 277-12-BZ; and

WHEREAS, the site is occupied by a series of buildings,

MINUTES

both completed and under construction, which comply with the applicable bulk regulations and are used for parking, offices, retail space, and various community facility uses; and

WHEREAS, the applicant proposes to construct a four-story parking garage on the M1-1 portion of Lot 35; the parking garage will include rooftop parking for 109 automobiles, which is not permitted as-of-right in an M1-1 district; accordingly, the applicant seeks a special permit pursuant to ZR § 73-49; and

WHEREAS, the applicant states that the proposed rooftop parking is not required but is permitted accessory parking for the various uses on the zoning lot; likewise, the proposed parking complies with ZR § 44-12, which limits non-required accessory parking spaces to 150; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit parking spaces to be located on the roof of a building if the Board finds that the roof parking is located so as not to impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the rooftop parking will not impair the essential character or future use or development of adjacent areas and will not adversely affect the character of the surrounding area; and

WHEREAS, the applicant notes that there are no buildings or open uses immediately adjacent to the proposed rooftop parking, nor are there any residential uses that would be impacted; similarly, the applicant states that the nearest uses are commercial buildings or parking facilities; and

WHEREAS, at hearing, the Board requested additional information regarding the proposed lighting of the rooftop parking area; and

WHEREAS, in response, the applicant provided a plan sheet detailing the proposed lighting, which has been designed to reflect inward and away from adjacent uses; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR § 73-49 have been met; 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, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, accordingly, 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 617.5; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14-BSA-029X, dated August 26, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions;

Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617.5 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 application under ZR § 73-49 to permit 109 parking spaces on the rooftop of a four-story parking garage located on a site partially within an M1-1 zoning district and partially within an R5 zoning district, contrary to ZR § 44-10, *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 9, 2014"- ten (10) sheets; and *on further condition*:

THAT the maximum number of parking spaces on the rooftop will be 109, as approved by DOB;

THAT all lighting on the roof will be directed down and away from adjacent uses;

THAT the rooftop parking will be screened from neighboring residences as per the BSA-approved plans;

THAT the site will be maintained safe and free of debris;

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

THAT the parking layout will be reviewed and approved by DOB;

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

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

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

Adopted by the Board of Standards and Appeals, June 10, 2014.

MINUTES

316-13-BZ

APPLICANT – Slater & Beckerman, PC, for 210 Joralemon Street Condominium, owner; Yoga Works, Inc., lessee.

SUBJECT – Application December 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Yoga Works*) in the cellar and first floor of the building. C5-2A (Special Downtown Brooklyn) zoning district.

PREMISES AFFECTED – 210 Joralemon Street, southeast corner of Joralemon Street and Court Street, Block 266, Lot 7501 (30), Borough of Brooklyn.

COMMUNITY BOARD #3BK

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 6, 2013, acting on DOB Application No. 320447370, reads, in pertinent part:

[Proposed] physical culture establishment requires special permit; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2A zoning district, within the Borough Hall Skyscraper Historic District, the operation of a physical culture establishment (“PCE”) in portions of the cellar and first story of a 13-story commercial building, contrary to ZR § 32-30; and

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

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

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

WHEREAS, the subject site is located on the southeast corner of the intersection Court Street and Joralemon Street, within a C5-2A zoning district, within the Borough Hall Skyscraper Historic District; and

WHEREAS, the site has approximately 180 feet of frontage along Court Street, approximately 274 feet of frontage along Joralemon Street, approximately 36 feet of frontage along Livingston Street, and 62,390 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 13-story commercial building; and

WHEREAS, the proposed PCE will occupy 6,040 sq. ft. of floor space – 1,160 sq. ft. of floor area on the first story and 4,880 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as YogaWorks; 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 7:00 a.m. to 10:00 p.m.; and

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

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

WHEREAS, the Landmarks Preservation Commission approved the alterations to the building and the proposed signage by Certificates of Appropriateness dated October 9, 2012 and July 23, 2013, respectively; and

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

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

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

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

WHEREAS, the project is classified as a Type 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. 14BSA077M dated March 12, 2014; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type I Negative Declaration prepared in accordance with Article 8 of the New York State

MINUTES

Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C5-2A zoning district, within the Borough Hall Skyscraper Historic District, the operation of a PCE in portions of the cellar and first story of a 13-story commercial building, contrary to ZR § 32-30; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 13, 2014” – three (3) sheets and “Received March 14, 2014” – two (2) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 10, 2024;

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

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

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

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

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

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

Adopted by the Board of Standards and Appeals, June 10, 2014.

319-13-BZ

CEQR #14-BSA-081M

APPLICANT – Herrick, Feinstein LLP, for Harlem Park Acquisition, LLC, owner.

SUBJECT – Application December 17, 2013 – Variance (§72-21) to waive the minimum parking requirements (§25-23) to permit the construction of a new, 682 unit, 32-story mixed used building. 123 parking spaces are proposed. C4-7 zoning district.

PREMISES AFFECTED – 1800 Park Avenue, Park Avenue, East 124th street, East 125 Street, Block 1749, Lot 33 (air rights 24), Borough of Manhattan.

COMMUNITY BOARD #11M

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated December 12, 2013, acting on Department of Buildings Application No. 121237303, reads in pertinent part:

ZR 25-23 – Required number of parking spaces not provided for number of dwelling units (UG 2) proposed; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C4-7 zoning district, within the Special 125th Street District, the construction of a 32-story mixed residential and commercial building that does not comply with the zoning requirements for parking, contrary to ZR § 25-23; and

WHEREAS, a public hearing was held on this application on April 29, 2014, after due notice by publication in the *City Record*, with a continued hearing on May 20, 2014, and then to decision on June 10, 2014; and

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

WHEREAS, Community Board 11, Manhattan, recommends approval of this application; and

WHEREAS, Congressman Charles B. Rangel and Assemblyman Robert J. Rodriguez provided testimony in support of the application; and

WHEREAS, the subject site occupies the eastern portion of the block bounded by East 124th Street, Madison Avenue, East 125th Street, and Park Avenue; and

