
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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August 27, 2014

DIRECTORY

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DOCKETS

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180-14-A

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181-14-BZ

670 92nd Street, located on 92nd Street, between Battery Avenue and 7th Avenue, Block 6143, Lot(s) 35, Borough of **Brooklyn, Community Board: 10**. Variance (§72-21) to permit the construction of an educational and cultural facility be located on the premises, located within an R4B zoning district. R4B district.

182-14-BZ

1977 Homecrest Avenue, Between Avenue "S" and Avenue "T", Block 7291, Lot(s) 136, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to enlarge an existing two story dwelling with cellar and attic, in a residential zoning district, also seeks to vary the floor area ratio, side yard and rear yard requirements, located within an R5 zoning district. R5 district.

183-14-BZ

113 Nassau Street, Northwest side of Nassau Street, 35.02 feet north of Ann Street, Block 90, Lot(s) 17, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow a physical culture establishment (Blink Fitness)within portions of an existing mixed use building, located within an C5-5(LM) zoning district. C5-5-LM district.

184-14-BZ

1-37 12th Street, Located on the eastern side of the intersection between Hamilton Place and 12th Street, Block 1007, Lot(s) 172, Borough of **Brooklyn, Community Board: 6**. Special Permit (§73-36) to allow the operation of a Physical Culture Establishment(PCE) on the third floor of the existing building at the premises, located within an M1-2 zoning district. M1-2 district.

185-14-BZ

14 Wall Street, located on the North side of Wall Street with frontage on Nassau Street and Pine Street, Block 46, Lot(s) 9, Borough of **Manhattan, Community Board: 1**. Special

Permit (§73-36) to permit the operation of a Physical Culture Establishment(PCE) on the cellar and sub-cellar floor of the existing building at the premises, which is located in a C5-5 zoning district. C5-5 district.

186-14-BZ

51-63 Bond Street and, Southeast corner of Bond Street and Schermerhorn Street., Block 172, Lot(s) 5,7,1013,14,15.109, Borough of **Brooklyn, Community Board: 2**. Variance (§72-21) to permit the construction of a new hotel building with ground floor retail, located within an C6-1 (DB) district. C6-1DB & R6B DB district.

187-14-BZ

71 Longstreet Avenue, Bound by Glennon Place, Longstreet Avenue, and Hatting Place, Block 5522, Lot(s) 154, Borough of **Bronx, Community Board: 10**. Variance (§72-21):to allow for the development of five two family homes to be sub-divided into five zoning lots located within a C3A/LDGM zoning district. C3A/LDGM district.

188-14-BZ

73 Longstreet Avenue, Bound by Glennon Palace, Longstreet Avenue and Hatting Place, Block 5522, Lot(s) 154, Borough of **Bronx, Community Board: 10**. Variance (§72-21) to allow for the development of five two family homes to be sub-divided in five zoning lots located within a C3A/LDGM zoning district. C3A/LDGM district.

189-14-BZ

75 Longstreet, Bound by Glennon Place, Longstreet Avenue, and Hatting Place, Block 5524, Lot(s) 154, Borough of **Bronx, Community Board: 10**. Variance (§72-21) to allow for the development of five two family homes to be sub-divided into five zoning lots located within a C3A/LDGM zoning district. C3A/LDGM district.

190-14-BZ

77 Longstreet Avenue, Bonded by Glennon Place, Longstreet Avenue, and Hatting Place, Block 5524, Lot(s) 154, Borough of **Bronx, Community Board: 10**. Variance (§72-21) to allow for the development of five two family homes to be sub-divided into five zoning lots located within a C3A/LDGM zoning district. C3A/LDGM district.

191-14-BZ

79 Longstreet Avenue, Bound by Glennon Place, Longstreet Avenue and Hatting Place, Block 5524, Lot(s) 154, Borough

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of **Bronx, Community Board: 10**. Variance (§72-21) to allow for the development of five two family homes to be sub-divided into five zoning lots located within a C3A/LDG zoning district. kC3A/LDGM district.

192-14-A

10 Winslow Place, Southwest corner of intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 40, Borough of **Staten Island, Community Board: 3**. Proposed construction of buildings that do not front on a legally mapped street pursuant to Article 3, Section 36 of the General City Law. R3-2 Zoning District R3-2(SRD) district.

193-14-A

12 Winslow Place, Southwest corner of Intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 42, Borough of **Staten Island, Community Board: 3**. Proposed to construction of buildings that do nor front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-2(SRD) district.

194-14-A

18 Winslow Place, Southwest corner of intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 43, Borough of **Staten Island, Community Board: 3**. Proposed construction of buildings that do not front on a legally mapped street, pursuant to Section 36 ,Article 3 of the General City Law. R3-2(SRD) district.

195-14-A

20 Winslow Place, , Block 6373, Lot(s) 45, Borough of **Staten Island, Community Board: 3**. Proposed construction of buildings that do not front on a legally mapped street, pursuant to, Section 36 Article 3 of the General City Law. R3-2(SRD) district.

196-14-A

26 Winslow Place, Southwest corner of intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 145, Borough of **Staten Island, Community Board: 3**. Proposed construction of buildings that do not front on a legally mapped pursuant to Section 36 ,Article 3 of the General City Law. R3-2(SRD) district.

197-14-A

30 Winslow Place, Southwest corner of intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 146, Borough of **Staten Island, Community Board: 3**. Propose construction of the buildings that do not front on a legally mapped street pursuant to Section 36 , Article 3 of the General City Law. R3-2(SRD) district.

198-14-A

32 Winslow Place, Southwest corner of intersection of Winslow Place and Amboy Road, Block 6373, Lot(s) 147, Borough of **Staten Island, Community Board: 3**. Proposed construction of the buildings that do front on a legally mapped street, pursuant to Section 36 , Article 3 of the General City Law. R3-2(SRD) 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.

CALENDARS

SEPTEMBER 16, 2014, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 16, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

921-57-BZ

APPLICANT – Eric Palatnik, P.C., for Rafael Mizrachi, owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of a variance which permitted the operation of an Automobile Repair Facility (UG 16B) which expired on May 29, 2013; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 6602 New Utrecht Avenue, New Utrecht Avenue between 66th Street and 15th Avenue, Block 5762, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #11BK

229-84-BZ

APPLICANT – Troutman Sanders LLP, for High Definition Realty, LLC. owner; Bally Total Fitness of Greater New York, lessee.

SUBJECT – Application June 16, 2014 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (*Bally's Total Fitness*) which expires on November 27, 2014. M1-1 zoning district.

PREMISES AFFECTED – 75-28 Queens Boulevard, block bounded by Queens Boulevard Jacobus Street, 51st Avenue and Kneeland Street, Block 2450, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

178-03-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, Inc., owner.

SUBJECT – Application June 6, 2014 – Extension of Term of a Special Permit (§73-211) permitting the operation of an automotive service station (UG 16B) which expired on April 28, 2014. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 114-02 Van Wyck Expressway, south west corner of Linden Boulevard and Van Wyck Expressway, Block 11661, Lot 7, Borough of Queens.

COMMUNITY BOARD #10Q

19-12-A

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

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

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

COMMUNITY BOARD #1Q

67-13-A

APPLICANT – NYC Board of Standards And Appeals
OWNER OF PREMISES - OTR 945 Zerega LLC, lessee.

SUBJECT – Application August 13, 2014 – Reopening by court remand for supplemental review of whether a sign at the subject site was a permitted non-conforming advertising sign in light of the Board's decision in BSA Cal. No. 96-12-A. M1-1 zoning district.

PREMISES AFFECTED – 945 Zerega Avenue, between Quimby Avenue and Bruckner Boulevard, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

ZONING CALENDAR

81-12-BZ

APPLICANT – Eric Palatnik, P.C., for McDonald's Real Estate Co., owner.

SUBJECT – Application April 5, 2012 – Special Permit (§73-243) to permit the demolition and reconstruction of an eating and drinking establishment (Use Group 6) with an accessory drive-through and on-site parking. C1-3/R3-2/R3A zoning district.

PREMISES AFFECTED – 98-01/05 Metropolitan Avenue, northeast corner of 69th Road, Block 3207, Lot(s) 26 & 23, Borough of Queens.

COMMUNITY BOARD #6Q

176-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 31 BSP LLC, owner.

SUBJECT – Application June 17, 2013 – Variance (§72-21) to permit Use Group 6 on the first floor and Use Group 2 residential on the second through sixth floors of an existing building, contrary to Sections 42-14(D)(2)(b) and 42-10 of the zoning resolution.

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PREMISES AFFECTED – 31 Bond Street, southern side of Bond Street approximately 1170' from Lafayette Street, Block 529, Lot 25, Borough of Manhattan.

COMMUNITY BOARD # 2M

25-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Yeshiva of Flatbush, LLC, owner.

SUBJECT – Application February 6, 2014 – Variance (§72-21) to permit the enlargement of an existing four story Yeshiva. R2 & R5 zoning district.

PREMISES AFFECTED – 1601-1623 Avenue J aka 985-995 East 16th Street & 990-1026 East 17th Street, Block 6709, Lot(s) 32, 34, 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

42-14-BZ

APPLICANT – Eric Palatnik, P.C., for 783/5 Lex Associates LLC., owner; Lush Cosmetics NY LLC., lessee.

SUBJECT – Application March 12, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Lush Cosmetics*) located on the cellar, first and second floor of a five story building. C1-8 zoning district.

PREMISES AFFECTED – 783 Lexington Avenue, between 61st and 62nd Streets, Block 1395, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #8M

91-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for 3428 Bedford LLC by Jeffrey Mehl, owner.

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

PREMISES AFFECTED – 3420 Bedford Avenue, southwest corner of Bedford Avenue and Avenue M, Block 7660, Lot (tentative) 45, Borough of Brooklyn.

COMMUNITY BOARD #14BK

93-14-BZ

APPLICANT – Eric Palatnik, P.C., for 455 West 37 LLC., owner; MJM Boxing LLC., lessee.

SUBJECT – Application September 16, 2014 – Special Permit (§73-36) to allow a physical culture establishment (*Title Boxing Club*). R8A/C2-5 zoning district.

PREMISES AFFECTED – 455 West 37th Street, between Dyer and 10th Avenues, Block 735, Lot 6, Borough of Manhattan.

COMMUNITY BOARD #4M

96-14-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, by Paul Selver, Esq., for 290 Dyckman Properties, LLC, owner.

SUBJECT – Application May 5, 2014 – Variance (§72-21) to allow the conversion of an existing two-story building that has historically been occupied by manufacturing and industrial/commercial uses to be converted to a self-storage facility. C8-3/R7-2 district.

PREMISES AFFECTED – 290 Dyckman Street, corner lot at the intersection of Dyckman Street and Henshaw Street. Block 2246, Lot 28. Borough of Manhattan.

COMMUNITY BOARD #12M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, AUGUST 19, 2014
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

611-52-BZ

APPLICANT – Gerald J. Caliendo, for John Blumenfeld - HL Dalis, Inc., owner.

SUBJECT – Application October 15, 2013 – Extension of Term (§11-411) of a previously approved variance permitting a one story warehouse building, which expired on May 5, 2013. R5 zoning district.

PREMISES AFFECTED – 35-35 24th Street, east side of 24th Street, 130.63 feet south from the intersection of 35th Avenue and 24th Street, Block 338, Lot 8, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an extension of time to complete construction, which expired on January 9, 2003, and an extension of term for a variance permitting a warehouse within a residence district, which expired on May 5, 2013; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in *The City Record*, with a continued hearing on June 17, 2014, and then to decision on August 19, 2014; and

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

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

WHEREAS, the subject site is located on the east side of 24th Street, between 35th Avenue and 36th Avenue, within an R5 zoning district; and

WHEREAS, the site has approximately 311 feet of frontage along 24th Street and 33,393 sq. ft. of lot area; it is occupied by a one-story warehouse with approximately 20,252 sq. ft. of floor area (0.61 FAR); and

WHEREAS, the Board has exercised jurisdiction over the site since May 5, 1953, when, under the subject calendar number, it granted an application to permit the continued use of an existing one-story warehouse building in a residence

district, contrary to the use regulations of the 1916 Zoning Resolution; and

WHEREAS, the grant was extended at various times; most recently, on January 9, 2001, the Board amended the grant to permit a 3,720 sq.-ft. enlargement, and extended the term of the grant until May 5, 2013; and

WHEREAS, pursuant to the 2001 grant, substantial constructed was to be completed by January 9, 2003; however, the applicant states that the enlargement was never constructed due to a lack of funding; and

WHEREAS, accordingly, the applicant now seeks an extension of time of complete construction and an extension of the term of the variance; the enlarged building will have 23,972 sq. ft. of floor area (0.72 FAR); and

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

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made for an extension of term under ZR § 11-411; in addition, the Board finds that the requested extension of time to complete the construction authorized under the 2001 grant is appropriate.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 5, 1953, so that as amended the resolution reads: “to permit an extension of time to complete construction and to permit an extension of the term of the variance for an additional ten years from May 5, 2013, expiring on May 5, 2023; *on condition*:

THAT the term of the variance will expire on May 5, 2023;

THAT the building will have a maximum of 23,972 sq. ft. of floor area (0.72 FAR);

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

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

THAT substantial construction will be completed by August 19, 2016;

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

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

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

Adopted by the Board of Standards and Appeals, August 19, 2014.

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751-78-BZ

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

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

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

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term for a variance permitting an automotive repair shop within a residence district, which expired on January 23, 2009; and

WHEREAS, a public hearing was held on this application on May 13, 2014, after due notice by publication in *The City Record*, with continued hearings on June 17, 2014, and July 29, 2014, and then to decision on August 19, 2014; and

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

WHEREAS, Community Board 11, Queens, recommends approval of the application, subject to the following conditions: (1) that the premises shall be kept clean of debris and graffiti; (2) that no repairs shall be performed in the street or on the sidewalk; (3) that the sidewalk shall not be blocked; (4) that there shall be no overnight parking of trucks or cars except those vehicles that are awaiting service; (5) that the hours of operation shall be limited to Monday through Friday, from 8:00 a.m. to 8:00 p.m., Saturday, from 8:00 a.m. to 6:00 p.m., and closed on Sunday; and (6) that the tire racks in front of the building and the tires stored in the northwest corner of the premises shall be permanently relocated to a storage container and/or placed within the bays; and

WHEREAS, Queens Borough President Melinda Katz recommends approval of the application, provided that the applicant complies with the conditions of Community Board 11; and

WHEREAS, certain members of the surrounding community, including a representative from the Auburndale Improvement Association, testified in opposition to the proposed hours of operation; in addition, certain members expressed concern with the presence of stacked tires at the

site, the colors of the building and the storage container, the poor management of the dumpster, the noise of idling vehicles, and the lack of landscaping; and

WHEREAS, the subject site is the triangular block bounded by 201st Street, 43rd Avenue, and Northern Boulevard; it is located within a C2-2 (R3-2) zoning district; and

WHEREAS, the site has approximately 71 feet of frontage along 201st Street, approximately 128 feet of frontage along 43rd Avenue, approximately 152 feet of frontage along Northern Boulevard, and 5,186 sq. ft. of lot area; it is occupied by a one-story automotive repair shop with approximately 1,659 sq. ft. of floor area (0.32 FAR); and

WHEREAS, the Board has exercised jurisdiction over the site since October 7, 1952, when, under BSA Cal. No. 22-52-BZ, it granted, pursuant to 1916 Zoning Resolution §§ 7f, 7i, and 7h, an application to permit in a business use district the change in occupancy from sale and display of more than five motor vehicles to a gasoline service station, lubratorium, car washing, motor vehicle repair shop, office, and parking and storage of motor vehicles, for term of 15 years, to expire on October 7, 1967; and

WHEREAS, on October 17, 1967, the grant was extended for a term of ten years; and

WHEREAS, on January 23, 1979, under the subject calendar number, the Board granted an application pursuant to ZR §§ 11-412 and 11-413 to permit the change in use from an automotive service station with accessory uses to an automobile repair and muffler installation establishment; and

WHEREAS, on May 2, 1989, the grant was extended and amended to permit a storage container at the site; and

WHEREAS, most recently, on September 12, 2000, the grant was extended for a term of ten years, to expire on January 23, 2009; and

WHEREAS, accordingly, the applicant now seeks an extension of the term of the variance; 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, at hearing, the Board directed the applicant to: (1) provide evidence demonstrating that the existing hours of operation (Monday through Saturday, from 8:00 a.m. to 9:00 p.m.) are consistent with similar establishments in the surrounding community; (2) provide photographs showing the removal of tires from the open portions of the site; and (3) provide an amended site plan reflecting the location of the storage container; and

WHEREAS, as to the hours of operation, the applicant states that two nearby automobile-related establishments have similar hours as those proposed; the applicant also notes that many businesses along Northern Boulevard operate 24 hours per day; finally, the applicant represents that the proposed hours are necessary to allow for successful operation of the business; and

WHEREAS, as to the tire storage on site, the applicant provided photographs demonstrating that all tires had been removed from open portions of the site; the applicant also

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provided the requested amended site plan reflecting the location of the storage container; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made for an extension of term under ZR § 11-411.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated January 23, 1979, so that as amended the resolution reads: “to permit an extension of the term of the variance for an additional ten years from the prior expiration, to expire on January 23, 2019; *on condition on condition* that all work will substantially conform to drawings, filed with this application marked ‘Received June 3, 2014’ – (1) sheet; and on further condition:

THAT the term of the variance will expire on January 23, 2019;

THAT tire will not be stored at the site, except within the building or storage containers;

THAT the hours of operation will be limited to Monday through Friday, from 8:00 a.m. to 9:00 p.m., Saturday from 8:00 a.m. to 6:00 p.m., and closed Sunday;

THAT landscaping will be maintained in accordance with the BSA-approved plans;

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

THAT only vehicles awaiting service may be stored at the site overnight;

THAT vehicles will not obstruct the sidewalk;

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

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

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

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

Adopted by the Board of Standards and Appeals, August 19, 2014.

169-93-BZ

APPLICANT – Law office of Fredrick A. Becker, for 2231 Associates LLC, owner; TSI West 80, LLC dba NY Sports Club, lessee.

SUBJECT – Application May 5, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on May 17, 2014. C4-6A/EC-3 zoning district.

PREMISES AFFECTED – 246-248 West 80th Street, southwest corner of West 80th Street and Broadway, Block 1227, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a physical culture establishment (“PCE”), which expired on May 17, 2014; and

WHEREAS, a public hearing was held on this application on July 22, 2014, after due notice by publication in *The City Record*, and then to decision on August 19, 2014; and

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

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

WHEREAS, the subject site is located at the southeast corner of the intersection of Broadway and West 80th Street, within a C4-6A zoning district, within the Special Enhanced Commercial District (“EC-3”); and

WHEREAS, the site is occupied by two adjoining five-story commercial buildings (246 West 80th Street and 248 West 80th Street); and

WHEREAS, the applicant represents that the PCE occupies all of 248 West 80th Street and the second story of 246 West 80th Street, for a total PCE size of 21,458 sq. ft. (a total of 19,163 sq. ft. of floor area on the first through fifth stories and 2,295 sq. ft. of floor space in the cellar); and

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

WHEREAS, on May 17, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, the operation of a PCE within 248 West 80th Street for a term of ten years, to expire on May 17, 2004; and

WHEREAS, on December 19, 2000, the Board amended the grant to permit expansion of the PCE into the second story of 246 West 80th Street and to modify the hours of operation; and

WHEREAS, most recently, on July 18, 2006, the Board extended the term of the grant for ten years, to expire on May 17, 2014; and

WHEREAS, accordingly, the applicant now seeks a further extension of term; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 17, 1994, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years from the prior expiration; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed

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with this application marked 'Received June 23, 2014' - (13) sheets; and *on further condition:*

THAT this grant will be limited to a term of ten years, to expire on May 17, 2024;

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

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

THAT the hours of operation will be limited to Monday through Thursday, from 5:30 a.m. to 11:00 p.m., Friday from 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 10:00 p.m.;

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

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

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

Adopted by the Board of Standards and Appeals, August 19, 2014.

