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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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February 5, 2014

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## DIRECTORY

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## CONTENTS

DOCKET .....	47-48
<b>CALENDAR</b> of February 11, 2014	
Morning .....	49-50

# CONTENTS

**MINUTES of Regular Meetings,  
Tuesday, January 28, 2014**

Morning Calendar .....51

**Affecting Calendar Numbers:**

119-03-BZ	10 Columbus Circle, aka 301 West 58 <sup>th</sup> Street and 303 West 60 <sup>th</sup> Street, Manhattan
209-03-BZ	150 Central Park South, Manhattan
176-09-BZ	220-236 West 28 <sup>th</sup> Street, Manhattan
427-70-BZ	38-01 Beach Channel Drive, Queens
406-82-BZ	2411 86 <sup>th</sup> Street, Brooklyn
799-89-BZ	1460-1470 Bruckner Boulevard, Bronx
20-02-BZ	303 Park Avenue South, Manhattan
331-04-BZ	26 Cortlandt Street, Manhattan
238-07-BZ	5-11 47 <sup>th</sup> Avenue, Queens
68-13-A	330 Bruckner Boulevard, Bronx
131-13-A & 132-13-A	43 & 47 Cecilia Court, Staten Island
230-13-A	29-19 Newtown Avenue, Queens
231-13-A	29-15 Newtown Avenue, Queens
166-12-A	638 East 11 <sup>th</sup> Street, Manhattan
348-12-A & 349-12-A	15 & 19 Starr Avenue, Staten Island
98-13-A	107 Haven Avenue, Staten Island
107-13-A	638 East 11 <sup>th</sup> Street, Manhattan
110-13-A	120 President Street, Brooklyn
127-13-A	332 West 87 <sup>th</sup> Street, Manhattan
156-13-A	450 /west 31 <sup>st</sup> Street, Manhattan
214-13-A	219-08 141 <sup>st</sup> Street, Queens
300-13-A	112, 114 & 120 Fulton Street, Manhattan
279-12-BZ	27-24 College Point Boulevard, Queens
81-13-BZ	264-12 Hillside Avenue, Queens
167-13-BZ	1614/26 86 <sup>th</sup> Street, and Bay 13 <sup>th</sup> Street, Brooklyn
218-13-BZ	136 Church Street, Manhattan
255-13-BZ	3560/84 White Plain Road, Queens
292-13-BZ	2085 Ocean Parkway, Brooklyn
54-12-BZ	65-39 102 <sup>nd</sup> Street, Queens
303-12-BZ	1106-1108 Utica Avenue, Brooklyn
76-13-BZ	176 Oxford Street, Brooklyn
78-13-BZ	876 Kent Avenue, Brooklyn
92-13-BZ & 93-13-BZ	22 and 26 Lewiston Street, Staten Island
95-13-BZ	3120 Corlear Avenue, Bronx
128-13-BZ	1668 East 28 <sup>th</sup> Street, Brooklyn
130-13-BZ	1590 Nostrand Avenue, Brooklyn
153-13-BZ	107 South 6 <sup>th</sup> Street, Brooklyn
157-13-BZ	1368 & 1374 East 23 <sup>rd</sup> Street, Brooklyn
193-13-BZ	4770 White Plains Road, Bronx
207-13-BZ	177 Hastings Street, Brooklyn
212-13-BZ	151 Coleridge Street, Brooklyn
213-13-BZ	3858-60 Victory Boulevard, Staten Island
228-13-BZ	157 Columbus Avenue, Manhattan
236-13-BZ	423 West 55 <sup>th</sup> Street, Manhattan
274-13-BZ	7914 Third Avenue, Brooklyn

Correction .....84

**Affecting Calendar Numbers:**

360-65-BZ	108-114 East 89th Street, Manhattan
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# DOCKETS

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New Case Filed Up to January 28, 2014  
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## 7-14-BZ