WHEREAS, the site comprises Tax Lots 24 and 33, has 315 feet of frontage along East 125th Street, 215 feet of frontage along East 124th Street, approximately 202 feet of frontage along Park Avenue, and 53,486 sq. ft. of lot area; and

WHEREAS, Lot 24 is occupied by a five-story building with 46,098 sq. ft. of floor area (0.86 FAR) utilized by the New York College of Podiatric Medicine; Lot 33 is vacant; the applicant represents that the owner of Lot 24 has transferred its 162,798 sq. ft. of unused floor area to Lot 33; and

WHEREAS, the applicant proposes to construct on Lot 33 a 32-story mixed residential and commercial building with 595,734 sq. ft. of floor area (11.14 FAR), 55,722 sq. ft. of commercial floor area, 682 dwelling units, and 123 accessory parking spaces; and

WHEREAS, the applicant states that pursuant to ZR § 25-23, one parking space is required for 40 percent of the 682 new dwelling units; thus, 273 parking spaces are required; and

WHEREAS, the applicant seeks a variance to provide only 123 accessory parking spaces; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the presence of

MINUTES

the Metro North railway viaduct and station; (2) the proximity of the Second Avenue subway line; and (3) subsurface conditions, including a deep bedrock elevation, the presence of groundwater, which will require substantial dewatering prior to construction of the foundation, and significant contamination, and; and

WHEREAS, the applicant states that the nearby presence of the Metro North railway viaduct and station uniquely impacts the site and will result in premium construction costs; and

WHEREAS, in particular, the applicant states that the site is bounded by the elevated Metro North railway viaduct and station, which extends from East 124th Street to East 126th Street, and that, in the area adjacent to the site, the viaduct and station are supported by a steel platform on steel bents spaced every 65 feet, which are supported by five columns, which are in turn supported by eight-foot-long by eight-foot-wide pier foundations, five of which are located within the sidewalk along East 125th Street approximately ten feet from the site's eastern property line; and

WHEREAS, the applicant notes that, according to the engineering consultant's report (the "Langan Report"), the pier foundation for the station extends approximately 14.5 feet to 18.5 feet below sidewalk grade and is supported on uncontrolled fill material; accordingly, the applicant asserts that development of the site requires special excavation procedures and a specialized foundation system in order to protect the Metro North structures, at significant cost; and

WHEREAS, the applicant contends that its proximity to the Metro North station and its support columns is unique, in that only four blocks along Park Avenue from East 123rd Street to East 126th Street, have a similar condition; and

WHEREAS, the applicant states that the proximity of the Second Avenue subway line will include the construction of an underground station under East 125th Street extending from Third Avenue to mid-block between Park Avenue and Madison Avenue and that such proposed station creates unique hardships in the development of the site; and

WHEREAS, specifically, the applicant states that future station and subway tunnels will be directly adjacent to the site's northern property line; as such, it is expected that the New York City Transit Authority will require certain easements, including a permanent easement for the space below the cellar of any new building at the site (for the installation of rock anchors to support the subway station) and a temporary easement at the cellar and ground level during the construction period of the station; and

WHEREAS, in addition, the applicant states that, based on the Langan Report, the Transit Authority will likely require transfer of all foundation loads beyond the theoretical influence line; further, per the Langan Report, the applicant must employ a specialized foundation installation procedure involving the drilling of a permanent steel casing to the top of rock, coring a hole in the rock, advancing casing to the influence line, and then drilling a rock socket below the influence line, in order to prevent any shedding of gravity loads to the rock adjacent to the tunnels; accordingly, the

applicant states that protecting the Second Avenue subway line will significantly increase its construction costs; and

WHEREAS, in addition, the applicant notes that pile driving is not permitted within 50 feet of the structural boundary of either the Metro North station or the Second Avenue subway tunnel; as such, an alternative, more expensive foundation system must be employed; and

WHEREAS, further, the applicant asserts that even if adjacency to a subway line is not a unique site condition in the surrounding neighborhood, adjacency to both a subway line and an elevated train station is unique; and

WHEREAS, as to the subsurface conditions, the applicant states that, based on the Langan Report, the bedrock at the site ranges from 59 feet to 110 feet below grade, which is 80 percent deeper than the bedrock at surrounding sites; as such, in addition to being more technically complex due to the presence of subway tunnels and above-ground structures, the foundation must be deeper than typical foundations; and

WHEREAS, in addition, the applicant states that the Langan Report identified groundwater at depths ranging from 10 feet to 15 feet below grade; thus, dewatering prior to the construction of the foundation will be required; and

WHEREAS, as to contamination, the applicant states that the New York State Department of Environmental Conservation has classified the site as a Brownfields Cleanup Site due to the presence of elevated concentrations of metals, polynuclear aromatic hydrocarbons, polycyclic chlorinated biphenyls, and lead at concentrations that make it hazardous waste; additionally, a level of petroleum has been identified atop the water table; as such, the applicant represents that approximately 35,000 tons of soil will need to be excavated from the site and properly disposed of, and a vapor barrier must be constructed beneath the foundation to prevent the migration of contaminants; and

WHEREAS, the applicant represents that the total cost premium resulting from the site's unique physical conditions are \$16,627,727 and that such cost involves the construction of only one below-grade level; and

WHEREAS, accordingly, the applicant states that the construction of one or more sub-cellars to accommodate parking is not feasible due to the site's unique physical conditions; and

WHEREAS, likewise, the applicant asserts that it is not feasible to locate parking within above-grade portions of the building because doing so would require elimination of valuable retail space, which is necessary to offset the premium construction costs noted above; and

WHEREAS, to support this assertion, the applicant analyzed a complying building with 32 stories, 595,734 sq. ft. of floor area (11.14 FAR), one retail story (21,912 sq. ft. of commercial floor area), 682 dwelling units and 304 parking spaces ("Scenario A"); thus, the Scenario A building is similar to the proposal all respects except the number of parking spaces and the amount of retail space; and