72-11-BZ

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

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

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

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a gasoline service station with accessory uses within an R3-2 zoning district, which expired on October 25, 2012; and

WHEREAS, a public hearing was held on this application on July 29, 2014, after due notice by publication in *The City Record*, and then to decision on August 19, 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 located on a through lot bounded by Astoria Boulevard to the north, 101st Street to the west, and 31st Avenue to the south, within an R3-2 zoning district; and

WHEREAS, the site, which has 10,859 sq. ft. of lot area, is occupied by a one-story gasoline service station (Use Group 16) with 1,196 sq. ft. of floor area (0.06 FAR); and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 31, 1959 when, under BSA Cal. No. 711-56-BZ, the Board granted a variance to permit the site to be occupied as a gasoline service station with accessory uses, within a residence district, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times, most recently on October 25, 2011; on that date, under the subject calendar, the Board reinstated the variance and extended its term for ten years, to expire on October 25, 2021; and

WHEREAS, the 2011 grant included a condition requiring that a certificate of occupancy be obtained by October 25, 2012; however, the applicant states that, as of that date, a certificate of occupancy had not been obtained; and

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

WHEREAS, the applicant represents that the issuance of the CO has been delayed because the operator took longer than anticipated to remove all debris from the site and install landscaping; and

WHEREAS, at hearing, the Board directed the applicant to provide further information regarding the proposed accessory signage; and

WHEREAS, in response, the applicant states that the signage at the site is being changed from “Getty” to “Lukoil” and that it will comply with the C1 signage regulations; 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated October 25, 2011, so that as amended the resolution reads: “to grant an extension of the time to obtain a certificate of occupancy, to expire on October 25, 2015; *on condition:*

THAT a certificate of occupancy will be obtained by October 25, 2015;

THAT signage will be in accordance with C1 signage regulations;

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, August 19, 2014.

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245-32-BZ

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

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over October 28, 2014, at 10 A.M., for continued hearing.

765-50-BZ

APPLICANT – Kenneth H. Koons, for R.G. Ortiz Funeral Home, Ink., owner.
SUBJECT – Application April 14, 2014 – Extension of Term (§11-411) of an approved variance permitting an existing one-story funeral parlor, which expired on November 20, 2013. C1-2 zoning district.

PREMISES AFFECTED – 1430-36 Unionport Road, eastside 43 feet South of Olmstead Avenue, Block 3933, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

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

997-84-BZ

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

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

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

COMMUNITY BOARD #6BK

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

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

68-91-BZ

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

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

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

COMMUNITY BOARD #11Q

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

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

88-92-BZ

APPLICANT – Kenneth H. Koons, for 3007 Enterprise Ink., owner.

SUBJECT – Application March 12, 2014 – Extension of Term (§11-411) of an approved variance for an existing diner, which will expire on June 28, 2014. R4-1 zoning district.

PREMISES AFFECTED – 3007 East Tremont Avenue, northeast corner of Ericson Place, Block 5381, Lot 38, Borough of Bronx.

COMMUNITY BOARD #10BX

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

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

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

THE VOTE TO CLOSE HEARING –

Affirmative: Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....3

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Negative:.....0

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

152-07-BZ

APPLICANT – Eric Palatnik, P.C., for Joseph Dweck, owner.

SUBJECT – Application December 31, 2013 – Extension of Term of a previously granted Special Permit (§73-36) for the continued use of a physical culture establishment (*Dolphin*) on the second floor of a two-story commercial building which expired on January 1, 2013; Extension of Time to obtain a Certificate of Occupancy which expired on February 5, 2009; Waiver of the Rules. C4-2A zoning district.

PREMISES AFFECTED – 8701 4th Avenue, southwest corner of 4th Avenue and 87th Street, Block 6050, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over October 7, 2014, at 10 A.M., for continued hearing.

254-08-BZ

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

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

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

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

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

76-12-BZ

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

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

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

COMMUNITY BOARD #15BK

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

APPEALS CALENDAR

110-13-A

APPLICANT – Abrams Fensterman, LLP, for Laurence Helmarth and Mary Ann Fazio, owners.

SUBJECT – Application April 24, 2013 – Appeal challenging Department of Buildings’ interpretation of the Building Code regarding required walkway around a below-grade pool. R6B zoning district.

PREMISES AFFECTED – 120 President Street, between Hicks Street and Columbia Street, Block 348, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, August 19, 2014.

296-13-A

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

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

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

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”) on October 1, 2013 (the “Final Determination”), brought by the property owner (the “Appellant”); and

WHEREAS, the Final Determination states, in pertinent part:

First, you claim that the non-conforming use of the Premises has discontinued for more than two years in violation of ZR 52-61 and that therefore, no non-conforming use may remain. In support of your claim, you provide multiple affidavits of neighbors who claim that they have not seen commercial activity at the Premises since September 11, 2001. As stated above, the Department conducted an audit of the Job Application and issued an Intent to

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Revoke letter on June 19, 2013 with an objection citing to ZR 52-61 to “confirm that the non-conforming use has not been discontinued”. In response, the applicant provided sufficient information to show that the non-confirming use had not discontinued for more than two years, including DOF records, utility bills, and aerial photographs.

In addition, the Department’s review of multiple images from Bing.com maps, Google.com maps, and Pictometry.com over a period stretching from 2003 to 2013 indicates commercial activity, including several different trucks and cars in the open space at the Premises and an open gate to the Premises (see attached images). Therefore, based on this information showing continuous commercial use and without additional, verifiable evidence to demonstrate discontinuance of more than 2 years, the Department has no reason to conclude that the non-conforming use discontinued on the basis of the uncorroborated affidavits you provided.

Second, you claim that the use of the open space at the Premises as an eating and drinking establishment is prohibited by ZR 52-34. However, ZR 52-34 does not apply to this change in use because this change of use involves a change from a non-conforming Use Group 16 use to a non-conforming Use Group 8 theater and non-conforming Use Group 6 eating and drinking establishment. Such change is permitted pursuant to ZR 52-332(a) and is not governed by ZR 52-34. Rather, ZR 52-34 only applies to changes in use from Use Group 15 and some below, not to Use Group 16; and

WHEREAS, a public hearing was held on this appeal on January 14, 2014 after due notice by publication in *The City Record*, with continued hearings on April 1, 2014, and June 17, 2014, and then to decision on August 19, 2014; and

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

WHEREAS, the subject site is located at the corner of Bond Street and DeGraw Street, within an R6B zoning district; and

WHEREAS, the site is occupied by an 8,500-sq.-ft. building, designed for warehouse and office use; and

WHEREAS, this appeal of the Final Determination is brought on behalf of community members and We Are Gowanus (the “Appellant” or “Appellants”) represented by counsel to challenge the legality of the permits issued to the property owner and lessee; and

WHEREAS, the Appellant asserts that the non-conforming use of the premises has discontinued for more than two years in violation of ZR § 52-61, therefore only a

conforming use can occupy the subject site; and

WHEREAS, a supplemental issue on the appeal is that the Appellant asserts that the use of the open space at the building as an eating and drinking establishment is prohibited in accordance with ZR § 52-332; and

WHEREAS, the supplemental issue was not pursued during the course of the appeal; and

WHEREAS, New York State Senator Velmanette Montgomery and New York State Assemblywoman Joan L. Millman provided testimony in support of the appeal, seeking revocation of the permits; and

WHEREAS, DOB and the property owner (the “Owner”), both represented by counsel, appeared and made submissions in opposition to the appeal; and

PROCEDURAL HISTORY

WHEREAS, on October 16, 2012, the Owner filed an Alteration Type 1 application to convert from commercial (Use Group 16 non-conforming use) to theater (Use Group 8), eating and drinking establishment (Use Group 6), and non-commercial art galleries (Use Group 4) to be occupied by the Rock and Roll Playhouse (RRPH); and

WHEREAS, after repeated reviews including examination of the non-conforming uses, DOB approved the application on November 28, 2012 and work permits were issued on April 17, 2013; and

WHEREAS, on June 6, 2013, the Opposition submitted correspondence to DOB requesting that it revoke the permits; and

WHEREAS, DOB conducted an audit of the Job Application and issued an Intent to Revoke letter on June 19, 2013 with an objection citing to ZR 52-61 to “confirm that the non-conforming use has not been discontinued”; and

WHEREAS, in response, the Owner provided information to show that the non-confirming use had not discontinued for more than two years to DOB’s satisfaction; and

WHEREAS, on August 12, 2013, the Opposition filed an Article 78 action seeking an order to compel DOB to issue a response to the Opposition’s Freedom of Information Law (“FOIL”) request; by stipulation, dated September 25, 2013, the parties agreed upon a schedule for DOB’s response and production of documents; and

WHEREAS, on October 31, 2013 DOB issued the Final Determination, which forms the basis of the appeal; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 (*Definitions*)

Non-conforming, or non-conformity

A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

* * *

ZR § 52-11 (*Continuation of Non-Conforming Uses*)

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General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

* * *

ZR § 52-61 (*Discontinuance*)

General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

* * *

ZR § 52-332 (*Other buildings or structures in Residence Districts*)

In all #Residence Districts#, a #non-conforming use# listed in Use Group 11A, 16, 17 or 18 which is not subject to the provisions of Sections 52-32 (Land with Minor Improvements) or 52-331 (Buildings designed for residential use), may be changed either to a conforming #use# or:

- (a) to any #use# listed in Use Group 6, 7B, 7C, 7D, 8, 9, 10, 11B or 14, in which case any subsequent change of #use# shall conform to the provisions of Section 52-34 (Commercial Uses in Residence Districts); or
- (b) in accordance with the provisions of the following table:

<u>From Use Group</u>	<u>To Use Group</u>
11A	11A
16 or 17	11A 16 or 17
18	11A 16 17 or 18

provided that such changed #use# shall conform to all regulations on performance standards applicable in M1 Districts, and that any such changed #use#, or the storage of materials or products #accessory# to any changed #use#, which is not located within a #completely enclosed building#, shall be screened by a solid wall or fence (including solid entrance or exit gates) at least eight feet in height. Whenever a #use# located within a #completely enclosed building# is changed to another #use#, no activity related to such changed #use#, including the storage of materials or products, shall be located outside of such #building#.

In no event shall any change of #use# permitted in paragraph (b) of this Section extend the statutory period of useful life applicable under the provisions of Section 52-74 (Uses Objectionable in Residence Districts); and

THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within an R6B zoning district and that the

proposed Use Group 8 and Use Group 6 uses are not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming use is permitted to remain, the Owner must meet the Zoning Resolution's criteria for a "non-conforming use" as defined at ZR § 12-10; and

WHEREAS, ZR § 12-10 defines "non-conforming" use as "any lawful use, whether of a building or other structure or of a tract of land, which does not conform to any one or more of the applicable use regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto"; and

WHEREAS, additionally, the Appellant must comply with ZR § 52-61 (*Discontinuance, General Provisions*) which states that: "[i]f, for a continuous period of two years, either the non-conforming use of land with minor improvements is discontinued, or the active operation of substantially all the non-conforming uses in any building or other structure is discontinued, such land . . . shall thereafter be used only for a conforming use"; and

WHEREAS, thus, the Board notes that the standard to apply to the subject use is (1) the use existed lawfully as of December 15, 1961, and (2) that the use did not change or cease for a two-year period since then. See ZR §§ 12-10, 52-61; and

WHEREAS, the question of the use's establishment and continuity are not under dispute, except for the period prior from 2001 until 2014; and

WHEREAS, as noted, the Appellant makes the supplemental argument that the proposed outdoor use is not permitted per ZR § 52-34, however did not pursue the argument throughout the appeal process; and

WHEREAS, the Appellant's position is that the non-conforming use at the site was discontinued for a period longer than two years and, thus, that no non-conforming use is permitted pursuant to ZR § 52-61 and, secondarily that the open space at the site could not be used as an eating and drinking establishment pursuant to ZR § 52-332; and

THE OWNER'S POSITION

- Evidence

WHEREAS, the Owner states that since at least May 1937, the site has been used for commercial use, as indicated on the 1937 Certificate of Occupancy, which reflects "Motor Truck Storage. One family"; and

WHEREAS, the Owner notes that the Certificate of Occupancy issued in February 1938 similarly reflects the use as "Storage Garage for Motor Trucks With One (1) 55 Gal Gasoline Tank in Open Yard" and the last recorded CO, dated April 1967 reflects the following: "First on ground: Loading and storage of boiler equipment. Non-storage garage for motor trucks; Mezzanine: offices"; and

WHEREAS, the Owner states that the Zoning Resolution lists the ground floor uses as Use Group 16 uses and the offices would be classified as accessory Use Group 16 uses; and

WHEREAS, accordingly, the Appellant states that it has

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established that the use was established as of December 15, 1961, prior to the site being zoned with an R6 zoning district where the use is not permitted as of right; and

WHEREAS, the Owner asserts that since December 15, 1961 when the use was no longer permitted pursuant to zoning use regulations, there has not been any discontinuance for a period of two years or greater; and

WHEREAS, however, all parties focus their attention to the period of 1982 to 1985 and 2001 to 2012; and

WHEREAS, the Owner cites to DOB Technical Policy and Procedure Notice #14/1988 (Documentation In Support of Existing Use) (the "TPPN"), which sets forth guidelines for the application of ZR § 52-61 and the submission of proof to DOB in support of non-conforming uses; and

WHEREAS, the TPPN includes the following types of evidence, which DOB accepts: (a) City agency records such as tax records or licenses; (b) records, bills, documentation from public utilities, telephone ads; (c) other documentation of occupancy including ads and invoices; and (d) affidavits; and

WHEREAS, the Owner's evidence within category (a) include: (1) Department of Finance records, (2) utility bills, and (3) aerial photographs, including multiple images from Bing.com maps, Google.com maps, and Pictometry.com during the period of 2003 to 2013, which reflect several different trucks and cars in the open space and an open gate; and

WHEREAS, the Owner submitted the following evidence for 2001: (1) a letter from Robert Grosseto of Superior Tinsmith Supply Co. reflecting its business relationship with Excellence (the "Grosseto Letter") and (2) a letter from Robert Hepplewhite, mechanic, regarding repair of Excellence's commercial vehicles (the "Hepplewhite Letter"); and

WHEREAS, the Owner submitted the following evidence for 2002: (1) eight DOB work permits issued to Excellence; (2) a 1040 tax form reflecting Excellence's income and expenses; (3) Providence Washington Insurance of New York commercial insurance policies with March 26, 2002 commencement date, covering 280 Bond Street; (4) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (5) a Sanborn Map, which indicates commercial use of the site; (6) an affidavit from accountant Lawrence Bauman stating that he commenced preparing tax returns for the Owner d/b/a Excellence; (the "Bauman Affidavit"); (6) an affidavit from Matthew Germann, tool dealer stating that he visited the site in 2002 and witnessed commercial use (the "Germann Affidavit") (7) the Grosseto Letter; and (8) the Hepplewhite Letter; and

WHEREAS, the Owner submitted the following evidence for 2003: (1) 11 DOB work permits issued to Excellence; (2) a 1040 tax form reflecting Excellence's income and expenses; (3) Providence Washington Insurance of New York commercial insurance policies, covering 280 Bond Street; (4) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (5) a Sanborn Map,

which indicates commercial use of the site; (6) the Bauman Affidavit; (7) the Germann Affidavit; (8) the Grosseto Letter; (9) the Hepplewhite Letter; and (10) an affidavit from Seth Nahoum, a former Excellence employee stating that Excellence operated at the site (the "Nahoum Affidavit"); and

WHEREAS, the Owner submitted the following evidence for 2004: (1) County Clerk's Office Judgment Docket & Lien Book search summary listing Excellence at the site; (2) nine DOB work permits issued to Excellence; (3) a 1040 tax form reflecting Excellence's income and expenses; (4) Providence Washington Insurance of New York commercial insurance policies, covering 280 Bond Street; (5) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (6) a Sanborn Map, which indicates commercial use of the site; (7) Excellence's Transaction Ledger from City Check Cashing; (8) the Bauman Affidavit; (9) the Germann Affidavit; (10) the Grosseto Letter; (11) the Hepplewhite, Letter; and (12) the Nahoum Affidavit; and

WHEREAS, the Owner submitted the following evidence for 2005: (1) County Clerk's Office Judgment Docket & Lien Book search summary listing Excellence at the site; (2) 25 DOB work permits issued to Excellence; (3) a 1040 tax form reflecting Excellence's income and expenses; (4) Providence Washington Insurance of New York commercial insurance policies, covering 280 Bond Street; (5) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (6) Excellence's Transaction Ledger from City Check Cashing; (7) three client job analyses; (8) a Cassone Leasing invoice for trailer rental at a job site; (9) a Sanborn Map, which indicates commercial use of the site; (10) Worker's Compensation Insurance Premium; (11) the Bauman Affidavit; (12) the Germann Affidavit; (13) the Grosseto Letter; (14) the Hepplewhite Letter; and (15) the Nahoum Letter; and

WHEREAS, the Owner submitted the following evidence for 2006: (1) 34 DOB work permits issued to Excellence; (2) Department of Finance assessment rolls; (3) a 1040 tax form reflecting Excellence's income and expenses; (4) Scottsdale Insurance Company commercial insurance policies, covering 280 Bond Street; (5) Excellence's Transaction Ledger from City Check Cashing; (6) Cassone Leasing invoice for trailer rental at a job site; (7) four client job analyses; (8) the Bauman Affidavit; (9) the Germann Affidavit; (10) the Grosseto Affidavit; (11) the Hepplewhite Letter; (12) the Nahoum, Affidavit' (13) a Sanborn Map, which indicates commercial use of the site; and (14) Worker's Compensation Insurance Premium; and

WHEREAS, the Owner submitted the following evidence for 2007: (1) 16 DOB work permits issued to Excellence; (2) Department of Finance assessment rolls; (3) a 1040 tax form reflecting Excellence's income and expenses; (4) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (5) Scottsdale Insurance Company commercial insurance policies, covering 280 Bond

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Street; (6) Excellence's Transaction Ledger from City Check Cashing; (7) Cassone Leasing invoice for trailer rental at a job site; (8) five client job analyses; (9) the Bauman Affidavit; (10) a letter from accountant indicating net assets; (11) the Germann Affidavit; (12) the Grosetto Letter; (13) the Hepplewhite Letter; (14) the Nahoum Affidavit; (15) a Sanborn Map, which indicates commercial use of the site; and (16) Worker's Compensation Insurance Premium; and

WHEREAS, the Owner submitted the following evidence for 2008: (1) 1096 and 1099 tax forms; (2) 14 DOB work permits issued to Excellence; (3) Department of Finance assessment rolls; (4) a 1040 tax form reflecting Excellence's income and expenses; (5) water, Con Edison, and National Grid bills for the site; (6) partial release of lien; (7) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (8) Scottsdale Insurance Company commercial insurance policies, covering 280 Bond Street; (9) Excellence's Transaction Ledger from City Check Cashing; (10) Cassone Leasing invoice for trailer rental at a job site; (11) three client job analyses; (12) the Bauman Affidavit; (13) accountant's statement of income-profit & loss; (14) the Germann Affidavit; (15) the Grosetto Letter; (16) the Hepplewhite Letter; and (17) the Nahoum Affidavit; and

WHEREAS, the Owner submitted the following evidence for 2009: (1) ten DOB work permits issued to Excellence; (2) Department of Finance assessment rolls; (3) a 1040 tax form reflecting Excellence's income and expenses; (4) water, Con Edison, and National Grid bills for the site; (5) partial release of lien; (6) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (7) Scottsdale Insurance Company commercial insurance policies, covering 280 Bond Street; (8) Hanover Insurance Group commercial auto insurance policy; (9) Notice of Mechanic's Liens; (10) Excellence's Transaction Ledger from City Check Cashing; (11) an affidavit from Scott Levy, president of Eastern Effects; (12) one client job analysis; (13) the Bauman Affidavit; (14) accountant's statement of income-profit & loss; (15) the Germann, Affidavit; (16) the Grosetto Letter; (17) the Hepplewhite, Letter; and (18) the Nahoum Affidavit; and