1380 Rockaway Parkway, West side of Rockaway Parkway, midblock between Farragut Road and Glenwood Road(204.85' south of Farragut Road, Block 8165, Lot(s) 48, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-36) to permit the conversion of the existing on-story, plus cellar to a physical culture establishment(Planet Fitness) in connection with an application to rezone the property from an R5D/C1-3(Z) to an R5D/C2-3(ZD). R5D/C1-3 district.  
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## 8-14-BZ

1824 East 22nd Street, West side of East 22nd Street between Quentin Road and Avenue R, Block 6804, Lot(s) 41, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to request the enlargement of an existing single family residential (R3-2) zoning district. R3-2 district.  
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## 9-14-BZ

4168 Broadway, located at the southeast corner of the intersection formed by West 177th Street and Broadway, Block 2145, Lot(s) 15, Borough of **Manhattan, Community Board: 12**. Special Permit (§73-36) & (§73-52) to allow the operation of a physical culture establishment fitness center within the existing building and to permit the fitness center use to extend 25 feet into the R7-2 zoning district, contrary to §§32-10 & 22-10. C C8-3,R7-2 district.  
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## 10-14-BZ

45 Williamsburg Street West, Located on the corner of the intersection of Williamsburg St West. Wythe Avenue and Hooper Street., Block 2203, Lot(s) 20, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) seeking to enlarge the existing school contrary to use regulations, rear yard requirements and height requirements. M1-2 zoning district. M1-2 district.  
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## 11-14-A

47-04 198th Street, Located on the south side of 47th Avenue between 197th Street and 198th Street, Block 5617, Lot(s) 34, Borough of **Queens, Community Board: 11**. Common Law Vesting pursuant to the common law doctrine of vested rights and seeks to renew Building Permit#402065732-01NB to allow the continuation development of the proposed two-family residential buildings at the site. R3-2 district.  
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## 12-14-A

47-06 198th Street, Located on the south side of 47th Avenue between 197th Street and 198th Street., Block 5617, Lot(s) 35, Borough of **Queens, Community Board: 11**. Common Law Vesting pursuant to the common law doctrine of vested rights and seeks to renew Building Permit #402065723-01 R3-2 district.  
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## 13-14-A

47-08 198th Street, Located on the south side of 47th Avenue between 197th and 198th Street, Block 5617, Lot(s) 36, Borough of **Queens, Community Board: 11**. Common Law Vesting pursuant to the common law doctrine of vested rights and seeks to renew Building Permit#402065714 to allow the continuation development of the proposed two-family residential buildings at the site. R3-2 district.  
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## 14-14-A

47-10 198th Street, Located on the south side of 47th Avenue between 197 and 198th Street., Block 5617, Lot(s) 37, Borough of **Brooklyn, Community Board: 11**. Common Law Vesting pursuant to the common law doctrine of vested rights and seeks to renew Building Permit#402065705 to allow the continuation development of the proposed two-family residential buildings at the site. R3-2 district.  
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## 15-14-BZ

12-03 150th Street, Southeast corner of 150th Street and 12th Avenue, Block 4517, Lot(s) 9, Borough of **Queens, Community Board: 7**. Variance (§72-21) proposed enlargement of existing not-for-profit school building that will not comply with §24-111 community facility floor area:§24-54 sky exposure plane and §25-31 accessory parking spaces. R2 zoning district. R2 district.  
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## 16-14-BZ

1648 Madison Place, Westside of Madison Place between Avenue P and Quentin Road, Block 7701, Lot(s) 59, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-621) to allow the enlargement of an existing one family residence contrary to §23-141. R3-2 zoning district. R3-2 district.  
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# DOCKETS

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**17-14-BZ (1/28/2014)**

600 McDonald Avenue, Beginning at the SW corner of Avenue C and McDonald Avenue 655',140'W,15'N, 100'E, 586'N,4"E, 54'N,39.67'East, Block 5369, Lot(s) 6, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) proposed to add a third and forth floor to an existing school building, contrary to §24-11 floor area and lot coverage, §24-521 maximum wall height, §24-35 side yard, §24-34 requires a 10' front yard and §24-361 rear yard of the zoning reso R5 district.