WHEREAS, thus, the applicant contends that there is a direct nexus between the physical hardships of the site and the requested parking waiver; and

MINUTES

WHEREAS, based upon the above, the Board finds that the site's adjacency to the Metro North railway viaduct and station and the Second Avenue subway line and the site's many subsurface conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

WHEREAS, in support of this assertion, the applicant submitted a feasibility study that analyzed Scenario A and the proposal; and

WHEREAS, in addition, in response to the Board's comments, the applicant examined two other alternative scenarios with larger dwelling units: (1) a complying development with 32 stories, 595,734 sq. ft. of floor area (11.14 FAR), two retail stories, 307 dwelling units, and 123 parking spaces; and (2) a complying development with only 30 stories, 360,790 sq. ft. of floor area (6.75 FAR), two retail stories, 307 dwelling units, and 123 parking spaces; and

WHEREAS, the applicant concluded that only the proposal would realize a reasonable rate of return; and

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

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by its diversity; the area has low-, medium-, and high-density residential and community facility buildings, with ground floor retail uses along both East 125th Street and Park Avenue; and

WHEREAS, the applicant states that the intersection of Park Avenue and East 125th Street is a vibrant commercial intersection, which is well-served by public transit and heavily trafficked by pedestrians and automobiles alike; and

WHEREAS, as to adjacent uses, the applicant states, as noted above, that the site shares occupies the same zoning lot with as the New York College of Podiatric Medicine, which will be located directly west of the proposed building; the only other building adjacent to the site is a four-story multiple dwelling with ground floor retail; directly north of the site across East 125th Street is the historic Corn Exchange building, which is slated for redevelopment; directly east of the site is, as mentioned above, the elevated structure for the Metro North train; directly south of the site is a parking lot; and

WHEREAS, turning to bulk, the applicant represents

that, with the exception of parking, the proposal complies in all respects with the bulk regulations applicable in the subject C4-7 zoning district; and

WHEREAS, as to parking, the applicant states that the site is well-served by several subway and bus lines, and the Metro North station and that number of parking spaces required for the development under ZR § 25-23 are unnecessary; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information regarding car ownership rates in the proposed building, off-street parking utilization, and parking supply; and

WHEREAS, in response, the applicant provided a study, which concluded: (1) based on census data and the location of the site, the building's 682 dwelling units will contribute a parking demand of 118 vehicles (which the applicant notes is less than the 123 parking spaces proposed); (2) 40 percent of the households expected to occupy the proposed building are likely to utilize street parking rather than paying for a parking space within the building; and (3) on- and off-street parking supply within ¼ mile of the site is more than adequate to accommodate the parking demand generated by the proposed building; and

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

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the proximity of the Second Avenue subway, the Metro North station, and the subsurface conditions on the site; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-081M, dated March 26, 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, (E) designation No. E-201 regarding noise and air quality was placed on the subject property in

MINUTES

conjunction with the rezoning of the property in April 30, 1008, under ULURP No. 080099ZMM; 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 to permit, on a site within C4-7 zoning district, within the Special 125th Street District, the construction of a 32-story mixed residential and commercial building that does not comply with the zoning requirements for parking, contrary to ZR § 25-23; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received June 6, 2014”– thirty (30) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum floor area of 595,734 sq. ft. (11.14 FAR), a maximum of 682 dwelling units, and a minimum of 123 accessory parking spaces, as reflected on the BSA-approved plans;

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

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

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

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

Adopted by the Board of Standards and Appeals, June 10, 2014.

331-13-BZ

CEQR #14-BSA-093K

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

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

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

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 18, 2013, acting on DOB Application No. 320817345, reads, in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in a C4-2 zoning district pursuant to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-2 zoning district, the operation of a physical culture establishment (“PCE”) in portions of the first story and mezzanine of a one-story commercial building, contrary to ZR § 32-30; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

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

WHEREAS, Community Board 11, Brooklyn, recommends approval of the application, on condition that: (1) the 85th Street side of the property is not used for entrance or egress; (2) the gate on the 85th Street side is secured at all times; and (3) additional bike racks on 86th Street are provided, if permitted by law; and

WHEREAS, the subject site is a through lot located on the block east of 20th Avenue between 85th Street and 86th Street, within a C4-2 zoning district; and

WHEREAS, the site has approximately 11 feet of frontage along 20th Avenue, 70 feet of frontage along 85th Street, 70 feet of frontage along 86th Street, and 14,330 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building with a mezzanine; the building has a total of 13,990 sq. ft. of floor area (0.98 FAR); and

WHEREAS, the applicant states that it proposes to enlarge the mezzanine level by 3,550 sq. ft., resulting in a total building floor area of 17,540 sq. ft. (1.22 FAR); and

WHEREAS, the proposed PCE will occupy 16,880 sq. ft. of floor area – 12,540 sq. ft. of floor area on the first story and 4,340 sq. ft. of floor space in the cellar; and

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

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

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

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and

MINUTES

operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

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

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

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

WHEREAS, at hearing, the Board requested clarification regarding the proposed PCE's use of the 85th Street entrance to the site; and

WHEREAS, in response, the applicant provided photographs showing that the 85th Street entrance to the site is enclosed with a gated fence; the applicant also represented that the PCE would not have an entrance on the 85th Street side of the building; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA093K dated December 23, 2013; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR

§§ 73-36 and 73-03 to permit, on a site within a C4-2 zoning district, the operation of a PCE in portions of the first story and mezzanine of a one-story commercial building, contrary to ZR § 32-30; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 11, 2014" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 10, 2024;

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

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

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

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

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

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

Adopted by the Board of Standards and Appeals, June 10, 2014.