WHEREAS, the Owner submitted the following evidence for 2010: (1) four DOB work permits issued to Excellence; (2) Department of Finance assessment rolls; (3) notice of mechanic's liens; (4) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (5) Scottsdale Insurance Company and Harleysville commercial insurance policies, covering 280 Bond Street; (6) Hanover Insurance Group commercial auto insurance policy; (7) one client job analysis; (8) the Bauman Affidavit; (9) the Grosetto Letter; (10) the Hepplewhite, Letter; and (12) the Nahoum Affidavit; and (13) a Sanborn Map, which indicates commercial use of the site; and

WHEREAS, the Owner submitted the following evidence for 2011: (1) Department of Finance assessment rolls; (2) Con Edison and National Grid account statement for

RRPH; (3) Cole's Directory listing for Excellence; (4) lease agreement for RRPH, which allows for Excellence to maintain its office for business functions until the Addendum is executed; (5) affidavit from Scott Levy, president of Eastern Effects, whose last day of renting the site for truck and lighting equipment storage was August 31, 2011; (6) Cassone Leasing Inc. payment history; (7) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (8) Harleysville commercial insurance policies, covering 280 Bond Street; (9) a fax coversheet from the District Attorney's office listing all properties associated with the Owner, including the site; (10) an affidavit from the Owner noting the transfer from her to SRS Real Estate Holdings; (11) the Grosetto Letter; and (12) the Hepplewhite Letter; and

WHEREAS, the Owner submitted the following evidence for 2012: (1) copy of BIS printout of an Alteration Type 1 application proposing the change of use from commercial (Use Group 16 non-conforming use) to theater (Use Group 8), eating and drinking establishment (Use Group 6) and non-commercial art galleries (Use Group 4), approved by DOB; (2) a BIS printout of post-approval amendment; (3) a DOB Stop Work Order; (4) a DOB BIS Plan Exam approved for building structural modification; (5) DOF assessment roll; (6) a BIS printout of license details which reflects that Excellence maintained general liability insurance with Harleysville Worcester through March 26, 2012; (7) commercial insurance policies with Harleysville insurance through May 22, 2012; (8) lease Addendum between RRPH and SRS Real Estate Holdings to allow rental of the second-story office; (9) email exchange with Verizon which reflects the existence of the Excellence phone line through October 2012; (10) a Sanborn map; (11) Cassone Leasing invoice reflecting the trailer rental at the site; (12) satellite images of the site, which show various commercial parking configurations and demonstrate the presence of commercial vehicles; (13) a Cole's Directory listing for Excellence; (14) affidavits from Larry Burda, general contractor who began working for RRPH at the site and who obtained permits for work there and parked commercial vehicles; (15) the Grosetto Letter; and (16) the Hepplewhite Letter; and

WHEREAS, the Owner submitted the following evidence for 2013: (1) the Final Determination; (2) work permits related to the Alteration Type 1 application; (3) a BIS printout of post approval amendments; (4) DOF assessment roll; (5) Excellence's transaction ledger from City Check Cashing; (6) Cassone Leasing invoice reflecting the trailer rental at the site; and (7) ModSpace Modular Office contract and invoice for RRPH; and

WHEREAS, the Owner submitted the following evidence for 2014: (1) a BIS printout of post approval amendments; and (2) Cassone Leasing invoice reflecting the trailer rental at the site; and

WHEREAS, the Owner asserts that any criticism of the strength of the evidence, the Owner notes that it all fits within the TPPN's (a) through (c) evidence and is reflective of the minimal actual work performed at the site primarily used for

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the storage of materials and vehicles; and

WHEREAS, on the contrary, the Owner claims that the Appellant's evidence is primarily within category (d) – affidavits – which DOB looks to only after satisfactory explanation or proof that the documentation pursuant to category (a), (b), and (c) are unavailable; and

WHEREAS, the Owner asserts that the affidavits lack detail, contain third-party testimony, and are in direct conflict with other evidence the Appellant offered; and

WHEREAS, the Owner also asserts that the Appellant's seven photographs of the site from April 20, 2003 to April 7, 2012 actually reflect the presence of commercial vehicles, in different configurations which is consistent with the movement of vehicles over a period of time when in use; and

WHEREAS, the Owner asserts that the photographs reveal physical evidence that is contradictory to the affiants' statements; and

WHEREAS, the Owner's evidence within category (d) includes affidavits from the two owners which explain that trucks would leave the site by 6:30 a.m. and return prior to 4:00 p.m. as well as letters from individuals and businesses which are either located near the site or have done business with the plumbing business formerly at the site; and

WHEREAS, the Owner provided a lease payment history for the rental of storage trailers at the site by Excellence in Plumbing, including one trailer that was rented from September 2011 until April 2014; work permit data printouts from the Buildings Information System (BIS) showing permits issued to Excellence in Plumbing for work at two different locations in 2010; general liability insurance maintained for Excellence in Plumbing through May 2013; evidence of insurance policies for Excellence in Plumbing operating at the site from March 26, 2009 to March 26, 2013; utility bills issued in November and December of 2011 to the lessees the RRPB; Coles Directory listings for 280 Bond Street from 2010 to 2012 for Excellence in Plumbing and Heating; and

WHEREAS, the Owner states that, despite an October 2011 lease to RRPB it was able to maintain an office in the building until June 2012, after which the lease was modified to allow the tenant's use of the office; and

WHEREAS, based on the above, the Owner contends that it has established that the use has been continuously in existence during the relevant periods; and

WHEREAS, the Owner asserts that the Board should not be guided by the Owner's testimony before the District Attorney which discusses the cessation of the business as (1) there was a context for those statements that is different than the context of establishing the continuation of a non-conforming use under the Zoning Resolution and (2) the Appellant's quotes should not be read in isolation, but with the remainder of the testimony which reflects the Owner's interest in seeking more business rather than abandonment of the site; and

WHEREAS, the Owner states that the deposition testimony is consistent with its position that the business existed but is slow; and

- The Legal Standard

WHEREAS, the Owner asserts that DOB is entitled to deference in its interpretation of the Zoning Resolution, citing the Court of Appeals: "it is well settled that the construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld," Matter of Howard v. Wyman, 28 N.Y.2d 434,438 (1971); and

WHEREAS, the Owner distinguishes the case law that the Appellant cites; specifically, the Owner states that Toys 'R' Us v. Silva, 89 N.Y.2d 411 (1996) centered upon an assertion that only the discontinuance of the entire nonconforming use would constitute the discontinuance required for termination of a nonconforming use; and

WHEREAS, the Owner asserts that an underperforming business, like Excellence in recent years, still qualifies as an active use; and

WHEREAS, otherwise, the Owner distinguishes other cases cited by the Appellant in that (1) none of them involve the applicability of ZR § 52-61; each is set outside New York City; three relate to variances, which require a hardship finding, and are thus inapplicable; the cases discuss intent, which is similarly not a factor in ZR § 52-61

- ZR § 52-332

WHEREAS, the Owner asserts that the Appellant misinterprets ZR § 52-332 in that section (b) makes it clear that the conditions relating to uses located outside of a building only apply to certain use changes and not to the Use Group 16 to Use Group 6 change proposed; and

WHEREAS, accordingly, the proposed outdoor use is permitted; and

THE APPELLANT'S POSITION

- Evidence

WHEREAS, as to ZR §52-61, the Appellant asserts that there have been at least two periods of two years in which the non-conforming use ceased at the site – from 1982 to 1984 and from 2009 to 2012; and

WHEREAS, the Appellant asserts that the Owner's evidence does not include employee records, customer records, or sales receipts, which would be standard for a plumbing business; and the Appellant raises concerns about the majority of evidence the Owner has submitted; and

WHEREAS, the Appellant refutes the Owner's other evidence as follows: (1) federal tax records do not reflect purchase of plumbing supplies after 2008 and no labor expenses or business income after 2009; (2) no customer records have been submitted to demonstrate business transactions; (4) there is no substantiated documents evidencing employee records after 2009 or documentation of work performed; (5) there are not any sales receipts or other records of business transactions after 2009; (6) 2009 and 2010 building permits do not reference 280 Bond Street; (6) the Owner provided sworn testimony with the Manhattan District Attorney's office that the business ceased to exist after 2008; and (7) the parking activity is not consistent with an active business at the site; and

WHEREAS, the Appellant submitted the following

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affidavits and letters in support of its assertion that the non-conforming use ceased for a period greater than two years: (1) an affidavit from Frank Napoli which states that he is a private investigator who interviewed several witnesses with knowledge of the site; (2) and affidavit from Robert Conklin, general contractor, in which he says that for one of the projects associated with building permit evidence (Beach Street) never observed Excellence delivering supplies to the project and that the Owner stated that the warehouse was no longer used for the plumbing business; (3) an affidavit from Leslie Bernat which discusses the Owner stating that he would be retiring and that the business had “wound down”; (4) an affidavit from Jennifer Jones in which she says she has observed a racing car on site; (5) an affidavit from Franck Poisson stating that he sent a certified letter to the address on February 15, 2012, which was returned as undeliverable; (6) an affidavit from Brenda Bello saying that she has parked in front of the steel gage since June 2010 at various times and no one has ever complained or towed her car; (7) an affidavit from Emilie Poisson in which she states that she visited the site in 2012 she did not witness any commercial use; (8) an affidavit from Fernando Serna, who stated that he accompanied Emilie Poisson to the site in March 2012 and did not see any indication of an active business; (9) an affidavit from Bruno Pasquale who stated that in approximately 2009, the Owner stated that he had retired and given up his business; and (10) an affidavit from Jeffrey Tortora who stated that he saw people climbing the walls to gain access to the site, presumably for shelter; and

WHEREAS, the Appellant asserts that there is not any TPPN Category A evidence to support the Owner’s contention that there was an active business from 2009 forward; and

WHEREAS, the Opposition asserts that there is not any TPPN Category B evidence to support the Owner’s contention that there was an active business from 2009 forward; and

WHEREAS, the Appellant asserts that the National Grid and Con Edison account statements for RRPB that the Owner has submitted contradict the contention that Excellence continued an active business at the location until October 2012; and

WHEREAS, the Opposition asserts that there is not any TPPN Category C and D evidence to support the Owner’s contention that there was an active business from 2009 forward; and

WHEREAS, the Appellant states that the Sanborn maps should be disregarded since some are illegible and many relevant years are missing; and

WHEREAS, as to the Cole’s Directory listings, the Appellant questions why there were listings for 2010 to 2012, but not all other years prior and that the telephone number has changed or is inconsistent with that noted in the communication with Verizon regarding the telephone use history; and

WHEREAS, the Appellant questions the lack of specificity in the insurance documents in part because certain policy years cover three locations without specifying any for plumbing business activity; and

WHEREAS, further, the Appellant question whether the insurance companies ever inspected the sites; and

WHEREAS, the Appellant asserts that the Cassone leasing information, City Check Cashing documents, and fax cover sheet from the New York County District Attorney’s office do not establish business activity at the site; and

WHEREAS, the Appellant states that the Nahoum Affidavit concludes that he was no longer visiting the site on a daily basis after 2008; and

WHEREAS, the Appellant states that the information about leasing the parking lot to a film equipment and studio rental business from 2009 to 2011 undermines the Owner’s position as this was an unlawful change of use, even if it were substantiated; and

WHEREAS, the Appellant also asserts that the lease to RRPB does not demonstrate active or related business activity for the period from 2010 to 2012; and

WHEREAS, finally, the Appellant cites to the Owner’s statements in a deposition for the District Attorney in which he states that he did not have wages, employees or business from 2009 to 2011; and

WHEREAS, as to the period from 1982 to 1984, the Appellant states that the Owner states that he began to renovate the property in 1982, completing them in 1983, but that a New York City tax photograph from 1983 reflects the building was abandoned at that time; and

WHEREAS, further, the Appellant asserts that Cole’s Directory lists Excellence as becoming active in 1985; and

WHEREAS, the Appellant states that any use by Eastern Effects was not permitted as the only non-conforming use permitted as to change the use a new CO authorizing it and a Department of Consumer Affairs license was required to substitute a new non-conforming use for an existing non-conforming use; and

WHEREAS, the Appellant asserts that inferences should be drawn from the failure to produce relevant material documents and witnesses; and

WHEREAS, in pursuit of additional information, the Appellant requested the Board to issue subpoenas for records and documents; and

WHEREAS, by letter dated May 5, 2014, the Board’s counsel responded by saying that New York City Charter Section 663 limits the Board’s subpoena authority to testimony and not documents and that the Board has the discretion to exercise its authority to subpoena witnesses, which it has chosen not to do; and

- The Legal Standard

WHEREAS, the Appellant states that the overriding public policy in zoning is aimed at the elimination of non-conforming uses while balancing the interest of not depriving business owners of their businesses; and

WHEREAS, in order to establish the standard for cessation of the use, the Appellant relies on the court’s decision in Toys R Us; and

WHEREAS, specifically, the Appellant is not concerned with the question of whether Excellence once existed as a business at the site, but whether it was continuously active

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there; and

WHEREAS, the Appellant states that the Toys R Us court emphasized that ZR § 52-61 did not equate with the complete stoppage of all business activity at the site and that the Zoning Resolution does not contemplate a complete cessation but rather, the court established that a nonconforming use can be used to sustain a use that is detrimental to the zoning plan for the community *only* if it remains *active*; and

WHEREAS, the Appellant finds that the court emphasized that the evidence to demonstrate a continuation of activity that is in derogation of local zoning must be of an *active* nature to promote the protection of owners of ongoing viable businesses and does not protect businesses that are dormant and exist in name only; and

WHEREAS, the Appellant cites to Toys 'R' Us to support its position that intent, for one thing, is not a factor in the non-conforming use analysis: "intent to resume active operations *shall not affect* the determination whether a nonconforming use has been discontinued;" and

WHEREAS, the Appellant asserts that the law views non-conforming uses as detrimental to a zoning scheme and the overriding policy of zoning in New York State is for the reasonable restriction and eventual elimination of non-conforming uses See Matter of Syracuse Aggregate Corp. v. Weise, 51 N.Y.2d 278; and

WHEREAS, the Appellant asserts that evidence the Owner has produced does not demonstrate the presence of an *active* business between 1982 and 1984 at the site or show how there was an active continuation of business after 2009, and, even more specifically, since 2011; and

WHEREAS, the Appellant asserts that the Owner's lack of evidence contrasts with eyewitness accounts, photographs and other documentary evidence; and

WHEREAS, the Appellant asserts that even though certain evidence may fit within the preferred categories of DOB's TPPN 14 of 1988, it does not establish an active use because, for example, a minimal amount of electricity or evidence of parked vehicles is not sufficient to overcome the basic legal principles governing the extinguishment of non-conforming use; and

- ZR § 52-332

WHEREAS, the Appellant introduced an argument that even if there were a legal non-conforming use, the outdoor Use Group 16 use could not be maintained as a Use Group 6 use; and

WHEREAS, however, the Appellant did not proceed with its argument that in accordance with ZR § 52-332, whenever a non-conforming use that is located within a completely enclosed building is changed to another non-conforming use, no activity related to such changed non-conforming use is permissible outside of such building and, thus, the proposed outdoor use is not permitted; and

THE DEPARTMENT OF BUILDINGS' POSITION

WHEREAS, DOB states that the Owner has submitted sufficient evidence to show continuous non-conforming commercial use at the site and the Appellant has not

demonstrated that the non-conforming commercial use was discontinued for a continuous period of two years or more; and

WHEREAS, DOB notes that where a Certificate of Occupancy exists permitting a non-conforming use, as is the case here with the 1967 Certificate of Occupancy, it presumes the non-conforming use has continued unless it receives a substantiated complaint that the non-conforming use has ceased for more than two years; and

WHEREAS, accordingly, in this case, the Appellant provided DOB with affidavits from neighbors who claim that they have not seen commercial activity at the site since approximately 2001; and

WHEREAS, at the Appellant's request, DOB conducted an audit which led to the issuance of an Intent to Revoke letter with an objection citing to ZR § 52-61 to "confirm that the non-conforming use has not been discontinued;" and

WHEREAS, DOB states that in response, the Owner provided sufficient information to show that the non-conforming use had not discontinued for more than two years; and

WHEREAS, DOB concluded that the Appellant has submitted sufficient evidence, in keeping with the TPPN and DOB precedent, to establish the use and its continuity as required by ZR § 52-61; and

WHEREAS, conversely, DOB notes that the Appellant submitted affidavits and other uncorroborated evidence; and

WHEREAS, as to the Appellant's concerns about the testimony to the District Attorney, DOB is not persuaded that such isolated statements in a different forum, made for a different purpose, should trump the credible evidence the Owner has submitted to support its claim of continuance; and

WHEREAS, DOB agrees with the Appellant that Sanborn maps are not listed on the TPPN as a type of documentation accepted in support of existing use because the source of the map information is unknown; thus, the maps are considered highly probative as to use and the absence of maps that show the site as commercial is not significant; and

WHEREAS, DOB takes the position that regardless of whether the site was used by Excellence in Plumbing or RRPB, the use by either in a continuing non-conforming use of the site; and

WHEREAS, DOB asserts that the Appellant's concern that the premises as unlawfully from September 2009 to August 2011 to the extent it was leased in part by Eastern Effects for the storage of commercial trucking vehicles, is misplaced since the use is only documented by an affidavit and its nature is unclear; and

WHEREAS, accordingly, DOB concludes that the Appellant has not demonstrated that the alteration permits for a continuing non-conforming use contravene ZR 52-61; and

WHEREAS, as to the Appellant's supplemental argument that ZR § 52-332 does not allow a change in use from a Use Group 16 to a Use group 6, DOB states that the Appellant is incorrect; and

WHEREAS, specifically, DOB states that ZR § 52-332(a) allows a non-conforming use listed in Use Group 16 to

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change to either a conforming use or any use listed in Use Group 6, as proposed; and

CONCLUSION

WHEREAS, the Board agrees with DOB that the Owner has met its burden of establishing that the non-conforming use has been in continuous use, without any two-year interruption during all relevant periods addressed in the appeal; and

WHEREAS, specifically, the Board finds the evidence submitted by the Owner sufficient to establish that the use of the site has been continuous since his ownership in 1982 and from 2001 to 2012, without any two-year interruption since that date; and

WHEREAS, as to the evidence submitted by the Owner to establish the continuous use, the Board notes that the Owner provided evidence in the form of photographs, leases, invoices, accounting statements, tax documents, copies of checks, certificates of liability insurance, and letters, and that some combination of this evidence was provided for each year beginning from 2001 until 2012 and later without any gaps; and

WHEREAS, the Board notes that the Owner submitted evidence for each year from 2001 and does not rely on the affidavits alone for any period, in contrast to the Appellant who relies on affidavits as its sole evidence; and

WHEREAS, instead, the Board notes that the Owner relies, in part, on evidence from neutral third-party sources for photographs and records; and

WHEREAS, accordingly, the Board does not need to rely on the affidavits from the Owner and is not persuaded by the Appellant's affidavits which, on their own, are not compelling enough evidence to refute the preferred forms of evidence that the Owner has submitted; and

WHEREAS, as to the question of veracity surrounding certain evidence in light of the Owner's statements to the Manhattan District Attorney, the Board agrees with DOB that those statements were made for a different purpose and in a different forum and, thus, do not have bearing on the evidence submitted to DOB within the Board's process; and

WHEREAS, further, the Board finds that the passages that the Appellant chose may have different meaning when read with the remainder of the statement and that they are not in direct contradiction with other evidence and statements; and

WHEREAS, the Board notes that its analysis is not one of criminal court, taxation, or business practices, but rather involved the review of evidence pursuant to ZR § 52-61; and

WHEREAS, the Board notes that the current Certificate of Occupancy, dated April 6, 1967, permits loading and storage of boiler equipment and non-storage for motor trucks at the first floor and offices at the mezzanine; and

WHEREAS, the Board accepts that a business such as Excellence and the use described on the Certificate of Occupancy is not a conventional commercial business with standard activity and traffic flow; and

WHEREAS, the Board notes that DOB has established guidelines to assess a range of non-conforming uses and finds that the Owner's evidence is relevant to the question of continuity and sufficient, when considered in the aggregate;

and

WHEREAS, the Board notes that it is unclear what amount of activity the Appellant suggests would be required for such work; and

WHEREAS, the Board is not persuaded by the Appellant's reading of Toys 'R' Us that Excellence's operations were inactive to an extent that the continuity was lost; and

WHEREAS, the Board accepts DOB's conclusion that neither the lease to Eastern Effects nor RRPB affects the assessment of continuity; and

WHEREAS, in sum, the Board concludes that the use has been continuous at the site in accordance with ZR § 52-61.