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

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# CALENDAR

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**FEBRUARY 11, 2014, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 11, 2014, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**SPECIAL ORDER CALENDAR**

**546-82-BZ**

APPLICANT – Akerman Senterfitt, LLP, for Pasquale Carpentire, owner; Ganesh Budhu, lessee.

SUBJECT – Application June 20, 2013 – Extension of Term of previously granted Variance for the continued operation of a non-conforming open public parking lot which expired on June 14, 2013. R7-A zoning district.

PREMISES AFFECTED – 148-15 89th Avenue, bounded by 88th Avenue to its north, 150th Street to its east, 148th Street to its west, 89th Avenue to its south, Block 9693, Lot 60, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**1070-84-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Epsom Downs, Inc., owner.

SUBJECT – Application November 7, 2013 – Extension of term of a previously granted variance (72-21) for the continued operation of a UG6 Eating and Drinking establishment (*The Townhouse*) which expired on July 9, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 9, 2003; Waiver of the Rules. R8 zoning district.

PREMISES AFFECTED – 234 East 58th Street, south side of East 58th Street, Block 1331, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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**178-99-BZ**

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

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

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

**COMMUNITY BOARD #11BK**

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**201-02-BZ**

APPLICANT – Eric Palatnik, P.C., for Paco Page, LLC, owner.

SUBJECT – Application May 17, 2013 – Extension of Term of a previously approved Variance (§72-21) for the construction of an automotive service station (UG 16B) with accessory convenience store which expired on January 28, 2013; Waiver of the rules. C1-1/R3X (SRD) zoning district. PREMISES AFFECTED – 6778 Hylan Boulevard, between Page Avenue and Culotta Lane, Block 7734, Lot 13 & 20, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**APPEALS CALENDAR**

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

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

SUBJECT – Application November 29, 2013 – An amendment to the previously approved MDL waivers application to include new objections raised by the DOB regarding specific provisions of the MDL. R8B zoning district.

PREMISES AFFECTED – 335, 333, 331, 329 East 9th Street, north side East 9th Street, 2nd and 1st Avenue, Block 451, Lot 47, 46, 45, 44 Borough of Manhattan.

**COMMUNITY BOARD #3M**

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**ZONING CALENDAR**

**88-13-BZ**

APPLICANT – Lawrence M. Gerson, Esq., for Allied Austin LLC, owner; American United Company, LLC, lessee.

SUBJECT – Application March 14, 2013 – Special Permit (§73-36) to allow the legalization of physical culture establishment (*Title Boxing Club*) within an existing building. C2-3/R5D zoning district.

PREMISES AFFECTED – 69-40 Austin Street, south side of Austin Street, 299' east of intersection with 69th Avenue, Block 3234, Lot 150, Borough of Queens.

**COMMUNITY BOARD #6Q**

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**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 bulk variance to allow for the residential development of the property. 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.

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# CALENDAR

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## COMMUNITY BOARD #18BK

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### 269-13-BZ

APPLICANT – Law Office of Marvin B. Mitzner, LLC, for Robert Malta, owner.

SUBJECT – Application September 13, 2013 – Special Permit (§73-42) to permit the expansion of the Arte Café restaurant, conforming use across, a district boundary line onto the subject premises. R8B zoning district.

PREMISES AFFECTED – 110 West 73rd Street, south side of 73rd Street between Columbus Avenue and Amsterdam Avenue, Block 1144, Lot 37, Borough of Manhattan.

## COMMUNITY BOARD #7M

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### 289-13-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York Methodist Hospital, owner.