7-14-BZ

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

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

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

COMMUNITY BOARD #18BK

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 Montanez5

Negative:.....0

THE RESOLUTION –

MINUTES

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 17, 2013, acting on Physical culture or health establishment is not permitted in C1-3 (R5D); and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3 (R5D) zoning district, the operation of a physical culture establishment (“PCE”) in a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, and then to decision on June 10, 2014; and

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

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the west side of Rockaway Parkway between Farragut Road and Glenwood Road, within a C2-3 (R5D) zoning district; and

WHEREAS, the site has 83 feet of frontage along Rockaway Parkway and 8,353 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story commercial building with 7,960 sq. ft. of floor area (0.95 FAR); and

WHEREAS, the proposed PCE will occupy the entire building, including the cellar, which has an additional 7,960 sq. ft. of floor space, for a total PCE size of 15,920 sq. ft. of floor space; and

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

WHEREAS, the applicant notes that parking for the historic commercial uses at the site was authorized on the adjacent parcel (Block 8165, Lot 21) by the Board under BSA Cal. No. 799-51-BZ; however, the applicant represents that the proposed PCE does not require parking and its employees and patrons will not park on Lot 21 and will instead use the public parking facility across Rockaway Parkway on Block 8166, Lot 14; 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; massage services will not be offered; and

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

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

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

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

WHEREAS, accordingly, the Board finds that this action will neither 1) alter the essential character of the

surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

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

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

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

WHEREAS, an environmental review of the proposed action was conducted by the New York City Department of City Planning (“DCP”) and is discussed in the Environmental Assessment Statement, CEQR No. 14DCP038K dated December 12, 2013; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals adopted DCP’s Negative Declaration dated December 16, 2013 prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C2-3 (R5D) zoning district, the operation of a PCE in a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 8, 2014” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 10, 2024;

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

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

THAT egress will be as reviewed and approved by DOB;

MINUTES

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

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

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

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

Adopted by the Board of Standards and Appeals, June 10, 2014.

16-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Saul Greenberger & Rochelle Greenberger, owners.

SUBJECT – Application January 27, 2014 – Special Permit (§73-621) for the enlargement of an existing one family residence, contrary to floor area, lot coverage and open space (§23-141). R3-2 zoning district

PREMISES AFFECTED – 1648 Madison Place, west side of Madison Place between Avenue P and Quentin Road, Block 7701, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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 Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 9, 2014, acting on DOB Application No. 320814669, reads in pertinent part:

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

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space and lot coverage, contrary to ZR § 23-141; and

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

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

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

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

WHEREAS, the site has 31 feet of frontage along Madison place and 3,100 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 1,415 sq. ft. of floor area (0.46 FAR); and

WHEREAS, the applicant proposes to horizontally enlarge the cellar, first, and second stories at the rear of the building, resulting in an increase in floor area from 1,415 sq. ft. (0.46 FAR) to 1,968 sq. ft. (0.64 FAR); the maximum permitted floor area is 1,860 sq. ft. (0.6 FAR), which includes 310 sq. ft. of floor area (0.1 FAR) that must be provided directly under a sloping roof; and

WHEREAS, the applicant seeks a decrease in open space from 73 percent to 63 percent; the minimum required open space ratio is 65 percent; and

WHEREAS, the applicant seeks an increase in lot coverage from 27 percent to 37 percent; the maximum permitted lot coverage is 35 percent; and

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

WHEREAS, the applicant submitted an excerpt of the 1929 Belcher-Hyde map to demonstrate that the building existed as a residence well before June 30, 1989, which is the operative date within the subject R3-2 zoning district; and

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

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space, the applicant represents that the proposed reduction in the open space results in an open space that is at least 90 percent of the minimum required; and

WHEREAS, as to the lot coverage, the applicant represents that the proposed increase in lot coverage results in a lot coverage that does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the floor area ratio, the applicant

MINUTES

represents that the proposed floor area does not exceed 110 percent of the maximum permitted; and

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

WHEREAS, at hearing, the Board directed the applicant to clarify the extent to which the enlargement includes floor area directly under a sloping roof; and

WHEREAS, in response, the applicant clarified that it proposes an additional 277 sq. ft. of floor area directly under a sloping roof; and

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

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR §§ 73-621 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space and lot coverage, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 27, 2014"- (9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 1,968 sq. ft. (0.64 FAR), a minimum open space ratio of 63, and a maximum lot coverage of 37 percent, as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 10, 2014.

20-14-BZ
CEQR #14-BSA-107M

APPLICANT – Sandy Anagnostou, Assoc, AIA, for 310-312 Owners Corp. LLC, owner; John Vatisas, NHMME, lessee.

SUBJECT – Application February 3, 2014 – Special Permit (§73-36) to allow the operation of a physical culture (*Massage Envy*) establishment on the first floor of an existing mixed use building. C1-9A zoning district.

PREMISES AFFECTED – 312 East 23rd Street, south side of East 23rd Street 171' east from the corner of 2nd Avenue and East 23rd Street, Block 928, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #10M

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

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated December 31, 2013, acting on DOB Application No. 121828335, reads, in pertinent part:

ZR 32-10 – Proposed physical culture establishment in a C1-9A (zoning district) is not permitted as-of-right; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9A zoning district, within the Special Transit Land Use District, the operation of a physical culture establishment ("PCE") in portions of the first story of a 12-story mixed residential and commercial building, contrary to ZR § 32-10; and

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

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of East 23rd Street between First Avenue and Second Avenue, within a C1-9A zoning district, within the Special Transit Land Use District; and

WHEREAS, the site has approximately 125 feet of frontage along East 23rd Street and 12,344 sq. ft. of lot area; and

WHEREAS, the applicant states that the site is occupied

MINUTES

by a 12-story mixed residential and commercial building with 117,871 sq. ft. of floor area (9.5 FAR); and

WHEREAS, the applicant notes that the building was historically two separate buildings, which were combined, as evidenced by Certificate of Occupancy No. 85578, issued March 27, 1984; and

WHEREAS, the proposed PCE will occupy 3,497 sq. ft. of floor area on the first story; and

WHEREAS, the PCE will be operated as Massage Envy; and

WHEREAS, the applicant represents that the services at the PCE include spa services and massage by New York State-licensed masseurs and masseuses; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 8:00 a.m. to 10:00 p.m. and Sunday, from 8:00 a.m. to 9:00 p.m.; and

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

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

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

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

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

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

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist, CEQR No. 14BSA107M dated February 3, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issued a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site within a C1-9A zoning district, within the Special Transit Land Use District, the operation of a PCE in portions of the first story of a 12-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 22, 2014" – Five (5)

sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 10, 2024;

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

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

THAT the hours of operation for the PCE will be limited to Monday through Saturday, from 8:00 a.m. to 10:00 p.m. and Sunday, from 8:00 a.m. to 9:00 p.m.;

THAT Local Law 58/87 compliance will be as reviewed and approved by DOB;

THAT fire safety measures will be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions will appear on the Certificate of Occupancy;

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

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

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

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

Adopted by the Board of Standards and Appeals, June 10, 2014.