WHEREAS, the Board agrees with DOB's interpretation of ZR § 52-322 and accepts the conclusion that the outdoor use may be converted from Use Group 16 to Use Group 6; and

Therefore it is Resolved that this appeal, challenging a Final Determination issued on October 1, 2013 is *denied*.

Adopted by the Board of Standards and Appeals, August 19, 2014.

92-14-A

APPLICANT – Greenberg Traurig, LLP, for MTS Propco. LPC/Rockpoint Group, LLC, owner.

SUBJECT – Application May 2, 2014 – Variance pursuant to Multiple Dwelling Law Section 310(2)(c) to waive court requirements and legally required windows under MDL Sections 26 and 30 for the construction of a residential addition to an existing hotel . C6-7/C6-6(MID) zoning district.

PREMISES AFFECTED – 790 7th Avenue, West 51st Street, Broadway, West 52nd Street and 7th Avenue, Block 1023, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings Application (“DOB”), dated April 10, 2014, acting on DOB Application No. 121184547 reads, in pertinent part:

The court for the existing transient hotel that is formed by the proposed new building on the same lot is less than the area required; contrary MDL 26;

Legally required windows for the existing transient hotel do not open onto a lawful yard, court, or space above a setback; contrary to MDL 30; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310(2)(c), to permit, on a site located partially within a C6-7 zoning district and partially

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within a C6-6 zoning district, within the Theater Subdistrict of the Special Midtown District, a variance of the court requirements in order to allow the enlargement of the existing building used primarily as a transient hotel, to permit construction of a residential addition, contrary to MDL §§ 26 and 30; and

WHEREAS, a public hearing was held on this application on July 15, 2014, after due notice by publication in *The City Record*, and then to decision on August 19, 2014; and

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

WHEREAS, the subject site is the city block bounded by Broadway, West 52nd Street, Seventh Avenue, and West 51st Street; it is located partially within a C6-6 zoning district and partially within a C6-7 zoning district, within the Theater Subdistrict of the Special Midtown District; and

WHEREAS, the site has 201.04 feet of frontage along Broadway, 170.92 feet of frontage along West 52nd Street, 200.83 feet of frontage along Seventh Avenue, 161.72 feet of frontage along West 51st Street, and 33,410 sq. ft. of lot area; and

WHEREAS, the site is occupied by a four-story base building (the “Podium”), which covers the entire site and contains retail uses (Use Group 6), a parking garage (Use Group 8), and the lobby of the hotel (Use Group 5), which for a portion of the site rises 22 stories; the existing floor area of the site is approximately 358,681 sq. ft. (10.7 FAR); the building was constructed prior to December 15, 1961; and

WHEREAS, the applicant proposes to modify the existing building to enhance the hotel and retail space, and to construct a 49-story residential tower with a building height of approximately 601 feet, 109 dwelling units, and a total residential floor area of 165,533 sq. ft.; and

WHEREAS, the applicant states that the construction of the residential tower will form an L-shaped open area between the tower and the hotel portion of the building; the open area is comprised of two overlapping, rectangular inner courts (as that term is defined in MDL § 4(32)): the court to the west of the hotel will have an area of 2,207 sq. ft. and the court to the south of the hotel will have an area of 2,078 sq. ft.; the combined, overlapping courts (the “Inner Court”) have a total area of approximately 3,832 sq. ft.; and

WHEREAS, the applicant notes that per MDL § 26(7), the maximum required area for an inner court is 1,200 sq. ft.; and

WHEREAS, the applicant states that 230 legally required hotel windows will face the Inner Court, and 169 of the 230 windows will be separated from the residential tower by distance of 20 horizontal feet; and

WHEREAS, the applicant notes that, per MDL § 26(7), within an inner court, a minimum horizontal distance of 30 feet is required between a legally required window and any wall opposite such window; in addition, per MDL § 30(2),

every living room in a multiple dwelling¹ shall have at least one window directly opening onto a street or upon a lawful yard, court, or space above setback located on the same lot as that occupied by the multiple dwelling; as such, with respect to 169 windows, the Inner Court will not be a lawful court, contrary to MDL § 30(2); and

WHEREAS, accordingly, the applicant seeks a variance to provide a horizontal distance of 20 feet instead of 30 feet, as required by MDL §§ 26(7) and 30; and

WHEREAS, pursuant to MDL § 310(2)(c), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings erected or to be erected or altered pursuant to plans filed on or after December 15, 1961, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the existing building at the site was constructed prior to 1961; however, MDL § 310(2)(c) is applicable to the proposal, because it results in a newly-created non-compliance with respect to MDL §§ 26(7) and 30; and

WHEREAS, pursuant to MDL § 310(2)(c) the Board may vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; and (3) minimum dimensions of yards or courts; and

WHEREAS, in varying or modifying the MDL pursuant to MDL § 310(2)(c), the Board must also find that: (i) the open areas for light and ventilation are “at least equivalent in area to those required” under the MDL; (ii) there are unique physical or topographical features, peculiar to and inherent in the particular premises, including irregularity, narrowness or shallowness of the lot size or shape; and (iii) such variance would be permitted under the Zoning Resolution; and

WHEREAS, the Board notes that MDL § 26(7) specifically relates to the minimum dimensions of courts; therefore the Board has the power to vary or modify the subject provision pursuant to MDL § 310(2)(c)(3); and

WHEREAS, the applicant represents that an unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, to demonstrate that strict compliance with the requirements of MDL §§ 26(7) and 30 would cause unnecessary hardships, the applicant examined the following development scenarios: (1) the construction of a residential tower that provides the required 30-foot distance for all hotel windows (the “As-of-Right Tower”); and (2) the construction of a residential tower that provides the required 30-foot distance between the hotel windows and the eastern façade of the tower (80 rooms) and a 20-foot distance between the hotel windows and the northern façade of the tower (the

¹ Pursuant to MDL § 4(9), transient hotels are considered “class B” multiple dwellings; therefore the proposed hotel use must comply with the relevant provisions of the MDL.

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“Alternative Tower”); and

WHEREAS, the applicant represents that the As-of-Right Tower would have a building height of approximately 769 feet (168 feet taller than the proposal) and contain 63 stories and 121 dwelling units; and

WHEREAS, the applicants notes that despite the As-of-Right Tower’s significant increase in height over the proposed tower, it would not utilize 15,015 sq. ft. of available floor area; further, the increased height would require thicker shear walls and additional elevator stops and mechanical systems, at significant cost; and

WHEREAS, the applicant represents that the As-of-Right Tower yields 32,939 fewer sq. ft. of marketable space than the proposal, resulting in a loss of \$96,476,026; accordingly, the applicant concludes that there is a practical difficulty in constructing the As-of-Right Tower; and

WHEREAS, the applicant represents that the Alternative Tower would have a building height of approximately 685 feet (84 feet taller than the proposal) and contain 56 stories and 116 dwelling units; as with the As-of-Right Tower, the Alternative Tower’s increased height would require thicker shear walls and additional elevator stops and mechanical systems, at significant cost; and

WHEREAS, the applicant represents that the Alternative Tower yields 9,903 fewer sq. ft. of marketable space than the proposal, resulting in a loss of \$51,351,966; accordingly, the applicant concludes that there is a practical difficulty in constructing the Alternative Tower as well; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of unnecessary hardship in complying with the requirements of MDL §§ 26(7) and 30; and

WHEREAS, the applicant states that the requested variance of MDL §§ 26(7) and 30 is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, the applicant contends that the primary intent of the court regulations of the MDL is ensure that adequate light and ventilation is provided to rooms in which people spend a substantial amount of time, such as sleeping rooms, living rooms within Class A permanent residential apartments or certain Class B residences, such as dormitories; and

WHEREAS, the applicant asserts that this intent is not substantially furthered by a strict application of the 30-horizontal distance requirement to the subject site; specifically, the applicant states that visitors to the subject hotel—which is in the heart of Times Square—are unlikely to spend a significant amount of time during daylight hours in their hotel rooms; accordingly, it is immaterial to such guests whether light is provided from a space with a distance of 30 feet or 20 feet; further, because the area of the Inner Court is more than twice the maximum required area for a court that complies with the MDL, guests at the subject hotel may receive even more light than guests staying rooms with windows facing minimally compliant courts; and

WHEREAS, the applicant also notes that the 20-foot

horizontal distance provided by the Inner Court is equivalent to the minimum rear yard depth that would be required for a Use Group 5 hotel under the Zoning Resolution; thus, where a transient hotel relies on a yard rather than court for required light and ventilation, such yard is typically no more than 20 feet from the adjoining rear lot line; and

WHEREAS, based on the above, the Board finds that the proposed variance to MDL §§ 26(7) and 30 will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, the applicant states that the open areas for light and ventilation are “at least equivalent in area to those required” under the MDL; and

WHEREAS, as noted above, the applicant asserts that although the minimum distance of the proposed open area is less than required by the MDL, the size of the open area is well in excess of the maximum required area for a court; and

WHEREAS, the Board finds that the proposal provides an equivalent open area for light and ventilation; and

WHEREAS, as to whether there are unique physical or topographical features, peculiar to and inherent in the particular premises, including irregularity, narrowness or shallowness of the lot size or shape, the applicant contends the existing pre-1961 hotel building at the site constitutes a unique physical condition, as that term has been interpreted by the Board; and

WHEREAS, the Board agrees that the existing building at the site constitutes a unique physical condition at the site; and

WHEREAS, finally, the applicant represents and the Board accepts that the proposed MDL variance results in a building that is permitted under the applicable provisions of the Zoning Resolution; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(c) and that the requested variance of MDL §§ 26(7) and 30 is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the DOB, dated April 10, 2014, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction will substantially conform to the plans filed with the application marked, "Received May 2, 2014" ten (10) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB objections related to the MDL;

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

Adopted by the Board of Standards and Appeals, August 19, 2014.

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300-08-A

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

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

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

COMMUNITY BOARD #1Q

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

166-12-A

APPLICANT – NYC Department of Buildings.

OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

23-14-A

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

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

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

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to

September 23, 2014, at 10 A.M., for continued hearing.

ZONING CALENDAR

211-12-BZ

CEQR #13-BSA-008K

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

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

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

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown, and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 27, 2012, acting on Department of Buildings (“DOB”) Application No. 320200117, reads in pertinent part:

Proposed two-family residence (UG-2) in manufacturing zone is contrary to Section 42-10; Prior residential use was discontinued for more than two years and cannot be reestablished, per Section 52-61; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the legalization of an existing three-story, two-family residential building (Use Group 2), contrary to ZR § 42-10; 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 May 12, 2014, and then to decision on August 19, 2014; and

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

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

WHEREAS, the subject site is located on the north side of Coffey Street, between Ferris Street and Conover Street, within an M1-1 zoning district; and

WHEREAS, the site has a width of 25 feet, a depth of 100 feet, a lot area of 2,500 sq. ft.; and

WHEREAS, the site is occupied by a three-story residential building with 3,750 sq. ft. of floor area (1.5 FAR) and two dwelling units; and

WHEREAS, the applicant notes that the building was

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constructed in approximately 1909 and was, as according to its only certificate of occupancy (No. 93555, issued September 13, 1939), previously occupied by six families; and

WHEREAS, the applicant states that the current owner purchased the property in January 2010 and, in January 2011, obtained permits to renovate the building and convert it to a two-family residence; and

WHEREAS, the applicant states that work proceeded under the permits in 2011 and was substantially completed by October 2011, when DOB determined that the permits were issued in error and that the residential use became non-conforming as of December 15, 1961, ceased in October 1977, and was not permitted to resume, per ZR § 52-61; and

WHEREAS, accordingly, the applicant now seeks a use variance to legalize the renovated two-family building; and

WHEREAS, the applicant represents that, per ZR § 72-21(a), the following are unique physical conditions which create unnecessary hardship in developing the site in conformance with applicable regulations: (1) the history of residential use on the site; and (2) the size and narrowness of the site; and

WHEREAS, the applicant states that practical difficulties arise from the historic use of the site for residential purposes; and

WHEREAS, specifically, the applicant states that a residential building has occupied the site for more than 100 years and was recently renovated to reduce the number of dwelling units from six to two; and

WHEREAS, as a result of such renovation, the building is wholly unsuitable for a conforming use, in that it does not have a loading dock, an elevator or a sprinkler system, it has limited floor-to-ceiling heights, and its floors are incapable of carrying the loads imposed by a modern as-of-right (manufacturing or office) use; its mechanical and electrical systems would have to be upgraded as well; and

WHEREAS, the applicant states that, even if the site did not have a history of residential use and even if the building had not been recently redeveloped as a residence, the site's small size and narrowness makes it undesirable for a modern manufacturing use, which requires large, uniform floor plates and wide frontages to accommodate loading; and

WHEREAS, in support of this assertion, the applicant represents that all nearby manufacturing sites have between 65 and 200 feet of lot width compared to the site's width of only 25 feet; and

WHEREAS, as for the feasibility of a commercial use, the applicant states that the site has minimal vehicular and foot traffic and is not marketable for retail or office uses; and

WHEREAS, the Board finds that the site has a combination of unique physical conditions including its history of residential use and its small size and narrowness, which, in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations;

WHEREAS, to satisfy ZR § 72-21(b), in addition to the proposal, the applicant examined the economic feasibility of a building with conforming office and retail uses, and concluded

that only the proposal will result in a reasonable return; and

WHEREAS, based upon its review of the study, the Board agrees that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict conformance with applicable use requirements will provide a reasonable return; and

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

WHEREAS, the applicant states that residential use is predominant along the stretch of Coffey Street where the site is located, despite its M1-1 designation and that the only building without dwellings near the site is a one-story warehouse directly across the street; and

WHEREAS, the applicant notes that neighboring blocks include multiple dwellings, single-family homes, and an array of low- to mid-rise commercial and industrial buildings; and

WHEREAS, the applicant states that an R5 zoning district is only 150 feet from the site, and that most residential buildings along Coffey Street were constructed around the time of the subject building and many have remained occupied throughout the years; accordingly, the proposal, despite being a use variance, would be more consistent with the character of the neighborhood than a conforming use; and

WHEREAS, as to bulk, as noted above, the three-story building has been at the site since the early 1900s and, as such, is similar in appearance and size to the other nearby row houses of a similar vintage; 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 rather a function of the site's historic residential use, narrowness, and small lot size; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 13-BSA-008K, dated July 26, 2012; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site within an M1-1 zoning district, the legalization of an existing three-story, two-family residential building (Use Group 2), contrary to ZR § 42-10; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 27, 2012" – four (4) sheets; and on further condition:

THAT the following are the bulk parameters of the building: a floor area of 3,750 sq. ft. of floor area (1.5 FAR); a maximum building wall height of 31'-6"; and two dwelling units, as indicated on the BSA-approved plans;

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

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

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

THAT 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, August 19, 2014.

311-12-BZ

CEQR #13-BSA-053K

APPLICANT – Eric Palatnik, P.C., for 964 Dean Acquisition Group LLC, owner.

SUBJECT – Application November 19, 2013 – Variance (§72-21) to permit the residential conversion of an existing factory building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 964 Dean Street, south side of Dean Street between Classon and Franklin Avenues, Block 1142, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated October 5, 2012 acting on DOB Application No. 320536997, reads in pertinent part:

Proposed Use Group 2 residential use in an M1-1 zoning district is contrary to Section 42-00 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the conversion of portions of the second, third, and fourth story of an existing four-story manufacturing building to residential use (Use Group 2), contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on December 10, 2013, after due notice by publication in the *City Record*, with continued hearings on April 29, 2014, and July 15, 2014, and then to decision on August 19, 2014; and

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

WHEREAS, Community Board 8, Brooklyn, recommends disapproval of the application; and

WHEREAS, the subject site located on the south side of Dean Street, between Classon Avenue and Franklin Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 78 feet of frontage along Dean Street, 120 feet of lot depth, and approximately 9,350 sq. ft. of lot area; and

WHEREAS, the site is occupied by an four-story manufacturing building with approximately 26,606 sq. ft. of floor area (2.85 FAR); and

WHEREAS, the applicant notes that the building was constructed around the early 20th Century, and has been occupied at various times by a confectionary, a lamp manufacturer, an automobile and electrical parts manufacturer, residential lofts, and a commercial printing company; most recently, portions of the building have been occupied as artists' studios; and

WHEREAS, initially, the applicant proposed to convert the entire building to residential use (26,526 sq. ft. of residential floor area (2.84 FAR) and 13 dwelling units); however, in response to the Board's concerns, the proposal was modified to reflect the conversion of the first story to office use (Use Group 6) and the conversion of the second, third, and fourth stories of the building to residential use (Use Group 2), resulting in a reduction in proposed dwelling units from 13 to nine; and

WHEREAS, thus, the applicant now proposes 7,710 sq. ft. of commercial floor area (0.83 FAR) on the first story

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and a total of 18,522 sq. ft. of residential floor area (1.98 FAR) on the second, third, and fourth stories, for a combined floor area of 26,232 sq. ft. (2.81 FAR); and

WHEREAS, because, per ZR § 42-00, Use Group 2 is not permitted within the subject M1-1 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are the site's unique physical conditions, which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: (1) the existing building's obsolete characteristics; and (2) the site's limited street access; and

WHEREAS, the applicant states that the building is obsolete for its original industrial purpose; as noted above, the building has been occupied by a variety of commercial and manufacturing uses over the years; however, the building is no longer attractive to conforming use on the upper stories in particular due to its relatively small floorplate, column spacing, archaic layout, inadequate ceiling heights, narrow stairwells and elevator, and its lack of loading berth; and

WHEREAS, as to the size of the floorplate, which is approximately 7,720 sq. ft. on the first, second, and third stories, and 3,368 sq. ft. on the fourth story, the applicant provided a land use study, which reflects that nearby manufacturing and warehouse uses have significantly larger floorplates than the subject building; and

WHEREAS, as to the column spacing and layout of the floors, the applicant asserts that the ubiquitous columns hamper the use of the building for as-of-right uses; specifically, for manufacturers, the columns form narrow maneuvering lanes that inhibit the use of trucks, forklifts, pallet jacks, and hand jacks, making the space inefficient and difficult to market; for retailers, the column condition interferes with the presentation of merchandise and reduces the amount of usable floorspace; storage tenants would also find the space unattractive, because they prefer large, open floorplates, which permit the efficient movement of goods within the facility; and

WHEREAS, as to the ceiling heights, the applicant states that ceiling heights vary from 8'-0" to 11'-0"; and

WHEREAS, the applicant asserts that such heights, when combined with the required 1'-6" clearance between sprinkler heads and any manufacturing operations, render the upper stories wholly unsuitable for conforming uses, such as a wholesale showroom, which would typically have a minimum ceiling height of 14'-0" or a warehouse, which would typically have a minimum ceiling height of 25'-0" to allow the stacking of goods on pallets; and

WHEREAS, as to the existing stairwells and elevator, the applicant asserts that they are inadequate to accommodate the material and personnel movement requirements of a conforming use; and

WHEREAS, specifically, the applicant states that the portions of the stairwells are only 3'-5" in width, which is three inches less than the minimum required under the building code for the manual transport of goods and equipment; in addition, the stairs are steeper than is permitted

for a commercial or manufacturing use (but sufficient for residential use); and

WHEREAS, the applicant also states that the existing elevator has a width of 8'-2", a depth of 8'-4", and a maximum capacity of 4,000 lbs.; in contrast, freight elevators for manufacturing buildings often have depths ranging and from 10'-0" to 22'-0" and capacities of approximately 20,000 lbs.; the applicant notes that even if a modern elevator were installed, the existing elevator shaft is too small to accommodate an elevator that would be suitable for manufacturing use; and

WHEREAS, as to the lack of loading berth, the applicant states that whereas a viable manufacturing or warehouse building would have a loading berth with a depth of approximately 45'-0", the subject building has no loading berth and insufficient space to accommodate a loading berth; and