SUBJECT – Application October 16, 2013 – Variance (§72-21) to allow the development of a new ambulatory care facility on the campus of New York Methodist Hospital. R6, C1-3/R6, & R6B, zoning district.

PREMISES AFFECTED – 473-541 6th Street aka 502-522 8<sup>th</sup> Avenue, 480-496 & 542-548 5th Street & 249-267 7th Avenue, Block bounded by 7th Avenue, 6th Street, 8th Avenue and 5th Street, Block 1084, Lot 25, 26, 28, 39-44, 46, 48, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JANUARY 28, 2014  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**119-03-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for A/R Retail LLC, owner; Equinox Columbus Centre, LLC, lessee. SUBJECT – Application October 1, 2013 – Extension of term of a special permit (§73-36) to allow the continued operation of a physical culture establishment (*Equinox*), which expired on September 16, 2013. C6-6 (MID) zoning district.

PREMISES AFFECTED – 10 Columbus Circle, aka 301 West 58th Street and 303 West 60th Street, northwest corner of West 58th Street and Columbus Circle, Block 1049, Lot 1002, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for an extension of term for a physical culture establishment (“PCE”), which expired on September 16, 2013; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

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

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

WHEREAS, the subject site is an irregular lot located on the west side of Columbus Circle, between West 59th Street and West 60th Street, within a C6-6 zoning district within the Special Midtown District; and

WHEREAS, the site is occupied by a 54-story commercial building, known as the Time Warner Center, with approximately 2,103,828 sq. ft. of floor area; and

WHEREAS, the PCE is located on a portion of the sub-cellar (40,887 sq. ft. of floor space) and first floor (720 sq. ft. of floor area) of the building, for a total PCE floor space of

41,607 sq. ft.; and

WHEREAS, the PCE is operated as Equinox; and

WHEREAS, on September 16, 2013, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C6-6 zoning district within the Special Midtown District, the operation of a PCE for a term of ten years; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 16, 2003, so that as amended the resolution reads: “to grant an extension of the special permit for a term of ten years, to expire on September 16, 2023; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received January 14, 2014’-(6) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on September 16, 2023;

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

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

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

THAT a certificate of occupancy will be obtained by January 28, 2015;

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

**209-03-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for 150 Central Park South Incorporated, owner; Exhale Enterprises, Inc., lessee.

SUBJECT – Application September 23, 2013 – Extension of term of a variance (§72-21) for the continued operation of physical culture establishment (*Exhale Spa*) located in a portion of a 37-story residential building which expired on October 21, 2013. R10-H zoning district.

PREMISES AFFECTED – 150 Central Park South, south side of Central Park South between Avenue of the Americas and Seventh Avenue, Block 1011, Lot 52, Borough of Manhattan.

**COMMUNITY BOARD #5M**

# MINUTES

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for an extension of term for a variance authorizing a physical culture establishment (“PCE”) in an R10H (C5-1) zoning district, which expired on October 21, 2013; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

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

WHEREAS, Community Board 5, Manhattan, declines to issue a recommendation regarding this application; and

WHEREAS, the subject site is an interior lot located on the south side of Central Park South, between Seventh Avenue and Avenue of the Americas, within an R10H (C5-1) zoning district; and

WHEREAS, the site is occupied by a 37-story mixed residential and commercial building with approximately 307,549 sq. ft. of floor area; and

WHEREAS, the PCE is located on portions of the cellar, first and second floors, for a total PCE floor space of 10,500 sq. ft.; and

WHEREAS, the PCE is operated as Equinox; and

WHEREAS, on October 21, 2003, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit, in an R10H district, the operation of a PCE for a term of ten years contrary to ZR § 22-00; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 21, 2003, so that as amended the resolution reads: “to grant an extension of the variance for a term of ten years, to expire on October 21, 2023; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked ‘Received December 11, 2013’- (4) sheets; and *on further condition*:

THAT this grant will be limited to a term of ten years, to expire on October 21, 2023;

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

THAT there will be no change in ownership or

operating control of the PCE without prior approval from the Board;

THAT the hours of operation of the PCE will be limited to Monday through Friday, from 6:30 a.m. to 9:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 8:00 p.m.;

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

THAT a certificate of occupancy will be obtained by January 28, 2015;

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

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## 176-09-BZ

APPLICANT – Bryan Cave LLP/Margery Perlmutter, for NYC Fashion Institute of Technology, owner.