216-13-BZ & 217-13-A

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

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

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

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision, hearing closed.

MINUTES

254-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.

SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

256-13-BZ thru 259-13-BZ

260-13-A thru 263-13-A

APPLICANT – Eric Palatnik PC, for Block 3162 LLC, owner.

SUBJECT – Application August 15, 2013 – Variance (§72-21) to permit four detached and semi-detached homes, contrary to side yard (§23-461) and open area (§23-891) regulations, and bulk non-compliances resulting from the location of a mapped street (§23-45). The proposed buildings are also located within the bed of a mapped street, contrary to General City Law Section 35. R3-2 zoning district.

PREMISES AFFECTED – 25, 27, 31, 33, Sheridan Avenue aka 2080 Clove Road, between Giles Place and the Staten Island Rapid Transit right of way, Block 3162, Lot 22, 23, 24, 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

279-13-BZ

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

SUBJECT – Application October 2, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar, first through third floors of a new building to be constructed. C6-4M and M1-6 zoning districts.

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

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision, hearing closed.

284-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 168-42 Jamaica LLC, owner; 168 Jamaica Avenue Fitness Group, LLC, lessee.

SUBJECT – Application October 9, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) on the cellar and the first floor of the building. R6-A/C2-4 (Downtown Jamaica) zoning district.

PREMISES AFFECTED – 168-42 Jamaica Avenue, south side of Jamaica Avenue approximately 180 feet east of the intersection formed by 168th Place and Jamaica Avenue, Block 10210, Lot 22, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision, hearing closed.

286-13-BZ

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

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

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

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision, hearing closed.

299-13-BZ

APPLICANT – Eric Palatnik, P.C., for David Gerstenfeld, owner; Michael Nejat, lessee.

SUBJECT – Application November 1, 2013 – Special Permit (§73-126) to allow the partial legalization and connection of two adjacent ambulatory diagnostic treatment health care facilities (UG4). R3-A zoning district.

MINUTES

PREMISES AFFECTED – 4299 Hylan Boulevard, between Thornycroft Avenue and Winchester Avenue, Block 5292, Lot(s) 37, 39 & 41, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

310-13-BZ

APPLICANT – Eric Palatnik, P.C., for Triangle Plaza Hub, LLC., owner; Metropolitan College of New York, lessee.
SUBJECT – Application November 22, 2013 – Variance (§72-21) to allow a UG3 college (*Metropolitan College of New York*) within a proposed mixed use building, contrary to use regulations (§44-00). M1-1/C4-4 zoning district.
PREMISES AFFECTED – 459 East 149th Street, northwest corner of Brook Avenue and East 149th Street, Block 2294, Lot 60, Borough of Bronx.

COMMUNITY BOARD #1BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 24, 2014, at 10 A.M., for decision, hearing closed.

324-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Eli Rowe, owner.
SUBJECT – Application December 20, 2013 – Special Permit (§73-621) to allow the enlargement of a single-family residence, contrary to floor area and open space regulations (§23-141). R2 zoning district.
PREMISES AFFECTED – 78-32 138th Street, southwest corner of the intersection of 138th Street and 78th Road, Block 6588, Lot 25, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for continued hearing.

15-14-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Greek Orthodox Community of Whitestone Holy Cross Ink., owner.
SUBJECT – Application January 24, 2014 – Variance (§72-21) to permit the enlargement of an existing school building (*Holy Cross Greek Orthodox Church*), contrary to floor area (§24-111), sky exposure plane (§24-54), and accessory parking spaces (§25-31). R2 zoning district.
PREMISES AFFECTED – 12-03 150th Street, southeast corner of 150th Street and 12th Avenue, Block 4517, Lot 9, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 15, 2014, at 10 A.M., for decision, hearing closed.

27-14-BZ

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

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

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

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for continued hearing.

39-14-BZ

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

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

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

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 22, 2014, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

MINUTES

*CORRECTION

The resolution adopted on September 12, 2006, under Calendar No. 124-05-BZ and printed in Volume 91, Bulletin Nos. 34-36, is hereby corrected to read as follows:

124-05-BZ

CEQR #05-BSA-131M

APPLICANT – Greenberg Traurig LLP/Deirdre A. Carson, Esq., for Red Brick Canal, LLC, Contract Vendee.

SUBJECT – Application May 20, 2005 – Under Z.R. § 72-21 to allow proposed 11-story residential building with ground floor retail located in a C6-2A district; contrary to Z.R. §§ 35-00, 23-145, 35-52, 23-82, 13-143, 35-24, and 13-142(a).

PREMISES AFFECTED – 482 Greenwich Street, Block 595, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Deirdre Carson.

For Opposition: Doris Diether, Community Board #2.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins.....3

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 31, 2005, acting on Department of Buildings Application No. 104054871, reads, in pertinent part:

“Proposed . . . lot coverage is not permitted in that it is contrary to ZR 23-145 of 80% for corner lot.

Proposed partial piece of building does not comply with side yard regulations. In addition the same area is subject to court regulations and does not comply with court regulations. ZR 35-32 and ZR 23-83.

Proposed parking area exceeds size permitted as per ZR 13-143. Maximum size permitted [is] 200 times 2 cars and 300 times 1 car for commercial store. (Maximum 700 square feet).

Proposed building exceeds setback regulations as per ZR 35-24.