WHEREAS, in addition to the building's lack of loading berth, the applicant also states that the site's limited street access makes the site unsuitable for the delivery of goods by truck, which is required for both manufacturing and warehouse uses; and

WHEREAS, specifically, the applicant states that the site's only frontage is located along Dean Street, which is a narrow, one-way street; as such, trucks would be forced to block vehicular and pedestrian traffic while loading and unloading, which is both inefficient and potentially hazardous; and

WHEREAS, thus, the applicant contends that there are physical conditions that create practical difficulties in using the building and the site for a conforming use; and

WHEREAS, the applicant also contends that such physical conditions are unique, and submitted a land use study in support of that contention; and

WHEREAS, the applicant states that the study examined 29 sites with existing buildings with the subject M1-1 zoning district in the area bounded by Grand Avenue, Atlantic Avenue, Bergen Street, and Franklin Avenue; according to the study, each site had one or more of the following characteristics, which made it distinguishable from the subject site: (1) frontage on a major thoroughfare (rather than a narrow, one-way street); (2) availability of off-street parking (rather than no off-street parking at the site); (3) larger floorplates than the subject building; and (4) lawful non-conforming residential use; and

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

WHEREAS, to satisfy ZR § 72-21(b), the applicant assessed the financial feasibility of three scenarios: (1) an as-of-right office building; (2) a lesser variance with office on the first and second stories and residential on the third and fourth stories; and (3) the proposal; and

WHEREAS, the applicant concluded that only the proposal would result in a sufficient return; and

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WHEREAS, at hearing, the Board directed the applicant to further support its assertion that the subject building was unsuitable for professional office space; and

WHEREAS, in response, the applicant's consultant analyzed 12 nearby office buildings and concluded that each of the 12 was occupied by not-for-profit institutions or government offices; in addition, the majority of buildings studied had a lobby with direct access to the street frontage, which the subject building lacks; as such, the applicant concluded that nearby buildings were not used as professional office space despite having layouts that would be more conducive to professional offices than the subject building; and

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

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

WHEREAS, the applicant represents that the immediate area is characterized by a mix of industrial, commercial and residential uses, with a predominance of residential use, including 69 existing dwelling units within 400 feet of the site and an additional 59 dwelling units approved but not yet constructed; and

WHEREAS, the applicant notes that the subject block is mapped M1-1 only in the mid-block and that R6 zoning districts with commercial overlays are mapped along the eastern (Franklin Avenue) and western (Classon Avenue) sides of the block; and

WHEREAS, as for the immediately adjacent sites, the applicant states that directly east of the site is a three-story warehouse, directly west of the site is a vacant lot used for parking, directly south of the site are two four-story multiple dwellings, and directly north of the site (across Dean Street) is a fenced bus parking lot; and

WHEREAS, as to bulk, the applicant states that although the proposed 2.81 FAR exceeds the maximum permitted FARs in the subject M1-1 district (1.0 FAR for manufacturing uses; 2.4 FAR for community facility uses), the building has existed at the site for nearly 100 years; further, the applicant states that the envelope will not change under the proposal; and

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

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development

of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, likewise, the Board finds, per ZR § 72-21(d), that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, finally, the applicant asserts and the Board agrees that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief, in accordance with ZR § 72-21(e); as noted above, the scope of the use variance was reduced in response to the Board's concerns; 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, Sections 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. 13BSA053K, dated July 8, 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; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an M1-1 zoning district, the conversion of portions of the second, third, and fourth story of an existing four-story manufacturing building to residential use (Use Group 2), contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 13, 2014" – nine (9) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: four stories; a maximum of 7,710 sq. ft. of commercial floor area (0.83 FAR) on the first story and a maximum of 18,522 sq. ft. of residential floor area (1.98 FAR)

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on the second, third, and fourth stories, for a combined maximum floor area of 26,232 sq. ft. (2.81 FAR); a maximum building height of 45'-0"; a minimum rear yard depth of 20'-11"; and a maximum of nine dwelling units;

THAT DOB will review and approve the required light and ventilation for the dwelling units;

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

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

Adopted by the Board of Standards and Appeals, August 19, 2014.

277-13-BZ

CEQR #14-BSA-048M

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for SoBro Development Corporation, owner.

SUBJECT – Application September 27, 2013 – Variance (§72-21) to permit a proposed development of a 12-story, 125 unit residential building with two floors of community facility/church space, contrary to floor area (§23-145), lot coverage (§23-145), and base and building height (§23-633). R7-2 zoning district.

PREMISES AFFECTED – 1769 Fort George Hill, bounded by Fort George Hill to the east an NYCTA No.1 train tracks to the west, Block 2170, Lots 180 & 190, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 18, 2013, acting on DOB Application No. 120024534, reads in pertinent part:

ZR 23-145 – Proposed building exceeds maximum allowable floor area ratio of 4.0 for residential portion;

ZR 23-145 – Proposed lot coverage exceeds maximum allowable lot coverage of 65 percent;

ZR 23-52 – Proposed building does not meet the minimum rear yard requirement;

ZR 23-633 – Proposed building does not comply with the maximum height and setback regulations; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a R7-2 zoning district, the construction of a 12-story mixed residential and community facility affordable housing building that does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, rear yards, and height and setback, contrary to ZR §§ 23-145, 23-52, and 23-633; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, with continued hearings on June 17, 2014, and July 15, 2014, and then to decision on August 19, 2014; and

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

WHEREAS, Community Board 12, Manhattan, recommends disapproval of this application, citing concerns regarding the proposed height, the affordability of the units, and the increased parking demand that will be created by the proposed building; and

WHEREAS, certain members of the surrounding community submitted testimony in opposition to the application (the “Opposition”), citing the following concerns: (1) the proposed height, which the Opposition contends is incompatible with the neighborhood context; (2) the excessive number of studio apartments; (3) the lack of sufficient parking in the neighborhood and the increased parking demand as a result of the proposal; (4) the amount of “green space” to be eliminated in connection with the proposal; (5) the suitability of the bedrock to carry the loads of the proposed building; (6) the risk of harm to persons and property associated with construction near a subway line; (7) the shadows that will be cast by the proposed building; and (8) the lack of affordability of the proposed apartments; and

WHEREAS, the application is brought on behalf of SoBro Development Corporation, the real estate development arm of the South Bronx Overall Economic Development Corporation, a not-for-profit organization, whose stated mission is to enhance the quality of life in the South Bronx by strengthening business and creating innovative economic, housing, educational, and career development programs for youth and adults; and

WHEREAS, the subject site is a narrow, crescent-shaped lot located on the west side of Fort George Hill approximately 155 feet south of the intersection of Nagle Avenue and Fort George Hill, within an R7-2 zoning district; and

WHEREAS, the site comprises Tax Lots 180 and 190, has approximately 456 feet of frontage along Fort George Hill, and 20,444 sq. ft. of lot area; and

WHEREAS, the site is vacant; available records indicate that it has never been developed; and

WHEREAS, the applicant proposes to construct a 12-story mixed residential (Use Group 2) and community facility (Use Group 4) building with 142,195 sq. ft. of floor area (6.97 FAR) (131,848 sq. ft. of residential floor area (6.46 FAR) and

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10,347 sq. ft. of community facility floor area (0.51 FAR)), 73 percent lot coverage, 113 dwelling units, 57 parking spaces, a rear yard depth of 10'-0", and a building height of 146'-1" with no setback; and

WHEREAS, the applicant notes that the proposal is an affordable housing project, with an income range for the dwelling units of 40 percent to 130 percent of area median income, and financing primarily through the New York City Housing Development Corporation, with additional subsidies through the participation of the Department of Housing Preservation and Development, the New York State Energy Research and Development Authority, and Enterprise Community Partners; and

WHEREAS, in order to construct the building as proposed, applicant seeks the following waivers: (1) residential FAR (a maximum residential FAR of 4.0 is permitted, per ZR § 23-145); (2) lot coverage (a maximum residential lot coverage of 65 percent is permitted, per ZR § 23-145); (3) rear yard (a minimum rear yard depth of 15'-0" is required, per ZR § 23-52); and (4) height and setback (a maximum base height of 65'-0" is required with a 10'-0" setback and a maximum building height of 80'-0" is permitted, per ZR § 23-633); and

WHEREAS, the applicant notes that, originally, the proposal included 125 dwelling units (mostly studio and one-bedroom apartments) and only 44 parking spaces, which required a waivers of ZR §§ 23-22 and 25-23; and

WHEREAS, however, in response to concerns raised by the Board, the proposal was amended to provide a complying number of dwelling units and parking spaces; in addition, studio apartments were eliminated entirely from the proposal and the number of two- and three-bedroom apartments were increased; 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 site's irregular shape; (2) its topography; (3) the adjacency of the elevated subway line; (4) its substandard soil composition; and (5) the presence of a transit easement; and

WHEREAS, the applicant states that the site is narrow and has a crescent shape, measuring 620 feet in length and only 46 feet in width at its widest point; and

WHEREAS, the applicant states that, due to the irregularity of the site, a complying building would be an elliptical building with inefficient floorplates and unmarketable unit layouts; in particular, a double-loaded corridor cannot be constructed on the site; and

WHEREAS, further, the applicant states that a complying building would have unusually high façade construction costs in proportion to the amount of floorspace that may be constructed as-of-right; and

WHEREAS, thus, the site's shape makes the construction of a complying building infeasible; and

WHEREAS, the applicant states that the site also has a unique topography; specifically, the applicant represents that the site slopes downward along Fort George Hill from an

approximately elevation of 79 feet at the southern end to an elevation of approximately 37 feet at the northern end; thus, in order to achieve a uniform basement grade, cuts of five to 50 feet are required, at significant cost; and

WHEREAS, the applicant contends that the site is also uniquely burdened by the presence of the No. 1 subway line tracks and platform for the Dyckman Street station along its western boundary; and

WHEREAS, the applicant states that the site for the subway line drops steeply in elevation from the subject site; as such, extraordinary temporary and permanent safety measures are required to safeguard areas around the subway line, including the construction of additional shoring and retaining walls, and the monitoring of vibrations, all at significant cost; and

WHEREAS, in addition, the applicant represents that the site is burdened by substandard soil; and

WHEREAS, specifically, the applicant states that rock outcroppings are visible throughout the site and that a geotechnical investigation (borings and probes) revealed rock quality to be "very poor", with a percent core recovery measurement of 70.0, a rock quality designation value of 0.0, and sound rock located well below weathered rock; accordingly, the applicant contends that the site's substandard soil creates premium foundation costs; and

WHEREAS, the applicant notes that such premium foundation costs are increased furthered by the presence of an MTA easement along the southern boundary of the site, which must remain open and protected in perpetuity; and

WHEREAS, based upon the above, the Board finds that the site's irregular shape, sloping topography, the adjacency to the No. 1 subway line, substandard soil composition, and adjacency to a transit easement, 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 Board also notes that a height factor building, which is available in the subject R7-2, is particularly incompatible with the site, given its unusual shape and shallow depth; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility of development of the site with affordable housing in compliance with the Zoning Resolution; and

WHEREAS, the applicant represents that the site's unique conditions create premium construction costs as follows: (1) \$540,000 for the construction of the perimeter retaining wall; (2) \$405,000 for the construction of the footings for the perimeter retaining wall; (3) \$600,000 for the excavation of hard and soft stone; and (4) \$265,000 for shoring and vibration monitoring; thus, the site's premium construction cost total \$2,023,350; and

WHEREAS, the applicant states that an as-of-right building would have 37 dwelling units at a premium construction cost of approximately \$54,685 per unit; in contrast, the proposed building distributes the premium construction costs over 113 dwelling units, at a cost of

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\$17,909 per unit, making affordable housing at the site feasible; 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 an affordable housing development in strict compliance with applicable zoning requirements is feasible; 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 includes high-density residential buildings, an active commercial district along Dyckman Street, major thoroughfares (the Henry Hudson Parkway, Broadway, and the Harlem River Drive) and parkland (Highbridge Park, Fort Tryon Park, and, further north, Inwood Hill Park); and

WHEREAS, the applicant states that the neighborhood is well-served by public transit, including the No. 1 train and several city bus lines; and

WHEREAS, as to adjacent uses, the applicant states, as noted above, that the site is directly adjacent to the No. 1 train and platform for the Dyckman Street station to the west; south and east of the site are Highbridge Park, and north of the site is the intersection of Nagle Avenue and Fort George Hill; no buildings abut the site, and the nearest building is a four-story utility building that fronts on Hillside Avenue and is separated from the site by the tracks for the No. 1 train; and

WHEREAS, turning to bulk, the applicant states that the proposed 12-story building is contextual with the profile of buildings in the immediate vicinity; while the buildings in the valley west of the train tracks and Nagle Avenue are predominantly five and six stories in height, the four buildings immediately to the south along Fort George Hill are more than 20 stories in height; in addition, there is a cluster of six 14-story buildings northeast of the site along Nagle Avenue; and

WHEREAS, at hearing, the Board: (1) directed the applicant to submit a parking demand analysis; and (2) questioned whether the proposed triple-stacker parking equipment would fit within the cellar; and

WHEREAS, in response, the applicant provided the requested parking demand analysis; in addition, the applicant submitted additional specifications regarding the parking stacker equipment and confirmed that it could be safely operated within the cellar; and

WHEREAS, as to the Opposition and the Community Board's many concerns, the Board notes that three of the major concerns—the height of the building, the parking waiver, and the breakdown of the unit type—were modified during the hearing process; the height was decreased by two stories, the parking waiver was eliminated, and the studio apartments were eliminated; and

WHEREAS, the Board finds that the Opposition's remaining concerns do not form a sufficient basis for the

denial of the variance; as to the amount of "green space" eliminated in connection with the proposal, the Board notes that the proposal complies in all respects with the landscaping and planting requirements of the Zoning Resolution; as to the suitability of the bedrock to carry the loads of the proposed building and the risk of harm to persons and property associated with construction near a subway line, such matters are within the purview of DOB; as to the shadows that will be cast by the proposed building, according to the Phase I environmental site assessment, the proposal does not have a significant adverse impact on shadows; finally, as to the lack of affordability of the proposed apartments, the Board observes that the applicant is a well-established community-based developer of affordable housing and the proposal has garnered support from various city agencies, including the Housing Development Corporation and the Department of Housing Preservation and Development; 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 peculiarities of the site and the applicant's objective to provide affordable housing; 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 a Type I 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. 14-BSA-048M, dated July 19, 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; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions

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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 a R7-2 zoning district, the construction of a 12-story mixed residential and community facility affordable housing building that does not comply with the zoning requirements for FAR, lot coverage, rear yards, and height and setback, contrary to ZR §§ 23-145, 23-52, and 23-633; *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 August 8, 2014”– thirteen (13) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: a maximum of 12-stories, a maximum floor area of 142,195 sq. ft. (6.97 FAR), a maximum residential floor area of 131,848 sq. ft. (6.46 FAR), a maximum of 73 percent lot coverage, 113 dwelling units, a minimum of 57 parking spaces, a minimum rear yard depth of 10’-0”, and a maximum building height of 146’-1” with no setback, 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, August 19, 2014.

299-13-BZ

CEQR #14-BSA-066R

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.

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 8, 2013, acting on DOB Application No. 520160218, reads in pertinent part:

Horizontal enlargement to an existing ambulatory diagnostic or treatment health care facility (Use Group 4) located in an R3A zoning district with existing floor area that is in excess of 1,500 sq. ft. is contrary to Section 22-14(A) of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-126 and 73-03, to permit, on a site within an R3A zoning district, within the Special South Richmond Development District, the combination of two existing ambulatory diagnostic treatment health care facilities (Use Group 4) resulting in 4,047 sq. ft. of floor area, contrary to ZR § 22-14; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in The City Record, with a continued hearing on July 15, 2014, and then to decision on August 19, 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 3, Staten Island, recommends disapproval of this application; and

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

WHEREAS, the subject site is located on the northwest corner of the intersection of Hylan Boulevard and Winchester Avenue, within an R3A zoning district, within the Special South Richmond Development District; and

WHEREAS, the site, which comprises Tax Lots 37, 39, and 41, has 120 feet of frontage along Hylan Boulevard, 104 feet of frontage along Winchester Avenue, and 12,741 sq. ft. of lot area; and

WHEREAS, the applicant states that the site is occupied by three buildings; Lot 37 is occupied by a one-story, single-family home with 948 sq. ft. of floor area; Lot 39 is occupied by a one-story community facility building (medical office) with 2,989 sq. ft. of floor area; Lot 41 is occupied by a two-story mixed residential and community facility building (medical office) with 2,287 sq. ft. of floor area (1,194 sq. ft. of residential floor area and 1,093 sq. ft. of community facility floor area); thus, the site has a total existing floor area of 6,233 sq. ft. (0.49 FAR)(2,142 sq. ft. of residential floor area (0.17 FAR) and 4,081 sq. ft. of community facility floor area (0.32 FAR)); and

WHEREAS, the applicant notes that in 2011, a breezeway was constructed without a permit between the buildings on Lots 39 and 41; and

WHEREAS, the applicant proposes to demolish the 948 sq.-ft. home on Lot 37, remove approximately 397 sq. ft. of floor area from the building on Lot 39, and enclose and extend the existing breezeway, resulting in the introduction of approximately 363 sq. ft. of floor area, for a net decrease

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in community facility floor area of 34 sq. ft. and a decrease in the total floor area on the lot from 6,233 sq. ft. (0.49 FAR)(2,142 sq. ft. of residential floor area (0.17 FAR) and 4,081 sq. ft. of community facility floor area (0.32 FAR) to 5,242 sq. ft. (0.41 FAR) (1,194 sq. ft. of residential floor area (0.09 FAR) and 4,048 sq. ft. of community facility floor area (0.32 FAR)); and

WHEREAS, the applicant also states that 11 accessory parking spaces will also be provided on the site; and

WHEREAS, the applicant notes that in the subject R3A zoning district, which also within a Lower Density Growth Management Area, an ambulatory diagnostic or treatment facility is limited to 1,500 sq. ft. of floor area, pursuant to ZR § 22-14; however, pursuant to ZR § 73-126, the Board may permit an ambulatory diagnostic or treatment health care facility with maximum floor area of 10,000 sq. ft., provided that: (a) the amount, type, and distribution of open area on the zoning lot are compatible with the character of the neighborhood; (b) the distribution of bulk on the zoning lot will not unduly obstruct access of light and air to adjoining properties or streets; and (c) the scale and placement of the building on the zoning lot relates harmoniously with surrounding buildings; and

WHEREAS, the Board notes that other than the increase in floor area beyond 1,500 sq. ft. authorized by the special permit, the ambulatory diagnostic or treatment health care facility must comply with all zoning parameters of the underlying district; and

WHEREAS, the applicant states that, aside from the requested increase in community facility floor area, the proposal complies in all respects with the zoning parameters of the subject R3A zoning district; and

WHEREAS, the applicant also states that the proposed building will have 4,048 sq. ft. (0.41 FAR) of community facility floor area, which is significantly less than the maximum permitted under the special permit (10,000 sq. ft.); and

WHEREAS, turning to the ZR § 73-126 findings, the applicant contends that the proposal's the amount, type, and distribution of open area on the zoning lot are compatible with the character of the neighborhood; and

WHEREAS, the applicant asserts that the site's proposed open area entirely compatible with the character of the neighborhood and will be significantly increased under the proposal, as noted above; and

WHEREAS, as to the distribution of bulk on the zoning lot and its impacts on the light and air of adjoining properties or streets, the applicant contends that the proposal has no impact on adjoining properties, and provides more light and ventilation than the existing condition; and

WHEREAS, the applicant also states that the proposal includes a significant decrease in floor area and the removal of an entire building and a portion of another, which will enhance the light, ventilation, and privacy of the neighboring residences on Lots 31, 32, 33, and 43; and

WHEREAS, as to the harmoniousness of the building with the surrounding buildings in terms of scale and

placement on the site, the applicant states that, as noted above, the building complies in all respects with the bulk regulations regarding FAR, height, yards, lot coverage, and parking; the applicant also notes that the perimeter of the site adjoining residences will be landscaped, creating an appropriate buffer between the community facility parking areas and the residential uses; and

WHEREAS, at hearing, the Board directed the applicant to remove a non-complying awning sign and to include a note on the proposed plans that lighting will be directed down and away from adjoining residences; and

WHEREAS, in response, the applicant stated that the awning will be removed entirely; the applicant also submitted amended plans that include the note about lighting; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-126; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the Board also finds that the proposal will not interfere with the renovation of the adjacent fire station, and will otherwise 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 requisite findings pursuant to ZR § 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 14BSA066R, dated October 31, 2013; and

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

WHEREAS, the Board has determined that the operation of the facility 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

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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 ZR §§ 73-125 and 73-03, to permit, on a site within an R3A zoning district, within the Special South Richmond Development District, the combination of two existing ambulatory diagnostic treatment health care facilities (Use Group 4) resulting in 4,047 sq. ft. of floor area, contrary to ZR § 22-14; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 22, 2014" – Eight (8) sheets; and *on further condition*:

THAT the parameters of the building shall be as follows: a maximum total floor area of 5,242 sq. ft. (0.41 FAR), a maximum residential floor area of 1,194 sq. ft. (0.09 FAR), a maximum community facility floor area of 4,048 sq. ft. (0.32 FAR), a maximum lot coverage of 22.6 percent, and 11 parking spaces, as reflected on the BSA-approved plans;

THAT the canopy attached to the building will be removed upon commencement of the proposed construction;

THAT all landscaping will be provided and maintained in accordance with the approved plans;

THAT lighting for the parking areas and signage will be in accordance with the approved plans;

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, August 19, 2014.