SUBJECT – Application October 4, 2013 – Extension of time to complete construction of a Special Permit (§73-64) to waive height and setback regulations (§33-432) for a community use facility (*Fashion Institute of Technology*) which expired on October 6, 2013. C6-2 zoning district.

PREMISES AFFECTED – 220-236 West 28th Street, south side of West 28th Street between Seventh Avenue and Eighth Avenue, Block 777, Lot 1, 18, 37, Borough of Manhattan.

## COMMUNITY BOARD #5M

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a reopening and an extension of time to complete construction under a previously-granted special permit, which authorized, within a C6-2 zoning district, the construction of a ten-story addition to an existing community facility building (Use Group 3); the time to complete construction expired on October 6, 2013; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

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

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# MINUTES

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WHEREAS, this application is brought on behalf of the Fashion Institute of Technology (“FIT”), a college of the State University of New York, a non-profit entity; and

WHEREAS, the subject site is located on the south side of West 28th Street, between Seventh Avenue and Eighth Avenue, within a C6-2 zoning district; and

WHEREAS, the site is currently occupied by four FIT buildings located on Lots 1, 18 and 37, with a total floor area of 746,889 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 6, 2009, when, under the subject calendar number, the Board granted a special permit pursuant to ZR §§ 73-641 and 73-03, to permit, on a site located within a C6-2 zoning district, the construction of a ten-story addition to an existing community facility building (Use Group 3), which does not comply with the zoning requirements for height, setback and sky exposure plane, contrary to ZR § 33-432; and

WHEREAS, substantial construction was to be completed by October 6, 2013, in accordance with ZR § 73-70; however, as of that date, substantial construction was not complete; and

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

WHEREAS, the applicant notes that work has not commenced at the site due to insufficient funding; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 6, 2009, so that as amended the resolution reads: “to grant an extension of the time to complete construction for a term of four years, to expire on October 6, 2017; *on condition*:

THAT substantial construction will be completed by October 6, 2017;

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

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

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

(DOB Application No. 120029940)

Adopted by the Board of Standards and Appeals, January 28, 2014.

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## **427-70-BZ**

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

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

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

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

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

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## **406-82-BZ**

APPLICANT – Eric Palatnik, P.C., for Adolf Clause & Theodore Thomas, owner; Hendel Products, lessee.

SUBJECT – Application August 13, 2013 – Extension of term of a special permit (§73-243) allowing an eating and drinking establishment (*McDonald's*) with accessory drive-thru which expired on January 18, 2013; Extension of time to obtain a Certificate of Occupancy which expired on September 11, 2013; Waiver of the Rules. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86th Street, northeast corner of 24th Avenue and 86th Street, Block 6859, Lot 1, Borough of Brooklyn.

### **COMMUNITY BOARD #11BK**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

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

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## **799-89-BZ**

APPLICANT – Law Office of Jay Goldstein, PLLC, for 1470 Bruckner Boulevard Corp., owner.

SUBJECT – Application September 24, 2013 – Extension of Term of a previously approved Variance (ZR 72-21) for the continued operation of a UG 17 Contractor's Establishment (*Colgate Scaffolding*) which expired on December 23, 2013. C8-1/R6 zoning district.

PREMISES AFFECTED – 1460-1470 Bruckner Boulevard, On the South side of Bruckner Blvd between Colgate Avenue and Evergreen Avenue. Block 3649, Lot 27 & 30. Borough of Bronx.