Proposed location of curb cut for parking access is not permitted in that it is contrary to ZR 13-142A ‘shall be located not less than 50 feet from the intersection of any two street lines’”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C6-2A zoning district, the proposed construction of an eleven story mixed-use residential, commercial, and community facility building, which does not comply with applicable zoning requirements concerning lot coverage, setback, side yard, courts, parking area size, and curb cut location, contrary to ZR §§ 23-145, 35-32, 23-83, 13-

143, 35-24, and 13-142A; and

WHEREAS, the building, which will be built in accordance with the ZR’s Quality Housing regulations, will have a total Floor Area Ratio (FAR) of 6.5 (20,255 sq. ft.), a residential FAR of 6.019 (18,877.7 sq. ft.), a commercial FAR of 0.307 (962.6 sq. ft.), a community facility FAR of 0.132 (415.0 sq. ft.); and

WHEREAS, ten dwelling units and three parking spaces will be provided; and

WHEREAS, the proposed street wall height is 60 ft., and the total height is 120 ft.; and

WHEREAS, the FAR, density, street wall height, and total height comply with applicable C6-2A district regulations; in particular, the FAR complies with the 6.5 maximum for buildings with a community facility component; and

WHEREAS, the Board also notes that all of the proposed uses are as of right; and

WHEREAS, however, the proposed building is non-compliant as follows: (1) the proposed lot coverage is 96.6% (80% is the maximum permitted); (2) the proposed trapezoidal building form, at the proposed lot coverage, will not comply with the required width for a side yard, or, alternatively, a court; (3) a small portion of the dormer will be located within the required 15 ft. setback at the 10th and 11th floors; (4) the proposed garage area is 862.9 sq. ft. (700 sq. ft. is the maximum permitted, based upon the proposed occupancies); and (5) the curb cut will be approximately 34 ft. from the intersection of Greenwich and Canal Streets (curb cuts are required to be at least 50 ft. away from the intersection); and

WHEREAS, the Board notes that the application as originally filed contemplated an eleven-story building, with the same waivers as indicated above, but also with a non-complying FAR of 7.98 (6.02 is the maximum permitted), a street wall height of 111 ft. (85 ft. is the maximum street wall height), and no setback at 85 ft. (a fifteen ft. setback is required at this height); and

WHEREAS, as discussed in greater detail below, the Board expressed serious concerns about the project as originally proposed, primarily because it did not credit certain of the alleged unique physical conditions that allegedly created the need for the FAR, street wall and setback waivers, and, to a lesser extent, because the proposed building appeared to be out of context with the surrounding built conditions; and

WHEREAS, while the applicant continues to contest the position of the Board as to its view as to the alleged hardships, the proposal was nevertheless modified to the current version near the end of the hearing process; and

WHEREAS, a public hearing was held on this application on January 24, 2006 after due notice by publication in the *City Record*, with continued hearings on April 25, 2006 and June 20, 2006 and then to decision on September 12, 2006; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board, consisting of Chair Srinivasan, Vice-Chair Babbar, and Commissioner Collins; and

MINUTES

WHEREAS, Community Board 2, Manhattan, upon review of the initial version of the application, supported waivers for lot coverage, curb cut distance, and parking, but expressed opposition to the proposed FAR waiver; and

WHEREAS, the Department of City Planning opposed the initial version of this application, expressing concerns about the proposed FAR and resulting street wall height, and noting that the degree of waiver was not warranted and that the street wall height would be out of character with the built conditions in the neighborhood; and

WHEREAS, this application was opposed by the Canal West Coalition and certain individual neighbors of the site (hereinafter, collectively referred to as the "opposition"); relevant arguments of the opposition are discussed below; and

WHEREAS, the subject premises is located on the northwest corner of the intersection of Canal and Greenwich Streets, and has a lot area of 3,136 sq. ft.; and

WHEREAS, the applicant notes that the site is located near the historic shoreline and is within Zone A – High Hazard Flood Plain; and

WHEREAS, while the site is currently in a C6-2A zoning district, it was formerly located within an M1-6 zoning district; the site was rezoned as part of the Hudson Square rezoning, approved by the City Council in 2003; and

WHEREAS, the applicant notes that during the CEQR review of the rezoning, what is known as an "E" designation was attached to the site, due to its history of gas station use; and

WHEREAS, the applicant states because of the "E" designation, prior to development, testing of the soil is mandated and soil remediation may be needed; further, the "E" designation also establishes minimum noise attenuation requirements for development on the site, due to its location on Canal Street; and

WHEREAS, the site has 59 ft. of frontage on Greenwich Street, and approximately 96 ft. of frontage on Canal Street; and

WHEREAS, the applicant states the site is irregularly shaped, since the two frontages meet at an acute angle, forming a 55 degree wedge at the intersection, and since the northern lot line of the site is bowed and pinched in the center; and

WHEREAS, the site is currently fully paved and partially occupied by a one-story brick garage and former gas station at its western edge, and with a billboard on the eastern side; all of the existing improvements on the site will be removed in anticipation of the new building; and

WHEREAS, the applicant states that the commercial space, the community facility space, the three-car garage, and the residential lobby will be located on the first floor of the proposed building, and the residential units will be located on the second through 11th floors; outdoor terraces will also be provided for some of the units, and recreation space will be located on the second floor; and

WHEREAS, as noted above, however, the proposed building requires certain waivers; thus, the instant variance application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a complying building: (1) the site is small and irregularly shaped; (2) the site is proximate to a major thoroughfare, Canal Street; (3) the site is burdened with an "E" designation; and (4) the site is within the flood plain; and

WHEREAS, as to size and shape, the applicant states this causes two immediate problems: (1) the irregular shape makes it impractical to comply with side yard, courtyard, and lot coverage regulations, since an as of right building would have to either leave the narrow northwestern corner of the site undeveloped, resulting in a non-complying court or yard, or, if it was developed, it would result in non-usable space that would only increase construction costs without generating revenue from such space; and (2) the sharply angled lot boundaries and pinched interior of the site require the building to have a high "face" to "plate" ratio, which increases construction costs; and