3-14-BZ

CEQR No.14-BSA-096M

APPLICANT – Friedman & Gotbaum LLP by Shelly Friedman, for Saint David School, owner.

SUBJECT – Application January 8, 2014 – Variance (§72-21) to permit the enlargement of a school (*Saint David's School*), contrary to lot coverage (§24-11, 24-12), floor area (§24-11), rear yard (§24-36), rear wall setback (§24-552b), base height (§24-522, 24-633), streetwall (§23-692c, 99-051b), maximum height (§99-054b), and enlargement to a non-complying building (§54-31) regulations. R8B/R10/C1-5MP zoning district.

PREMISES AFFECTED – 12-22 East 89th Street aka 1238 Madison Avenue, south side of East 89th St, west of the corner formed by the intersection of Madison Avenue and East 89th Street, Block 1500, Lot 62, Borough of

Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 26, 2013, acting on Department of Buildings Application No. 121532608, reads in pertinent part:

1. ZR 24-11 & ZR 24-12: Proposed enlargement of a building in R8B and R10/C1-5(MP) zoning districts increases the extent of noncomplying lot coverage as per ZR 24-11 and ZR 24-12.
2. ZR 24-11: Proposed enlargement of a building in R8B zoning district exceeds the maximum permitted floor area as per ZR 24-11.
3. ZR 24-36: Proposed enlargement of a building in a rear yard in R8B and R10/C1-5(MP) zoning districts increases the extent of rear yard non-compliance over 23 feet above curb level as per ZR 24-36.
4. ZR 24-552(b): Proposed enlargement of a noncomplying rear wall without providing a rear wall setback on a building in R8B zoning district increases the extent of rear wall setback non-compliance as per ZR Sec. 24-552(b).
5. ZR 24-522 & 23-633: Proposed addition of penthouse to a building in R8B and R10/C1-5(MP) zoning districts exceeds permitted maximum base height of a street wall, front setback regulations and building height as per ZR 24-522(a) and ZR 23-633.
6. ZR 23-692(c): Proposed addition of a penthouse to a portion of a building with a street wall of less than 45 feet located in an R10/C1-5(MP) district on a corner lot bounded by at least one wide street exceeds maximum permitted building height as per ZR Sec. 23-692(c).
7. ZR 99-051(b): Proposed addition of a penthouse to a portion of a building with frontage on a side street in a R10/C1-5(MP) district increases the extent of the noncomplying street wall and setback regulations as per ZR 99-051(b).
8. ZR 99-054(b): Proposed enlargement to a building in a R10/C1-5(MP) district increases the extent of noncomplying maximum building height as per ZR 99-054(b).
9. ZR 54-31: Proposed enlargement to a

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noncomplying building increases the extent of non-compliances and creates new non-compliance in both R10 and R8B district, contrary to ZR 54-31; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R10/C1-5 zoning district within the Special Madison Avenue Preservation District (MP) and partially within an R8B zoning district, within the Carnegie Hill Historic District, the proposed conversion and enlargement of two existing buildings, that does not comply with zoning parameters for rear yard, lot coverage, maximum base height and building height, front and rear setback and floor area, contrary to ZR §§ 24-11, 24-12, 24-36, 24-552, 23-633, 23-692, 99-051, 99-054, and 54-31; and

WHEREAS, the application is brought on behalf of the St. David's School (the "School"), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on May 6, 2014, after due notice by publication in the *City Record*, with a continued hearing on June 17, 2014, and then to decision on August 19, 2014; and

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

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

WHEREAS, Carnegie Hill Neighbors and CIVITAS provided testimony in support of the proposal; and

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

WHEREAS, certain neighbors testified in opposition to the application, including residents of the building at 19 East 88th Street who were represented by counsel; and

WHEREAS, those in opposition to the project are collectively, the "Opposition"; and

WHEREAS, the Opposition's primary concerns are that: (1) the School has read the case law on educational deference too broadly and that there are greater limitations on such uses, including that a unique condition be established; (2) the School has failed to establish programmatic needs; (3) the request does not constitute the minimum variance as the height could be reduced if a sub-cellar level were added to accommodate uses that increase the height; (4) the School has created its own hardship by setting a construction schedule only during summer months so as not to inconvenience school operations; (5) architectural and engineering analyses establish that alternative designs, including the inclusion of a sub-cellar level, are feasible; and (6) the School's light and noise from rooftop mechanicals will affect the adjacent residents; and

WHEREAS, the site consists of the Graham House (18-22 East 89th Street a/k/a 1236 Madison Avenue), a former residential hotel purchased by the School in 1972; and three townhouses (12, 14 and 16 East 89th Street) (the "Townhouses") presently housing the School; together,

these four buildings constitute the School's East 89th Street Campus, identified as Lot 62; and

WHEREAS, the School proposes to (1) re-use and convert the Graham House to allow full integration into the East 89th Street Campus; (2) enlarge the townhouse at 16 East 89th Street (the "Townhouse"); and (3) renovate the interiors of the Townhouses; and

WHEREAS, the site is located on the southwest corner of East 89th Street and Madison Avenue, with a total lot area of 15,910 sq. ft., 213.83 feet of frontage on East 89th Street and 25.71 feet of frontage on Madison Avenue; and

WHEREAS, the site is located partially within an R10/C1-5 (MP) zoning district (4,446 sq. ft. or 28 percent) and partially within an R8B district (11,464 sq. ft. or 72 percent); and

WHEREAS, none of the four existing School buildings, built between 1890 and 1920, complies with the Zoning Resolution; specifically, with respect to floor area, FAR, lot coverage, rear yard, front and rear setback, base height and building height in the R8B portion of the zoning lot and with respect to the building height and front wall height and front setbacks in the R10 portion of the zoning lot; and

WHEREAS, further, approximately 33,912 sq. ft. (7.63 FAR) of the existing East 89th Street Campus' 94,105 sq. ft. of floor area is located in the R10/C1-5 (MP) portion of the zoning lot and 60,193 sq. ft. (5.25 FAR) is located in the R8B portion of the zoning lot; and

WHEREAS, the applicant has identified the following existing non-compliances in the R8B zoning district: (1) lot coverage in excess of the 70 percent permitted by ZR § 24-11; (2) floor area (60,193 sq. ft.) and FAR (5.25) in excess of the maximum permitted (58,466 sq. ft. and 5.1 FAR for community facilities by ZR § 24-11); (3) a noncomplying rear yard with a depth of 4.2 feet for the Graham House (a minimum rear yard depth of 30 feet is required above the first story pursuant to ZR § 24-36; (4) a base height of 81.25 feet (the maximum permitted base height is 60 feet on East 89th Street, a narrow street, pursuant to ZR § 24-522(b), 23-633(b)); (5) the absence of a rear setback of ten feet above the maximum base height of 60 feet (ZR §§ 24-552(b), 23-633); (6) the absence of a rear setback of 15 feet above the maximum base height of 60 feet on East 89th Street, a narrow street (ZR § 23-633); and (7) a height of 81.25 feet (a maximum height of 75 feet is permitted (ZR §§ 24-522, 23-633); and

WHEREAS, the applicant has identified the following existing non-compliances in the R10/C1-5 (MP) zoning district: (1) lot coverage in excess of the 75 percent permitted by ZR § 24-11 within the corner lot portion of the zoning lot; (2) a side yard with a width of 1.5 feet (if a side yard is provided, it must have a width of at least eight feet, pursuant to ZR § 24-35); (3) the base height of 81.25 feet (a maximum base height of 60 feet is permitted on East 89th Street, a narrow street, beyond 50 feet of the intersection, pursuant to ZR § 99-051(b)); (4) the Graham House does not provide the required setback of 15 feet above the

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maximum base height of 60 feet on East 89th Street, a narrow street, and does not provide the required setback of ten feet from Madison Avenue, a wide street (ZR § 99-051(b)(3)); (5) the height of 81.25 feet exceeds the maximum height limitation of 80 feet for narrow buildings on Madison Avenue, a wide street, and within 70 feet of Madison Avenue on East 89th Street (Midblock Transition Portion), a narrow street (ZR §§ 99-053, 23-692; and (6) portions of the 81.25-ft. existing east wing of Graham House exceed the maximum building height defined by an inclined plane between 80 and 120 feet within the Midblock Transition Portion of Madison Avenue Preservation District (ZR § 99-054(b)); and

WHEREAS, the proposal triggers the following variance request: within the R8B zoning district: (1) lot coverage of 79.45 percent above the first floor for an interior zoning lot (70 percent is the maximum permitted); (2) a floor area of 63,493 sq. ft. (5.54 FAR) (58,466 sq. ft. (5.10 FAR) is the maximum permitted); (3) the absence of a rear yard (a rear yard with a minimum depth of 30 feet is required above the first story); (4) the absence of a rear setback of ten feet above the maximum rear wall height of 60 feet; (5) a setback with a depth of two feet from East 89th Street for the Penthouse (a setback with a depth of 15 feet from the front wall is required to be provided above a maximum front wall height of 60 feet, an increase in the height of Graham House's East 89th frontage by 11 feet and total height of the Graham House by 17.25 feet, an increase in the townhouse height by 11 feet (a maximum building height of 75 feet is permitted); and (6) proposed enlargement to the non-complying Graham House and Townhouse increases the extent of existing non-compliances, contrary to ZR § 54-31; and

WHEREAS, additionally, within the R10/C1-5 (MP) zoning district, the proposal triggers the following variance requests: (1) the elimination of the non-complying side yard and the existing rear yard in the design of the proposed West Replacement Wing will result in an increase of lot coverage non-compliance for the upper 12.66 feet volume of the second story (between 23 feet and 35.66 feet above grade); (2) the building height of narrow buildings is limited to 80 feet on Madison Avenue, a wide street, and within 70 feet of Madison Avenue on East 89th Street, a narrow street, within the Midblock Transition Portion of Madison Avenue Preservation District, maximum building height is defined by an inclined plane between 80 and 120 feet, the addition of the Penthouse will increase the degree of the existing building's non-compliance with the building height limitations and increase the extent of non-compliance with the height limitations for the enlargement of narrow buildings on both Madison Avenue, a wide street, and East 89th Street, a narrow street, and increase of the non-complying building height from 81.25 to 98.5 feet; (3) the Penthouse does not provide a set back with a depth of 15 feet and thus increases the extent of the front wall's existing non-compliance; (4) full lot coverage at the rear lot line rather than the 30 feet required, however the building out of

the existing sub-standard side yard eliminates that existing non-compliance; and (5) proposed enlargement to the non-complying Graham House increases the extent of existing non-compliances, contrary to ZR § 54-31; and

WHEREAS, the School proposes to demolish all floors of Graham House while retaining and restoring the historically significant Madison Avenue and East 89th Street façades and only as much of the remaining walls, foundation and structure as necessary to maintain the façades' structural integrity; and

WHEREAS, the applicant states that the new construction will replace the demolished area by splitting it into two replacement wings, an East Replacement Wing and a West Replacement Wing; and

WHEREAS, the East Replacement Wing, which is six stories with a mezzanine and penthouse, represents the narrow rectangle of the reconstructed Graham House with a width equal to the zoning lot's 25.71 feet Madison Avenue frontage, with an East 89th Street frontage with a footprint of 1,928.25 sq. ft.; the West Replacement Wing, which is six stories with a mezzanine and penthouse, represents the remainder of Graham House, a 100.71-ft. by 63.83-ft. rectangle with a footprint of 6,428.32 sq. ft. and a 4.2-ft. rear yard above the second story; and

WHEREAS, additionally, the School proposes to add a penthouse to Graham House beginning (the "Penthouse") and a small enlargement to the townhouse (the "Townhouse Addition"); and

WHEREAS, further, the Townhouses will undergo interior renovations under the same permits and as part of the same zoning lot; and

WHEREAS, because of the aforementioned noncompliance, the School seeks a variance; and

WHEREAS, the applicant represents that the waivers are sought to enable the School to construct a facility that meets its programmatic needs; and

WHEREAS, the School identifies the following primary programmatic needs: (1) to consolidate all buildings to the East 89th Street Campus by relocating the off-site physical education program; and (2) to overcome the practical administrative difficulties, including scheduling and space assignments, and programmatic hardships, including curriculum development and teaching, of the current facilities through a comprehensive conversion of Graham House and redevelopment of the Townhouses that will produce a single campus with sufficient facilities, necessary academic adjacencies and required interconnectivity between students and faculty; and

WHEREAS, the School notes the specific needs associated with the requested bulk waivers: (1) filling in the deep non-complying court which bisects the Graham House and the non-complying side yard allows for a viable footprint which eliminates unnecessary travel corridors, and provides space and adjacencies that address the School's educational requirements; (2) 3,300 sq. ft. of additional floor area in the R8B portion of the site allows the School to fill in the deep court on each floor and to relocate program space from areas

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of the Townhouses not formerly included in floor area calculation; (3) the proposed relocation of the rear wall at the ground and second floors to the south property line is required to successfully lay out the auditorium that will be located on the second floor; (4) the increase in the extent of the existing rear yard noncompliance caused by increasing the height of the existing rear wall by 17.25 feet is necessary to support the volume required for the gymnasium proposed on the sixth and penthouse floors; (5) the continuation and increase of the current rear wall setback non-compliance within the R8B portion of the zoning lot is necessary to support the volume required for the gymnasium, the ceiling height of which would be significantly impacted by the resulting complying internal setback; and (6) the two penthouses provide essential ancillary physical education functions adjacent to the large gymnasium, providing training spaces and storage space, they are essential to the physical education program and their location adjacent to gymnasium and lockers is important to the educational time management goals of the School; and

WHEREAS, the School also identifies the following physical conditions of the lot and existing buildings which lead to a hardship: (1) the irregularly-shaped zoning lot is split over two zoning districts, is subject to both corner and interior lot regulations and is further subject to special purpose district regulations which produce conflicting bulk restrictions incompatible with the use of the zoning lot for educational purposes; and (2) the existing buildings have existing non-compliance which would not allow for any enlargement without increasing the degree of non-compliance;

WHEREAS, further, the School notes its location within the Carnegie Hill Historic District, which requires Landmarks Preservation Commission approval which included the requirement to preserve historic architectural elements and led to the increase in the extent of non-compliance in order to accomplish its programmatic objectives; and

WHEREAS, the applicant analyzed two as-of-right alternatives: (1) the rebuilding of Graham House from within without generating new bulk non-compliance or increasing the degree of existing non-compliance and (2) the reduction in the building envelope to comply with building height, lot coverage, and rear yard requirements; and

WHEREAS, as to the first alternative, the applicant states that due to the interlocking current non-compliances regarding height and setback, yards and lot coverage in both the R10/C1-5 and R8B portions of the zoning lot, and the FAR and floor area non-compliances in the R8B portion, the resulting building therefore substantially duplicates the existing footprint and massing; and

WHEREAS, the applicant states that the retention of the deep court above the first floor requires extensive corridors to circumnavigate the court on all floors and the footprints of the existing court and the corridors that must be provided to pass around it represent the floor area lost for School use; and

WHEREAS, the applicant asserts that this is not simply a matter of shrinking rooms and spaces from the plan as proposed, it is the elimination of important new program spaces altogether whose minimal footprints cannot be located

within the as-of-right alternative, which cannot accommodate both the auditorium and the large gymnasium and, thus, will require continuation of the scheduling and administrative burdens associated with converting space functions continuously throughout the day; and

WHEREAS, the first alternative also cannot provide for critical adjacencies among the classrooms, division homerooms, school-wide functions, administrative services and faculty offices and results in reduction or elimination of academic and support space on each floor; and

WHEREAS, the applicant asserts that the second alternative would require combining the auditorium and gymnasium into a single space which compounds the current scheduling conflicts that exceed the School's ability to accommodate all needs within even an extended eight to ten-hour school day; and

WHEREAS, finally, the applicant notes that the proposal is influenced by the substantial amount of rock under the current Graham House building; and

WHEREAS, the applicant submitted engineering reports with soil borings that confirm the existence of rock as shallow as 1.75 feet below the Graham House cellar slab; and

WHEREAS, the applicant states that the impractical construction means and methods that the School would need to excavate below Graham House caused the School at a very early stage in its planning to abandon any thought of excavation as a matter of programmatic necessity due to cost and increased construction time; and

WHEREAS, the applicant states that as a non-profit educational institution, the Board must grant deference to the School and allow it to rely on its programmatic needs to form the basis for its waiver requests; the applicant cites to the decisions of New York State courts in support of its claim that the school warrants deference; and

WHEREAS, specifically, the applicant cites to Pine Knolls Alliance Church v. Zoning Board of Appeals of the Town of Moreau, 6 N.Y.3rd 407 (2005); the Pine Knolls court stated as follows:

In assessing a special permit application, zoning officials are to review the effect of the proposed expansion on the public's health, safety, welfare or morals, concerns grounded in the exercise of police power, "with primary consideration given to the over-all impact on the public welfare" (Trustees of Union College, 91 N.Y.2d at 166). Applications may not be denied based on considerations irrelevant to these concerns.