### **COMMUNITY BOARD #9BX**

**ACTION OF THE BOARD** – Laid over to March 4, 2014, at 10 A.M., for continued hearing.

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# MINUTES

## 20-02-BZ

APPLICANT – Law office of Fredrick A. Becker, for 303 Park Avenue South Leasehold Co. LLC, owner; TSI East 23, LLC dba New York Sports Club, lessee.

SUBJECT – Application September 20, 2013 – Extension of term of a special permit (§73-36) to allow the operation of a physical culture establishment (*New York Sports Club*) in a five story mixed use loft building, which expired on August 21, 2013. C6-4 zoning district.

PREMISES AFFECTED – 303 Park Avenue South, northeast corner of Park Avenue south and East 23rd Street, Block 879, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #5M

#### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

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

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## 331-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Blue Millennium Realty LLC, owner; Century 21 Department Stores LLC, lessee.

SUBJECT – Application October 24, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the expansion of floor area in an existing commercial structure (*Century 21*). The amendment seeks to permit a rooftop addition above the existing building which exceeds the maximum permitted floor area. C5-5 (LM) zoning district.

PREMISES AFFECTED – 26 Cortlandt Street, located on Cortlandt Street between Church Street and Broadway. Block 6911, Lot 6 & 3. Borough of Manhattan.

### COMMUNITY BOARD #1M

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

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## 238-07-BZ

APPLICANT – Goldman Harris LLC, for OCA Long Island City LLC; OCAII & III, owners.

SUBJECT – Application October 28, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a 12-story mixed-use building and a 6-story community facility dormitory and faculty housing building (*CUNY Graduate Center*), contrary to use and bulk regulations. The amendment seeks the elimination of the cellar and other design changes to the Dormitory Building. M1-4/R6A (LIC) zoning district.

PREMISES AFFECTED – 5-11 47th Avenue, 46th Road at north, 47th Avenue at south, 5th Avenue at west, Vernon Boulevard at east, Block 28, Lot 12, 15, 17, 18, 21, 121, Borough of Queens.

### COMMUNITY BOARD #2Q

#### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

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

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## APPEALS CALENDAR

### 68-13-A

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

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

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

### COMMUNITY BOARD #1BX

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

#### THE VOTE TO GRANT –

Affirmative: .....0  
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

#### THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Notice of Sign Registration Rejection letter from the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated January 14, 2013, denying registration for a sign at the subject premises (the “Final Determination”), which reads, in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Deficiency Letter from the Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. [S]uch documentation does not support the establishment of the existing sign prior to the relevant non-conforming use date. As such, the sign is rejected from registration. This sign will be subject to enforcement action 30 days from the issuance of this letter; and

WHEREAS a public hearing was held on this application on July 16, 2013, after due notice by publication in *The City Record*, with a continued hearing on September 24, 2013, and then to decision on January 28, 2014; and

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

WHEREAS, the subject premises (“the Premises”) is located on the east side of Bruckner Boulevard between East

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# MINUTES

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141st Street and East 149th Street, within an M3-1 zoning district; and

WHEREAS, the Premises is occupied by an eight-story warehouse; on the northeast wall of the building is an advertising sign measuring 79 feet by 143 feet (11,297 sq. ft.) (the “Sign”); and

WHEREAS, this appeal is brought on behalf of the lessee of the Sign structure, OTR Media Group, Inc. (the “Appellant” or “OTR”); and

WHEREAS, the Appellant states that the Sign is located 35 linear feet from and within view of the Bruckner Expressway, which is an arterial highway pursuant to Appendix H of the Zoning Resolution; and

WHEREAS, the Appellant states that the Premises has been located within an M3-1 zoning district since the adoption of the Zoning Resolution on December 15, 1961; and