WHEREAS, the Board agrees that the size and the shape of the site are unusual, and that significant constraints are placed on an as of right development; and

WHEREAS, in particular, the Board credits the applicant's explanation of how the size and shape of the site make it impractical to develop the site in a way that complies with lot coverage, and courts and yards; and

WHEREAS, the Board observes that the imposition of these requirements on the site would lead to the creation of impractical floor plates, which would diminish the overall sell out value of the proposed units and, on each floor increase, the amount of space (cores and common areas) that do not generate revenue; and

WHEREAS, the requested lot coverage, yard and court waivers eliminate the impact that the site's size and shape have on development; and

WHEREAS, however, the Board disagrees that the costs associated with the high "face" to "plate" ratio constitute an unnecessary hardship; instead, the Board concludes that the value of the units, given the multiple exposures arising from the site's shape, and the resulting views, will result in a unit sell out value that will compensate for any increased construction costs that may arise from the shape of the building and "face" to "plate" ratio; and

WHEREAS, the applicant also states that the shape of the site necessitates the additional curb cut and parking waivers; and

WHEREAS, specifically, the applicant notes that the shape and the location of the site make it impossible to place the entire curb cut for the garage entrance anywhere but within 50 feet of the intersection of Canal and Greenwich Streets; and

WHEREAS, the applicant further notes that placement of the curb cut on Canal is infeasible since it is a heavily trafficked street, and the Greenwich Street frontage is too small to accommodate the entire width of the 20 ft. curb cut without locating it within 50 feet of the intersection; and

WHEREAS, the applicant also notes that the small size of the lot makes it impractical to comply with the maximum

MINUTES

parking area requirement of 700 sq. ft. while still providing a reasonable layout for three parking spaces (which is an allowed amount in the subject zoning district and which increases the overall viability of the project); thus, the additional 163 sq. ft. is necessary; and

WHEREAS, the opposition argues that the size and the shape of the lot are not unique, in that there are numerous irregularly shaped lots in the immediate vicinity; and

WHEREAS, the applicant responds that the subject site is one of the few in the area that is both irregular in shape and very small in size, and cited to the submitted radius diagram in support of this response; and

WHEREAS, additionally, the applicant also explained that of the 19 other irregular lots (out of the total of 71 lots on Blocks 594 and 595), nine are good candidates for an assemblage, and six are already fully developed; and

WHEREAS, the applicant concludes that irregularity is a characteristic likely to create hardship for only a few vacant or under utilized lots in the area; and

WHEREAS, the Board concurs with this response, and further observes that to meet the finding set forth at ZR § 72-21(a), a site does not have to be the only site in the vicinity that suffers from a particular hardship; and

WHEREAS, instead, the Board must find that the hardship condition cannot be so prevalent that if variances granted to every identically situated lot, the character of the neighborhood would significantly change (see *Douglaston Civic Ass'n, Inc. v. Klein*, 435 N.Y.S.2d 705 (1980)); and

WHEREAS, the Board concludes that while there are other small, irregularly shaped sites in the subject zoning district, the conditions affecting the site are not so prevalent that the uniqueness finding cannot be made; and

WHEREAS, in sum, the Board finds that the requested lot coverage, yard, court, curb cut and parking waivers are necessitated by the site's shape and size, and location on Canal Street; and

WHEREAS, when the applicant also proposed FAR, setback and street wall height waivers, evidence was submitted regarding the costs associated with the "E" designation and the location of the site within the flood plain (which leads to soil conditions that would require pile foundation construction); and

WHEREAS, because the FAR waiver request has been withdrawn, these alleged conditions and any costs associated with them are no longer relevant; and

WHEREAS, however, the Board did not find the "E" designation a sufficiently unique condition to warrant consideration as a hardship for which relief was warranted, given that almost all of the sites within the Hudson Square rezoning received such designations; specifically, the Board notes that 56 lots on adjacent and nearby blocks have "E" designations; and

WHEREAS, further, the Board does not view the costs related to the "E" designation (for sound attenuation and soil testing) as an unnecessary hardship, given that they are minimal and because the noise attenuation adds value to the units; and

WHEREAS, the Board also was not persuaded that the site's soil conditions and location within the flood plain was a unique physical hardship; and

WHEREAS, the Board observes that the uniqueness of the site's sub-surface conditions was not conclusively established by the applicant; and

WHEREAS, the Board acknowledges that the "E" designation and the soil conditions (which, as stated above, require that piles be used) add to overall development costs; and

WHEREAS, however, the Board concludes that these additional costs are overcome by the increased sell out value of the units – an increase that results from the waivers that the Board is granting; and

WHEREAS, based upon the above, the Board finds that certain of the aforementioned unique physical conditions – namely, the site's size and shape, and its location on Canal Street - creates unnecessary hardship and practical difficulty in developing the site in compliance with the current applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study which analyzed a complying 18,862 sq. ft., 6.02 FAR nine-story building with retail on the ground floor and residential units on the floor above; and

WHEREAS, the study concluded that this complying scenario would not realize a reasonable return, since a complying building would have a compromised and inefficient floor plate that would depress sell out value; and

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

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

WHEREAS, the applicant notes that the proposed height is comparable to two residential projects directly across the Greenwich Street from the site: one is ten stories, and one is 14 stories; and

WHEREAS, the applicant also cites to other sites in the vicinity that are either developed with buildings of comparable height in the process of being developed: an eight-story building proposed for the small block bounded by Canal, Greenwich and Watts Streets, and a nine-story building across Canal Street; and

WHEREAS, finally, the applicant notes that the façade treatment is in keeping with development in the area, and was designed to reduce any appearance of bulk; and

WHEREAS, the Board notes that the current proposal respects the floor area, height and street wall requirements of the subject zoning district; and

WHEREAS, accordingly, in terms of its bulk, the current proposal is much more contextual with the surrounding neighborhood than the original proposal, which

MINUTES

required waivers of FAR and street wall; and

WHEREAS, the Board notes that the lot coverage and yard/court waivers will not negatively impact any neighboring building, nor will the resulting building negatively affect the character of the neighborhood; and