We made clear in Cornell University that it is not the role of zoning officials to second-guess expansion needs of religious and educational institutions; and

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that the School, as a nonprofit New York State chartered educational institution, may rely on its programmatic needs, which further its mission, as a basis for the requested waivers; and

WHEREAS, as noted by the applicant, under well-

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established precedents of the courts and this Board, applications for variances that are needed in order to meet the programmatic needs of non-profit institutions, particularly educational and religious institutions, are entitled to significant deference (see, e.g., Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986)); and

WHEREAS, the Board observes that such deference has been afforded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its submissions; and

WHEREAS, the applicant states that the School has adopted a strategic plan to renovate and reuse its buildings in more effective ways; and

WHEREAS, the applicant states that based on an extensive review of its facilities and operations, the School concluded that the proposal was the most efficient and effective use of its educational programmatic space; and

WHEREAS, the applicant concludes that bulk relief is required to meet the School's programmatic needs and the design imperatives of the historic buildings; and

WHEREAS, the Board finds that the proposal has been designed to be consistent and compatible with adjacent uses and with the scale and character of the surrounding neighborhood and is, therefore, consistent with the standard established by the decision in Cornell; and

WHEREAS, the Board concurs that the waivers will facilitate construction that will meet the School's articulated needs; and

WHEREAS, in sum, the Board concludes that the applicant has fully explained and documented the need for the waivers to accommodate the School's programmatic needs; and

WHEREAS, the Board also acknowledges the hardship associated with the physical constraints of the buildings, which are approximately a century old, and developing the site with historic pre-existing bulk non-compliance; and the interest in preserving and respecting the buildings' historic fabric; and

WHEREAS, the Opposition argues that the applicant has failed to make the finding set forth at ZR § 72-21(a) because: (1) the site does not suffer a unique hardship and programmatic needs cannot be substituted as a basis for the requested waivers; and (2) there are negative impacts to the public welfare which are not outweighed by the proposal's benefits; and

WHEREAS, as to the absence of uniqueness, the Opposition contends that the applicant cannot satisfy the finding set forth at ZR § 72-21(a) because the Zoning Lot is not subject to a unique physical condition which creates a hardship; and

WHEREAS, the Opposition also argues that the School is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under Cornell because the negative impacts of the proposal outweigh the public benefits; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, and other

evidence, provide the required specificity concerning its programmatic space requirements, establish that the requested variances are necessary to satisfy its programmatic needs consistent with Cornell, and that the Opposition has failed to establish that any potential negative impacts either meet the threshold set forth by the courts or outweigh the benefits; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals for religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

WHEREAS, the Board finds that the Opposition misapplies the guiding case law; and

WHEREAS, as to the guiding case law on educational deference, the Board disagrees with the Opposition and finds that the courts place the burden on opponents of a project to rebut the presumption that an educational institution's proposal is beneficial unless it is established to have an adverse effect upon the health, safety, or welfare of the community; the Board notes that courts specifically state that general concerns about traffic and disruption of the residential character of a neighborhood are insufficient basis for denying a request (see Westchester Reform Temple v. Brown, 22 N.Y.2d 488 (1968), Cornell, and Pine Knolls); and

WHEREAS, the Board also does not find any basis for the Opposition's assertion that the School must adopt an alternative in light of the fact that the Board finds the School's programmatic need for the requested waivers to be credible; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see Guggenheim Neighbors v. Bd. of Estimate, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also Jewish Recons. Syn. of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

WHEREAS, furthermore, a zoning board may not wholly reject a request by an educational institution, but must instead seek to accommodate the planned use; (see Albany Prep. Charter Sch. v. City of Albany, 31 A.D.3rd 870 (3rd Dep't 2006); Trustees of Union Col. v. Schenectady City Cnl., 91 N.Y.2d 161 (1997)); and

WHEREAS, the Board finds that the Opposition's position is contrary to the decisions of New York State courts and contrary to the Board's many variances for educational institutions which have either been upheld by New York State courts or remain unchallenged; and

WHEREAS, in sum, the Board has reviewed the Opposition's submissions, as well as the applicant's responses, and finds that the Opposition has failed to rebut the applicant's substantiated programmatic need for the proposal or to offer evidence, much less establish, that it will negatively impact the health, safety, or welfare of the surrounding community in the sense the courts envision; and

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WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that School's programmatic needs create an unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a nonprofit institution and each of the required waivers are associated with its educational use and are sought to further its non-profit educational mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant asserts that the noted bulk waivers will not alter the essential neighborhood character, impair the use or development of adjacent property, nor be detrimental to the public welfare; and

WHEREAS, the applicant represents that the proposal is compatible with nearby uses and that the Three Townhouses at the site have been used continuously for school purposes since 1963; and

WHEREAS, the applicant asserts that the variances requested are primarily to allow minor modifications of existing non-compliances inherent in the existing historic buildings and will only alter the visible built environment on the East 89th Street Campus in only the following respects: (1) the Penthouse on Graham House, is set back 34.85 feet off Madison Avenue to reduce its visibility, increases the roof height along the length of the Graham House's East 89th Street façade by only 11 feet to a height that is actually lower than the overall building height on the zoning lot; (2) an 866-sq.-ft. continuation of the Penthouse on Graham House, also with a height of 11 feet, added to the rear of the 16 East 89th Street Townhouse as the Townhouse Addition; (3) the rear portion of Graham House will be replaced with a distinctive new structure, eliminating a non-complying side yard, and a partially non-complying court and partially increasing the extent of the existing noncomplying rear yard; and (4) the original architectural features on Graham House will be restored and unattractive fire escapes on the rear and front elevations, will be removed in accordance with LPC approvals; and

WHEREAS, in response to comments from the Board, the applicant revised the original proposal to maintain the existing 4.2-ft. rear yard above the second story; and

WHEREAS, the applicant states that upon completion of construction, the envelope of the East 89th Street Campus will be nearly identical to the historic conditions; and

WHEREAS, further, the applicant notes that the remaining portion of Graham House's east elevation (as seen over the Madison Avenue commercial buildings) will be rebuilt with a new LPC-approved elevation that is supported by Community Board 8 and Carnegie Hill Neighbors, with a massing substantially unchanged but for extending the first and second floors 4.2 feet to the rear lot line and creating a setback above the second floor at a height of 35.66 feet; and

WHEREAS, the applicant notes that the visible and unattractive existing ground-to-roof external fire escapes that now almost fully occupy the 4.2-ft. rear yard will be

eliminated; and

WHEREAS, the applicant notes that the north elevation - the historic East 89th Street street walls of Graham House and the Townhouses - remains largely unchanged except for restoration work on the Graham House façade, the introduction of ground floor doors essential for School egress and the construction of the New Penthouse and Townhouse Addition; and

WHEREAS, further, the applicant states that the penthouses and the re-configured mechanical equipment are set back from the street wall and significantly not visible; and

WHEREAS, the applicant notes that the floor area on the zoning lot is being increased by only 3,763 sq. ft., or 4 percent; and

WHEREAS, the applicant asserts that the block has a mixed use character with five institutions on the north and south sides of East 89th Street between Madison and Fifth avenues; and

WHEREAS, the applicant notes that on the south side, Saint David's, including Graham House, occupies four buildings, or approximately 51 percent of the running length of the block; a residential rental building occupies the tax lot to the west, with a frontage that is approximately 22 percent of the running length; and the new annex to the Guggenheim Museum and the original Frank Lloyd Wright building complete the block; and

WHEREAS, the applicant states that institutional uses occupy 78 percent of the southern side of the street and on the northern side of the street, the National Academy of Design Museum and School, Trevor Day School and the NYC Road Runners Club occupy 40 percent of the frontage and two residential buildings occupy the rest; and

WHEREAS, additionally, at Fifth Avenue, the entire East 88th/89th block frontage is occupied by the Guggenheim Museum and half of the East 89th/90th block frontage is occupied by the Church of the Heavenly Rest; and

WHEREAS, finally, there are additional institutions two blocks further to the north such as the Smithsonian, Spence School, Convent of the Sacred Heart School, the Russian Consulate, Nightingale-Bamford School and the Jewish Museum; and

WHEREAS, because the site is within the Carnegie Hill Historic District, the applicant obtained approval from the Landmarks Preservation Commission ("LPC") by a Certificate of Appropriateness issued July 22, 2014 (when approving the revised proposal); and

WHEREAS, the applicant states that the proposed facility will result in no significant impacts to traffic or parking in the area because the current well-established number of students and faculty using the buildings will be maintained; and

WHEREAS, based upon the above, the Board finds that the subject variances will not alter the essential character of the surrounding neighborhood, impair the appropriate use and development of adjacent property, or be

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detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is created by its programmatic needs in connection with the physical constraints of buildings built approximately a century ago, which have pre-existing non-complying bulk conditions which constrain any development; and

WHEREAS, the applicant concludes, and the Board agrees, that the practical difficulties and unnecessary hardship that necessitate this application have not been created by the School or a predecessor in title; and

WHEREAS, the applicant states that the requested bulk waivers represent the minimum variance necessary to allow the School to meet its programmatic needs; and

WHEREAS, the applicant analyzed two lesser scenario schemes, one in which the majority of the rear wall was maintained and one that seeks approval of the height increase and addition of the Penthouse and Townhouse Addition; and

WHEREAS, the applicant concluded that neither alternative can accommodate the School's programmatic needs; and

WHEREAS, however, the School did revise its proposal at the Board's direction to maintain the existing 4.2-ft. rear yard above the second story; and

WHEREAS, the Board therefore finds that the requested waivers represent the minimum variance necessary to allow the School to meet its programmatic needs; and

WHEREAS, accordingly, based upon its review of the record and its site visits, the Board finds that the applicant has provided sufficient evidence to support each of the findings required for the requested variances; 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 and has identified and considered relevant areas of environmental concern about the project documented in the Final Environmental Assessment Statement (EAS) CEQR No.14-BSA-096M, dated January 8, 2014; and

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

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

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

Therefore it is Resolved that the Board of Standards

and Appeals issues a Type I 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 § 72-21 and grants a variance to permit, on a site partially within an R10/C1-5 zoning district within the Special Madison Avenue Preservation District (MP) and partially within an R8B zoning district, within the Carnegie Hill Historic District, the proposed conversion and enlargement of two existing buildings, that does not comply with zoning parameters for rear yard, lot coverage, maximum base height and building height, front and rear setback and floor area, contrary to ZR §§ 24-11, 24-12, 24-36, 24-552, 23-633, 23-692, 99-051, 99-054, and 54-31; *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 August 14, 2014" – twenty-one (21) sheets; and *on further condition*:

THAT the proposed buildings will have the following parameters: (1) floor area of 63,493 sq. ft. (R8B zoning district) and 33,577 sq. ft. (with an additional 798 sq. ft. for commercial use) (R10/C1-5 (MP) zoning district); (2) an FAR of 5.54 (R8B zoning district) and 7.55 (with an additional 0.18 FAR for commercial use) (R10/C1-5 (MP) zoning district), (3) a maximum lot coverage of 79.45 percent (R8B zoning district); (4) a maximum wall height of 81.25 feet and total height of 98.5 feet; and (5) all yards and setbacks as depicted on the Board-approved plans;

THAT the site will be maintained in good condition, free of debris;

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

THAT construction will be substantially completed in accordance with the requirements of ZR § 72-23; 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, August 19, 2014.

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27-14-BZ

CEQR No. 14-BSA-113M

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 8, 2014, acting on DOB Application No. 104812142, reads, in pertinent part:

ZR 42-14(D)(2)(b) – Proposed change of use below the 2nd floor from Use Group 16 (wholesale) to Use Group 6 (retail) is not permitted in M1-5B zoning district; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-5B zoning district within the SoHo Cast Iron Historic District, the legalization of an existing retail use (Use Group 6) on the first story and expansion of retail use (accessory storage) into the cellar, contrary to ZR § 42-14(D)(2)(b); and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication in the *City Record*, with a continued hearing on July 22, 2014, and then to decision on August 19, 2014; and

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

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

WHEREAS, the subject site is located on the east side of Broadway between Broome Street and Spring Street, within an M1-5B zoning district, within the SoHo Cast Iron Historic District; and

WHEREAS, the site has 22.25 feet of frontage along Broadway and 2,237 sq. ft. of lot area; and

WHEREAS, the site is occupied by a five-story building that was constructed in approximately 1866; the last-issued final certificate of occupancy (“CO”) for the building (No. 99266, issued October 7, 1991) authorizes wholesale storage (Use Group 16) in the cellar and on the first story, and joint living-work quarters for artists (“JWLQA”)(Use Group 17D) on the second through fifth stories; and

WHEREAS, the Board has exercised jurisdiction over the site since February 13, 1990; on that date, under BSA Cal. No. 831-89-ALC, the Board granted an authorization pursuant to ZR § 72-30 to exclude 7,204 sq. ft. of floor area from the computation of the conversion contribution to be paid as required under ZR § 15-50 (Relocation Incentive Contribution); the grant accompanied the conversion of the second through fifth stories of the building from manufacturing use to JLWQA; and

WHEREAS, the applicant notes that the first story of the building has been occupied by various commercial uses since at least 1980 and that, since around 2004, the uses have included clothing and jewelry stores; at present, the first story is occupied by a retail store; and

WHEREAS, accordingly, the applicant seeks legalization of the existing retail use (Use Group 6); in addition, the applicant seeks to use a portion of the cellar as accessory storage for the first story retail use; and

WHEREAS, specifically, the applicant proposes to classify 2,133 sq. ft. of floor area on the first story and 81 sq. ft. of floor space in the cellar as Use Group 6 retail; the applicant notes that the majority of the cellar will remain, per CO No. 99266, Use Group 16 retail storage; and

WHEREAS, because a Use Group 6 eating and drinking establishment is not permitted below the second story in the subject M1-5B zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the existing building is obsolete for manufacturing use; (2) the site is too small and too narrow to accommodate floorplates for a manufacturing use; and (3) the site is constrained by its location within a historic district; and

WHEREAS, as to the obsolescence of the building for a conforming use, the applicant states that the building lacks a loading berth and has no space to install one; additionally, the building has limited access, with only two pedestrian-sized doors, one of which is devoted to the JLWQA units on the upper stories, and no elevator; and

WHEREAS, the applicant states the site’s 2,133 sq. ft. of lot area and 22.25-ft. width is far too small to accommodate floorplates that would make the building marketable for a conforming use; and

WHEREAS, the applicant states that 80 percent of the 280 buildings within a 1,000-ft. radius of the site have more lot area than the subject site; in addition, the site is the narrowest site on the entire block and narrower than 90 percent of the 280 buildings within a 1,000-ft. radius of the site; as such, the applicant asserts that its small size and narrow width are unique burdens in the surrounding area; and

WHEREAS, the applicant also notes that only 26 buildings (nine percent) within the study area have both less lot area and a narrower width than the site, and that 24 of the 26 such buildings have Use Group 6 uses on the first story

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1; and

WHEREAS, finally, the applicant asserts that the site's location within the SoHo Cast Iron Historic District, though not unique, contributes to the practical difficulties associated with developing the first story and cellar with a conforming use; and

WHEREAS, specifically, the applicant states that any enlargement, significant alteration or demolition and reconstruction is subject to the approval of the Landmarks Preservation Commission ("LPC"); as such, there are premium construction costs for materials, consulting, and permitting, which cannot be recouped at this site due to the undesirability of the building for a manufacturing use; and

WHEREAS, the Board agrees that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the 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, the applicant provided a financial analysis for (1) a conforming scenario with permitted uses (Use Groups 7, 9, 11, 16, 17A, 17B, 17C, and 17E); and (2) the proposal; and

WHEREAS, the study concluded that only the proposal would provide a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with 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 immediate area is characterized by a predominance of commercial and manufacturing uses; ground floor commercial use is particularly well-established, with every ground floor of every building fronting on Broadway between Spring Street and Broome Street (22 buildings) occupied by ground floor commercial use; and

WHEREAS, the applicant states that the proposed Use Group 6 retail is entirely consistent with the character of the neighborhood; and

WHEREAS, the applicant also notes that, historically, the area has been characterized by ground floor commercial

use, as evidenced by the LPC designation report for the SoHo Cast Iron Historic District; and

WHEREAS, LPC approved the changes legalized under this application by Certificate of Appropriateness, dated May 9, 2008; 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; and

WHEREAS, the applicant represents that the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site, and notes that no changes to the bulk of the building are proposed; and

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

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

WHEREAS, the project is classified as a Type I action pursuant to 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. 14-BSA-113M, dated February 7, 2014; and

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

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5B zoning district within the SoHo Cast Iron Historic District, the legalization of an existing retail use (Use Group 6) on the first story and expansion of retail use (accessory storage) into the cellar, contrary to ZR § 42-14(D)(2)(b), *on condition* that any and all work will

1 The applicant notes that of the 24 buildings, seven have Use Group 6 uses authorized by a CO, ten do not have a CO, and seven have Use Group 6 contrary to the CO.

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substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 7, 2014"- eleven (11) sheets; and *on further condition*:

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

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

THAT the approved plans 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, August 19, 2014.

300-12-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Columbia Grammar & Preparatory School, owner.

SUBJECT – Application October 19, 2012 – Variance (§72-21) to permit an enlargement of an existing school building (*Columbia Grammar and Preparatory*), contrary to lot coverage (§24-11), permitted obstruction (§24-33), rear yard equivalent (§24-332), initial setback distance (§24-522), height (§23-692), and side yard (§24-35(b)) regulations. R7-2 zoning district.

PREMISES AFFECTED – 36 West 93rd Street aka 33 West 92nd Street, between Central Park West and Columbus Avenue, Block 1206, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for decision, hearing closed.

350-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Overcoming Love Ministries, owner.

SUBJECT – Application December 31, 2012 – Variance (§72-21) to permit the construction of an 11-story community facility/residential building, contrary to use regulations (§42-00). M3-1 zoning district.

PREMISES AFFECTED – 5 32nd Street, southeast corner of 2nd Avenue and 32nd Street, Block 675, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for continued hearing.

65-13-BZ

APPLICANT – Eric Palatnik, Esq., for Israel Rosenberg, owner.

SUBJECT – Application February 12, 2013 – Variance (§72-21) to permit a residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 123 Franklin Avenue, between Park and Myrtle Avenues, Block 1899, Lot 108, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for deferred decision.

155-13-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Cong Kozover Zichron Chaim Shloime, owners.

SUBJECT – Application May 15, 2013 – Variance (§72-21) to permit the enlargement of an existing synagogue (*Congregation Kozover Sichron Chaim Shloime*) and rabbi's residence (UG 4) and the legalization of a Mikvah, contrary to floor area (§24-11), lot coverage (§24-11), wall height and setbacks (§24-521), front yard (§24-34), side yard (§24-35), rear yard (§24-36), and parking (§25-18, 25-31) requirements. R3-2 zoning district.

PREMISES AFFECTED – 1782-1784 East 28th Street, west side of East 28th Street between Quentin road and Avenue R, Block 06810, Lots 40 & 41, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

185-13-BZ

APPLICANT – Eric Palatnik P.C., for 97 Franklin Avenue LLC, owner.

SUBJECT – Application June 20, 2013 – Variance (§72-21) to permit the development of a proposed three story, two-unit residential development, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 97 Franklin Avenue, Franklin Avenue, Between Park and Myrtle Avenue, Block 899, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to October 7, 2014, at 10 A.M., for continued hearing.

188-13-BZ & 189-13-A

APPLICANT – Rothkrug Rothkrug & Spector, for Linwood Avenue Building Corp., owner.

SUBJECT – Application June 25, 2013 – Special Permit (§73-125) to permit an ambulatory diagnostic or treatment health care facility.

Proposed building does not front on legally mapped street, contrary to Section 36 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – 20 Dea Court, south side of Dea

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Court, 101' West of intersection of Dea Court and Madison Avenue, Block 3377, Lot 100, Borough of Staten Island.

COMMUNITY BOARD #2SI

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

193-13-BZ

APPLICANT – Eric Palatnik, Esq., for Centers FC Realty LLC, owner.

SUBJECT – Application July 2, 2013 – Special Permit (§73-44) for the reduction in parking from 190 to 95 spaces to facilitate the conversion of an existing building to UG 6 office and retail use. C2-2/R6A & R-5 zoning districts.

PREMISES AFFECTED – 4770 White Plains Road, White Plains Road between Penfield Street and East 242nd Street, Block 5114, Lot 14, Borough of Bronx.

COMMUNITY BOARD #12BX

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

222-13-BZ

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

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

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

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 18, 2014, at 10 A.M., for continued hearing.

225-13-BZ

APPLICANT – Eric Palatnik, P.C., for Yitta Neiman, owner.

SUBJECT – Application July 25, 2013 – Variance (§72-21) to permit the development of a three-family, four-story residential building, contrary to use regulations (§42-00). M1-2 zoning district.

PREMISES AFFECTED – 810 Kent Avenue, east Side of Kent Avenue between Little Nassau Street and Park Avenue, Block 1883, Lot 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

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 September 23, 2014, at 10 A.M., for continued hearing.

265-13-BZ

APPLICANT – Eric Palatnik P.C., for St. Albans Presbyterian Church, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to permit a proposed community facility and residential building (*St. Albans Presbyterian Church*), contrary to floor area (§§23-141, 24-161), maximum dwelling unit (§§23-22, 24-20), maximum building height (§23-631), and minimum parking (§25-25e) regulations. R3A zoning district.

PREMISES AFFECTED – 118-27/47 Farmers Boulevard, east side of Farmers Boulevard, 217.39 feet north of intersection of Farmers Boulevard and 119th Avenue, Block 12603, Lot(s) 58 & 63, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....3
Negative:.....0

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

266-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for 515 East 5th Street LLC, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to legalize the enlargement of a six-story, multi-unit residential building, contrary to maximum floor area (§23-145). R7B zoning district.