WHEREAS, the Appellant states that DOB has issued permits for the Sign in connection with the following application numbers: (1) 201143217 in 2008 (the “2008 Permit”); (2) 200080170 in 1990 (the “1990 Permit”); and (3) BN 27/81 in 1981 (the “1981 Permit”); in addition, in 2012, the Appellant applied for and was denied a permit for the sign under Application No. 220233110 (“the 2012 Permit”); and

WHEREAS, the 1981 Permit application was filed on January 21, 1981 to legalize an existing business sign; the application includes an amendment (the “Amendment”), dated March 18, 1981, which states

Request reconsideration to the objection of 3/4/81 on grounds that the sign under construction is a business sign. Since a storage and office facility is maintained in this building by the company whose sign is located on the easterly wall of said building, said sign complies with section 42-51 of the Zoning Resolution for a business sign; and

WHEREAS, below the reconsideration request is a handwritten note, which states that “Request denied as per report herewith attached” and is signed by the Bronx Borough Commissioner and dated March 18, 1981; and

WHEREAS, the 1981 Permit application also includes: (1) an April 14, 1981 letter from the Chairman of Community Board 1 to New York Bus Service (“Community Board letter”), in which the Chairman states that he knows of “no objection to the sign as a business sign”; and (2) an April 15, 1981 declaration (the “Declaration”) executed by the owner of the Premises at the time, Peter’s Bag Corp., which states that “when New York Bus Service ceases to use a portion of [the Premises] to conduct their business, the sign indicating their business will be removed from the face of [the Premises]”; and

WHEREAS, finally, the 1981 Permit application includes a Departmental Memorandum, dated May 7, 1981, from the DOB Commissioner to the Bronx Borough Commissioner regarding the Premises (the “Reconsideration”); the Reconsideration makes reference to the Zoning Resolution definition of “business sign,” the

Chairman’s letter, and the Declaration, and provides, in pertinent part, that “[i]n view of the above . . . reconsideration is given in this matter provided that the Declaration is acceptable to the Department Counsel, reference is made on Building Notice Application and the Declaration is filed with the City Register prior to issuance of the permit”; and

WHEREAS, the 1990 Permit was revoked on March 15, 2013, the 2008 Permit was revoked on April 23, 2013, and the 2012 Permit application was disapproved on July 15, 2013; the permit revocations and denial, and DOB’s January 14, 2013 Final Determination denying registration of the Sign reflect the DOB’s interpretation that the Sign is not a lawful, non-conforming advertising sign because it was changed under the 1981 Permit to an accessory business sign, which discontinued the advertising sign use; and

WHEREAS, the Appellant now seeks a reversal of DOB’s rejection of the registration of the Sign1; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

## REGISTRATION REQUIREMENT

WHEREAS, the relevant statutory requirements related to sign registration have been in effect since 2005; and

WHEREAS, under Local Law 31 of 2005, the New York City Council enacted certain amendments to existing regulations governing outdoor advertising signs; and

WHEREAS, the amendments are codified under Articles 501, 502, and 503 of the 2008 Building Code and were enacted to provide DOB with a means of enforcing the sign laws where signs had been erected and were being maintained without a valid permit; and

WHEREAS, pursuant to Article 502 (specifically, Building Code § 28-502.4), an outdoor advertising company is required to submit to DOB an inventory of:

all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet [60.96 m] from and within view of a public park with an area of ½ acre (5000 m) or more; and

WHEREAS, further, Local Law 31 authorized the Commissioner of DOB to promulgate rules establishing permitting requirements for certain signs; the DOB rules, enacted under Rule 49, provide specific procedures for registration of advertising signs; Rule 49-15(5) reads in pertinent part:

Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or

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1 DOB’s basis for denying the 2012 Permit application on July 15, 2013 and denying the request to register the Sign on January 14, 2013 are identical. As such, this appeal challenges both DOB actions.