WHEREAS, the Board observes that lot coverage is complied with above 60 feet, and the waiver is only needed for the floors beneath this height; and

WHEREAS, finally, the Board notes that after eliminating the FAR and street wall requests, the applicant initially submitted a building proposal which showed a fully compliant height, setback, and dormer; and

WHEREAS, however, concerns were raised as to the dormer above 60 feet, at the street line and adjacent to the lot line along Greenwich Street; and

WHEREAS, accordingly, the current proposal includes a dormer above 60 ft., set back from the street wall; and

WHEREAS, as a result of such configuration and the need to accommodate a sufficient amount of floor area on each floor, the dormer at the 10th and 11th floors modestly encroaches into the setback (approximately 13 sq. ft. at the 10th floor, and approximately 34 sq. ft. at the 11th floor); and

WHEREAS, the Board further notes that the small setback waiver is the result of the desire to enhance light and air for the neighboring property, and that the design change that will incorporate this waiver was in response to certain concerns of the opposition; and

WHEREAS, the Board further notes that the curb cut waiver will not affect traffic patterns in the area, and will eliminate the need for a curb cut on Canal Street, as well as decreasing on street parking demand; and

WHEREAS, the Board observes that while the proposed garage does not comply with the minimum size requirement, the layout has been reviewed and is acceptable; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the pre-existing size, shape and location of the lot; and

WHEREAS, in addition to the complying scenario discussed above, the applicant also analyzed its initial proposal, a 6.02 FAR proposal with lot coverage, street wall height, setback, yard and court waivers, and a 6.02 FAR alternative, with lot coverage and yard/court waivers, but no setback waiver; and

WHEREAS, the applicant concluded that both 6.02 FAR scenarios and the 7.6 FAR scenario would not realize a reasonable return, but that the proposal would; and

WHEREAS, however, the Board expressed concern about the claimed revenue to be generated by the residential units, and suggested that it was understated; and

WHEREAS, in particular, the Board questioned whether the comparables used to generate the sell out value were too

low and not an accurate reflection of unit values in the area; and

WHEREAS, further, as noted above, the Board did not view the initial proposal as the minimum variance; and WHEREAS, after modifying the proposal, the applicant submitted a new feasibility study of the proposal that reflected an updated site value, sell out value, construction costs estimate, and interest rates; and

WHEREAS, the applicant also maximized the value of the as of right FAR and height by removing the proposed cellar, thereby decreasing construction costs and increasing revenue; and

WHEREAS, the applicant notes that the unit prices were based on the pricing structure suggested by the opposition, ranging from \$1,200 per square foot for the smaller units to \$1,950 per square foot for the larger units; previously, the per square foot value was approximately \$1,000; and

WHEREAS, the Board has reviewed this revised study and finds it acceptable, as the sell out value has appropriately increased to reflect actual market conditions; and

WHEREAS, because the applicant modified the proposed building to the current version, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the Board notes that the opposition has made numerous arguments as to this application, many of which are no longer relevant because of the change in the proposal, particularly the arguments made in opposition to the floor area and height waivers; and

WHEREAS, particularly, concerns about inflated construction costs (i.e. piles) for site conditions that may not be unique are no longer relevant since the FAR waiver request has been withdrawn; further, concerns that the originally proposed FAR and street wall did not comport with the character of the neighborhood are likewise irrelevant; and

WHEREAS, as noted above, the Board agrees that certain of the cited physical conditions were not established as unique, and were therefore discounted; and

WHEREAS, the Board also notes that the financial data was updated, and that acceptable revenue projections were submitted; and

WHEREAS, however, the opposition continues to oppose the application even as currently proposed, and set forth a summary of its arguments in a submission dated August 15, 2006; and

WHEREAS, for the reasons cited by the applicant in its August 25, 2006 submission, the Board finds that none of the opposition arguments as to the current proposal are persuasive; and

WHEREAS, finally, the Board disagrees with the opposition's contention that the building as proposed should have been presented to the Community Board for another hearing and vote; and

WHEREAS, neither the City Charter nor the Board's Rules mandate that further Community Board action is necessary when a proposed building is reduced in scale; and

WHEREAS, all that is required by the Board's Rules is

MINUTES

that the Community Board be copied on submissions made by the applicant to the Board; here, that occurred; and

WHEREAS, while the Rules provide that the Board may send an applicant back to the Community Board at its discretion, the Board has determined that this is unnecessary in this case; and

WHEREAS, the Board observes that the Community Board expressed approval of the lot coverage, curb cut and parking waivers, and only objected to the FAR and significant street wall waiver; as noted above, these waivers have been withdrawn; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; 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. 05BSA131M dated May 20, 2005; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an C6-2A zoning district, the proposed construction of an eleven story mixed-use residential, commercial, and community facility building, which does not comply with applicable zoning requirements concerning lot coverage, side yard, setback, courts, parking area size, and curb cut location, contrary to ZR §§ 23-145, 35-32, 23-83, 13-143, 35-24, and 13-142(a); *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 September 12, 2006"- ten (10) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: ten total dwelling units; three parking spaces; a total Floor Area Ratio of 6.5 (20,255 sq. ft.), a residential FAR of 6.019 (18,877.7 sq. ft.), a commercial FAR

of 0.307 (962.6 sq. ft.), a community facility FAR of 0.132 (415.0 sq. ft.); a street wall height of 60 ft., and a total height of 120 ft; lot coverage of 96.6%; no side yard or court; a garage area of 862.9 sq. ft.; a curb cut approximately 34 ft. from the intersection of Greenwich and Canal Streets; and setbacks as indicated on the BSA-approved plans;

THAT a construction protection plan approved by the Landmarks Preservation Commission must be submitted to the Department of Buildings before the issuance of any building permit;

THAT all mechanicals and bulkheads shall comply with applicable regulations;

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

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

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

Adopted by the Board of Standards and Appeals, September 12, 2006.

The resolution has been amended to correct the Block and Lot Number. Corrected in Bulletin Nos. 22-24, Vol. 99, dated June 19, 2014.