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street between Avenue A and B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

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

283-13-BZ

APPLICANT – Alexander Levkovich, for 100 Elmwood Realty Corp., owner.

SUBJECT – Application October 8, 2013 – Special Permit (§73-36) to allow the operation of a physical culture

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establishment (*NYC Fitness Club*) on the first floor of a one story building. M1-1 zoning district.

PREMISES AFFECTED – 4930 20th Avenue, Dahill Road and 50th Street; Avenue 1 & Dahill Road, Block 5464, Lot 81, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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

294-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, Esq., for Susan Go Lick, owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow for the enlargement and conversion of a commercial building for residential use (UG 2) with ground floor commercial UG6), contrary to use regulations (§43-17, 42-141). M1-5B zoning district.

PREMISES AFFECTED – 220 Lafayette Street, west side of Lafayette Street between Spring Street and Broome Street, Block 482, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

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

328-13-BZ

APPLICANT – Eric Palatnik, P.C., for Patti, owner.

SUBJECT – Application December 26, 2013 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*Brooklyn Athletic Club*). M1-1 zoning district.

PREMISES AFFECTED – 8 Berry Street, northeast corner of Berry Street and North 13th Street, Block 2279, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to October 21, 2014, at 10 A.M., for continued hearing.

5-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Israel Ashkenazi & Racquel Ashkenazi, owner.

SUBJECT – Application January 9, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 1807 East 22nd Street, east side of East 22nd Street between Quentin Road and Avenue R, Block 6805, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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

48-14-BZ

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

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

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

COMMUNITY BOARD #15BK

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

50-14-BZ

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

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

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

COMMUNITY BOARD #1BK

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

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

52-14-BZ

APPLICANT – Lewis Garfinkel, for Asher Fried, owner.

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

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

COMMUNITY BOARD #14BK

THE VOTE TO GRANT –

Affirmative: Commissioner Hinkson, Commissioner Ottley-Brown and Commissioner Montanez3
Negative:.....0

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

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closed.

CORRECTION

Jeff Mulligan, Executive Director

This resolution adopted on March 11, 2014, under Calendar No. 274-13-BZ and printed in Volume 99, Bulletin No. 11, is hereby corrected to read as follows:

274-13-BZ

CEQR #14-BSA-045M

APPLICANT – Sheldon Lobel, P.C., for SKP Realty, owner; H.I.T. Factory Approved Inc., operator.

SUBJECT – Application September 26, 2013 – Variance (§72-21) to permit the operation of a physical culture establishment (*H.I.T. Factory Improved*) on the second floor of the existing building. C1-3/R6B zoning district.

PREMISES AFFECTED – 7914 Third Avenue, west Side of Third Avenue between 79th and 80th Street, Block 5978, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #10BK

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 Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated September 9, 2013, acting on DOB Application No. 320782630, reads, in pertinent part:

Proposed physical culture establishment use is not permitted in a C1-3 zoning district, per ZR 32-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment (“PCE”) within the second story of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 28, 2014, after due notice by publication in the *City Record*, with a continued hearing on February 25, 2014, and then to decision on March 11, 2014; and

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

WHEREAS, Community Board 10, Brooklyn, recommends approval of the application, provided that the hours of operation are limited to daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the subject site is located on the west side of Third Avenue, between 79th Street and 80th Street, within a C1-3 (R6B) zoning district within the Special Bay Ridge District; and

WHEREAS, the site has approximately 60 feet of frontage along Third Avenue and 6,000 sq. ft. of lot area; and

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WHEREAS, the site is occupied by a two-story commercial building with approximately 11,400 sq. ft. of floor area (1.9 FAR); and

WHEREAS, the applicant notes that the first floor of the building is occupied by a grocery store and the second floor is vacant; and

WHEREAS, the applicant notes that the building was constructed in or around 1931 and that the site has been subject to the Board's jurisdiction since July 24, 1959, when, under BSA Cal. No. 398-58-BZ, it granted a variance permitting a factory contrary to use regulations; in addition, later that year, on September 29, 1959, under BSA Cal. No. 399-58-A, the Board granted an appeal waiving the live load requirements for the second story; and

WHEREAS, the applicant states that the manufacturing use remained on the second story until around 1972, when the manufacturer vacated the space, and remained vacant until around 2000, when a martial arts studio leased the space and occupied it until March 2012; and

WHEREAS, the applicant acknowledges that a martial arts studio is a PCE and concedes that a variance was not obtained for the operation of the studio; however, the applicant represents that both the building owner and the martial arts studio were unaware that a martial arts studio is considered a PCE and that PCEs are not permitted within a C1-3 (R6B) district; and

WHEREAS, the applicant now seeks a variance to operate the subject PCE, which will be known as H.I.T. Factory, occupy 5,400 sq. ft. of floor area on the second story, and operate daily, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the second floor in conformance with applicable regulations: (1) the second floor's configuration, depth, and size; and (2) its absence of street-level exposure; and

WHEREAS, the applicant states that the historic configuration, depth, and size of the second floor—the characteristics that made it suitable for historic manufacturing use—render it unsuitable for modern conforming uses; and

WHEREAS, specifically, the applicant states that the second floor has a large open floorplate, which would require utilities upgrades and partition construction in order to accommodate a modern business or professional office, at significant cost; and

WHEREAS, the applicant also asserts that the large size (approximately 6,000 sq. ft.) and depth (approximately 90 feet) of the second floor make residential use infeasible; and

WHEREAS, in particular, the applicant states that the second floor would be able to provide a rear yard depth of only ten feet, which is 20 feet less than the minimum required for habitable rooms; accordingly, all dwelling units must use the Third Avenue frontage of the building for required light and ventilation, which effectively prohibits the rear of the building from being converted to residences; and

WHEREAS, the applicant also states that the lack of light and ventilation owing to the building's depth would

further decrease its attractiveness to modern business or professional offices, which prefer natural light; and

WHEREAS, similarly, the second floor's absence of street-level exposure makes it undesirable for local retail and service establishment uses, which rely primarily on pedestrian visibility and convenience of access in order to attract customers; as such, the rent for the second floor must be heavily discounted in order to offset the limitations of the space; and

WHEREAS, the applicant notes that the second floor's unattractiveness to tenants is evidenced by its 28-year vacancy, which, as noted above, began in 1972 and ended when a martial arts studio (a PCE) began occupying the space in 2000; and

WHEREAS, to support its claim of unique hardship, the applicant provided an area study of the 92 buildings within 600 feet of the site; and

WHEREAS, based on the study, only one other building has a second floor non-residential (community facility) use: 7817 Third Avenue, which has a Rite-Aid store on the first floor and "Tutor Time," an infant child care and preschool, on the second floor; and

WHEREAS, however, the applicant asserts that the Tutor Time building is distinguishable from the site, in that it has significantly more lot area (approximately 9,600 sq. ft.) and is located on a corner, where light and ventilation are available for residential or modern office uses; and

WHEREAS, the Board agrees with the applicant that the aforementioned unique physical conditions, when considered together, create unnecessary hardship and practical difficulty in developing the site in conformance 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 addition to the proposal, the applicant examined the economic feasibility of constructing a conforming office for a single user on the second floor; and

WHEREAS, the applicant concluded that the offices resulted in a negative rate of return after capitalization; in contrast, the applicant represents that the proposal results in a positive rate of return; and

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

WHEREAS, the applicant represents that the proposed PCE 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 a PCE occupied the building (albeit without the required variance, as noted above) from approximately 2000 until 2012, and that this

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application has received letters of support from various community organizations as well as the community board; and

WHEREAS, the applicant represents that the surrounding community is characterized by low- to medium-density mixed residential and commercial uses, with many small business that are geared to local residents, and that the proposed PCE is consistent with such uses and will provide a valuable service; and

WHEREAS, as to the PCE's impact, the applicant represents that although light music may be played during workouts, the building's double concrete walls and extra padding will provide ample sound attenuation for both the neighboring buildings, and the grocery store use at the first floor; and

WHEREAS, in addition, consistent with the community board's request, as noted above, the hours of operation for the PCE will be limited to daily, from 7:00 a.m. to 10:00 p.m.; 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 rather a function of the history of manufacturing use on the second floor and the building's depth; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

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

WHEREAS, the Board notes that because the use authorized herein is classified as a PCE, the variance will be granted for a term of ten years, to expire on March 11, 2024; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 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. 14BSA045M, dated September 23, 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; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within a C1-3 (R6B) zoning district within the Special Bay Ridge District, the operation of a physical culture establishment ("PCE") within the second story of a two-story commercial building, contrary to ZR § 32-10, *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 December 23, 2013" – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on March 11, 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 signage at the site will be limited to C1 zoning district regulations;

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

THAT the hours of operation for the PCE will be limited to seven days per week, from 7:00 a.m. to 10:00 p.m.;

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

THAT a new certificate of occupancy will be obtained within two years of the date of this grant, on March 11, 2016;

THAT Local Law 58/87 compliance will be as 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, March 11, 2014.

The resolution has been amended to replace the part which read ...two-story residential building... now reads:

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“...two-story commercial building...”. Corrected in Bulletin No. 34, Vol. 99, dated August 27, 2014.

Updated - 8/21/2014

CORRECTION

This resolution adopted on July 15, 2014, under Calendar No. 15-14-BZ and printed in Volume 99, Bulletin Nos. 27-29, is hereby corrected to read as follows:

15-14-BZ

CEQR #14-BSA-103Q

APPLICANT – Davidoff Hatcher & Citron LLP, for Greek Orthodox Community of Whitestone Holy Cross Inc., 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), side yard (§24-35(a)), lot coverage (§24-11), front yard (§24-34), and accessory parking (§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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 27, 2014, acting on DOB Application No. 420927475, reads, in pertinent part:

1. Community facility floor area ratio contrary to ZR Section 24-111;
2. Sky-exposure plane contrary to ZR Section 24-54;
3. Number of parking spaces contrary to ZR Section 25-31;
4. Side yard contrary to ZR Section 24-35(a);
5. Lot coverage contrary to ZR Section 24-11;
6. Front yard contrary to ZR Section 24-34; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R2 zoning district, the enlargement of a one-story community facility building to be occupied as a religious school (Use Group 3), which does not comply with regulations regarding floor area ratio (“FAR”), sky-exposure plane, parking, side and front yards, and lot coverage, contrary to ZR §§ 24-11, 24-34, 24-35, 24-54, 25-31, and 24-111; and

WHEREAS, the application is brought on behalf of Greek Orthodox Community of Whitestone Holy Cross, Inc. (“Holy Cross”), a not-for-profit corporation, which owns and operates Valiotis Greek-American School (“Valiotis”), the existing school at the subject site; and

WHEREAS, a public hearing was held on this application on June 10, 2014, after due notice by publication

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in the *City Record*, and then to decision on July 15, 2014; and

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

WHEREAS, Community Board 7, Queens, recommends approval of the application, subject to the following conditions: (1) "One Way" signs are installed at the 12th Avenue entrance to the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days; (2) "One Way" signs are installed indicating "Exit Only" on at the 150th Street exit of the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days; (3) staff will be required to park only in the church parking lot and not on the local streets; (4) all staff cars will be required to park in a predetermined area and stacked next to each other; (5) kindergarteners and first graders will be dismissed 15 minutes early; (6) Valiotis will pursue the installation of a Stop sign at the intersection of 150th Street and 12th Avenue; and (7) Valiotis, Community Board 7, and Councilman Vallone will continue to pursue a request for a crossing guard at the intersection of 150th Street and 12th Avenue; and

WHEREAS, Councilman Paul A. Vallone, submitted testimony in support of the application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of 12th Avenue and 150th Street, within an R2 zoning district; and

WHEREAS, the site has 125 feet of frontage along 12th Avenue, 100 feet of frontage along 150th Street, and 12,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story school (Use Group 3) with 6,030 sq. ft. of floor area (0.48 FAR) and a building height of 31'-11"; the building was completed in 2004, and, according to Certificate of Occupancy No. 400676559, includes: in the sub-cellar, a gymnasium, assembly space, a mechanical room, a kitchen, and accessory storage; on the cellar level, a child care center for up to 36 children; on the first story, classrooms, offices, and accessory storage; and at the attic level, accessory storage; the four required accessory off-street parking spaces for the building are provided across 12th Avenue in the Holy Cross church parking lot (Block 4516, Lot 1; formerly Block 4516, Lot 50), per restrictive declaration; and

WHEREAS, the applicant notes that an as-built survey revealed that the building was constructed with the following non-compliances: (1) a front yard depth of 14'-0" (a minimum front yard depth of 15'-0" is required, per ZR § 24-34); (2) two side yards with widths of 8'-0" (two side yards with minimum widths of 8'-0" and 10'-2" are required, per ZR § 24-35); and (3) a lot coverage of 66 percent (a maximum lot coverage of 60 percent is permitted, per ZR § 24-11); and

WHEREAS, the applicant now proposes to vertically and horizontally enlarge the building, resulting in a two-story building with 13,967 sq. ft. of floor area (1.11 FAR)

and building height of 34'-3"; and

WHEREAS, the applicant states that the variance is requested to legalize the above-noted non-compliances, which are maintained in the enlarged portion of the building; in addition, the following new non-compliances are proposed: (1) an FAR of 1.11 is proposed (the maximum permitted FAR is 0.5 FAR, per ZR § 24-111); (2) a sky-exposure plane of less than 1-to-1 is proposed (a 1-to-1 sky-exposure plane is required, per ZR § 24-54); and (3) four accessory off-street parking spaces (a minimum of ten accessory parking spaces are required, per ZR § 25-31); and

WHEREAS, the applicant states that Valiotis began as an afternoon Greek School Afternoon Program with three students in 1977 and currently enrolls 180 students in nursery through third grade; the applicant notes that demand for Valiotis has increased sharply since 2008, when enrollment was approximately 30 students; and

WHEREAS, the applicant represents that 35 prospective students were turned away in the 2013-2014 school year because the existing facility is too small to accommodate them; further, approximately 50 students must occupy classroom space in temporary trailers in a nearby site; and

WHEREAS, the applicant states that the proposal would allow Holy Cross to institute a comprehensive elementary school curriculum, consisting of nursery through fifth grade, with a total enrollment of 250 students; and

WHEREAS, the applicant states that the proposed 7,937 sq-ft. enlargement includes the following: on the first story, a new library, a new science lab, a new classroom, and new boys' and girls' restrooms; and on the second story, a new classroom, a new computer room, a new art room, additional storage, and new boys' and girls' restrooms; and

WHEREAS, the applicant states that the following are the primary programmatic needs of Holy Cross, which necessitate the requested variances: (1) to accommodate the needs of its growing congregation of approximately 650 members, many of whom have children enrolled at Valiotis and would like to send them to the school for fourth and fifth grade; (2) to provide interdisciplinary teaching spaces (arts, information technology, and science) in order to prepare its students for modern intermediate and high school curricula; and (3) to provide sufficient space for Holy Cross' Greek School Afternoon and Sunday School programs; and

WHEREAS, the applicant states that there is a direct nexus between the requested waivers and the programmatic needs of Holy Cross; and

WHEREAS, in particular, the applicant asserts that a complying building could not provide adequate classroom and program space for Holy Cross; as noted above, Valiotis was built and received a certificate of occupancy despite several as-built non-compliances; thus, constructing a complying building would require costly demolition of substantial portions of the existing building, resulting in further reductions of program space; and

WHEREAS, as to the new non-compliances associated with the proposed enlargement (FAR, sky-exposure-plane, and

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parking), the applicant asserts that each is essential to constructing a space that will accommodate Holy Cross's needs; the FAR is necessary, as noted above, because the existing school is too small to accommodate even its existing student body (50 students must learn in temporary trailers); the sky-exposure-plane waiver is necessary to provide sufficient headroom in a new classroom on the second story; the parking waiver is necessary because the existing building was constructed without parking and providing parking would require complete renovation and a substantial loss of program space; for example, if parking were to be located in the sub-cellar and/or cellar, Valiotis would be forced to give up portions of its gymnasium and child care center; and

WHEREAS, in addition, the applicant states, as noted above, that Valiotis has four designated parking spaces in the Holy Cross church parking lot across 12th Avenue; under the proposal, the number of designated spaces will be increased to ten; and

WHEREAS, accordingly, the applicant asserts that only the proposal will provide the necessary space for Holy Cross to achieve its programmatic needs at Valiotis; and

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

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

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the existing building and the site, when considered in conjunction with the programmatic needs of Holy Cross, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant represents that the surrounding neighborhood is characterized by one- and two-story residential and community facility uses; south of the site along 150th Street between 12th Road and the Cross Island Parkway, the built character reflects the area's zoning designations (C1-2 and C2-2), in that one- and two-story mixed residential and commercial buildings predominate; and

WHEREAS, the applicant notes that the proposed use exists and is permitted as-of-right in the subject R2 zoning

district; and

WHEREAS, as such, the applicant contends that the proposed enlargement is entirely consistent with the use and bulk of the area; and

WHEREAS, the applicant states that the proposal was designed to be sensitive to the scale of the streetscapes along both 150th Street and 12th Avenue, in that it maintains the existing yards and provides complying wall and building heights; and

WHEREAS, as to adjacent uses, the applicant states that directly south of the site is a two-story community facility building, directly east of the site is an undeveloped lot with a width of 50 feet, directly north of the site (across 12th Avenue) is the parking lot for the Holy Cross church, and directly west of the site (across 150th Street) is a school; the applicant also notes that there is a two-story church north and west of the site, on the northwest corner of the intersection of 12th Avenue and 150th Street; and

WHEREAS, the applicant also notes that the site abuts an R3-2 zoning district, where the maximum permitted FAR for a community facility is 1.0 FAR, which is consistent with the proposed 1.11 FAR; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide a site plan of the parking lot at Block 4516, Lot 1, which shows the proposed number of parking spaces, site circulation, and signage; and (2) clarify the proposed traffic mitigation and safety measures; and

WHEREAS, in response, the applicant provided the requested plan, which reflects the proposed parking lot circulation and signage, which includes a single entrance point (the 12th Avenue curb cut) and exit point (the 150th Street curb cut) for the lot; and

WHEREAS, as traffic mitigation and safety, the applicant states that security personnel will be assigned to the site during pickup and drop-off times, dismissal times for pre-kindergarten and kindergarten students will be staggered, and bus queuing and parking will be relocated from 150th Street to 12th Avenue; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of Holy Cross could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, per ZR § 72-21(d); and

WHEREAS, the applicant states and the Board agrees that the requested waivers are the minimum necessary to afford relief to satisfy the Holy Cross' programmatic needs, 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

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

4, 2014” . Corrected in Bulletin No. 34, Vol. 99, dated August 27, 2014.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R2 zoning district, the enlargement of a one-story community facility building to be occupied as a religious school (Use Group 3), which does not comply with regulations regarding FAR, sky-exposure plane, parking, side and front yards, and lot coverage, contrary to ZR §§ 24-11, 24-34, 24-35, 24-54, 25-31, and 24-111; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received June 3, 2014” – Nine (9) sheets; and “Received July 14, 2014” – One (1) sheet; and *on further condition*:

THAT the building parameters will be: two stories; a maximum building height of 34’-3”; a maximum of 13,967 sq. ft. of floor area (1.11 FAR); a minimum front yard depth of 14’-0”; two side yards with minimum widths of 8’-0”; and a maximum lot coverage of 66 percent, as illustrated on the BSA-approved plans;

THAT a deed restriction will be recorded against Block 4516, Lot 1 designating minimum of ten parking spaces for the school’s use;

THAT “One Way” signs will be installed and maintained at the 12th Avenue entrance to the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days;

THAT “One Way” signs will be installed and maintained at the 150th Street exit of the church parking lot for the hours of 7:30 a.m. to 6:00 p.m. on school days;

THAT the 12th Avenue curb cut will only be used for entering the parking lot and the 150th Street curb cut will only be used for exiting the parking lot, and signs reflecting these restrictions will be installed and maintained;

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 are considered approved only for the portions related to the specific relief granted;

THAT construction will proceed in accordance with ZR § 72-23; and

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

Adopted by the Board of Standards and Appeals, July 15, 2014.

The resolution has been amended to change the plans date which read “June 3, 2014” ...now reads:”June