# MINUTES

“non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter; and

WHEREAS, subchapter B of Rule 49 (Registration of Outdoor Advertising Companies), (specifically, Rule 49-15(d)(15)(b)), sets forth the acceptable forms of evidence to establish the size and the existence of a non-conforming sign on the relevant date set forth in the Zoning Resolution; and

WHEREAS, the acceptable forms of evidence set forth at Rule 49 are, in pertinent part as follows:

Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date; and

WHEREAS, affidavits are also listed as an acceptable form of evidence; and

WHEREAS, a DOB guidance document sets forth the instructions for filing under Rule 49 and states that any one of the following documents would be acceptable evidence for sign registration pursuant to Rule 49: (1) DOB issued permit for sign erection; (2) DOB-approved application for sign erection; (3) DOB dockets/permit book indicating sign permit approval; and (4) publicly catalogued photograph from a source such as NYC Department of Finance, New York Public Library, Office of Metropolitan History, or New York State Archives; and

## REGISTRATION PROCESS

WHEREAS, on September 5, 2012, pursuant to the requirements of Article 502 and Rule 49, the Appellant submitted a Sign Registration Application for the Sign and completed an OAC3 Outdoor Advertising Company Sign Profile, attaching copies of the following in support of the establishment of the Sign: the 1981 Permit; the 1990 Permit; the 2008 Permit; a 1958 photo; a 1959 and 1980 Bronx Yellow Pages excerpt; a 1967 photo; a 1978 mortgage; a 1980 photo; a 1980 letter from the president of the New York Bus Service; Bronx address book excerpts from 1956, 1959, 1967, and 1980; a 1973 New York Bus Service Bus Schedule; photos from 1988, 1993, 1994, 1998, 2001, 2005, 2008, 2009, 2010, 2011, and 2012; and two affidavits from sign painters; and

WHEREAS, on October 3, 2012, DOB issued a Notice of Sign Registration Deficiency, stating that “[DOB is] unable to accept the sign for registration at this time (due to your) failure to provide proof of legal establishment”; and

WHEREAS, the Appellant states that, believing its evidence to be sufficient, it did not submit further evidence in response to the October 3, 2012 notice; and

WHEREAS, accordingly, on January 14, 2013, DOB issued the Final Determination denying registration; and

## RELEVANT STATUTORY PROVISIONS

### ZR § 12-10 Definitions

Accessory use, or accessory

An "accessory use":

- (a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, #accessory# docks, off-street parking or off-street loading need not be located on the same #zoning lot#; and
- (b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and
- (c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use#.

When "accessory" is used in the text, it shall have the same meaning as #accessory use#.

\* \* \*

### Sign, advertising

An "advertising sign" is a #sign# that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same #zoning lot# and is not #accessory# to a #use# located on the #zoning lot#.

\* \* \*

### 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; and

\* \* \*

### ZR § 42-55

Additional Regulations for Signs Near Certain Parks and

Designated Arterial Highways

M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a),(b) and (c), or paragraph (d), of this Section, shall apply for #signs# near designated arterial highways or certain #public parks#.

- (a) Within 200 feet of an arterial highway or a #public park# with an area of one-half acre or more, #signs# that are within view of such arterial highway or #public park# shall be subject to the following provisions:
  - (1) no permitted #sign# shall exceed 500 square feet of #surface area#; and
  - (2) no #advertising sign# shall be allowed; nor shall an existing #advertising sign# be

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# MINUTES

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structurally altered, relocated or reconstructed.

(b) Beyond 200 feet from such arterial highway or #public park#, the #surface area# of such #signs# may be increased one square foot for each linear foot such sign is located from the arterial highway or #public park#.

(c) The more restrictive of the following shall apply:

(1) any #advertising sign# erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal #non-conforming use# status pursuant to Section 52-83 (Non-Conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or

(2) any #advertising sign# erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in #surface area# on its face, 30 feet in height and 60 feet in length, shall have legal #non-conforming use# status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All #advertising signs# not in conformance with the standards set forth herein shall terminate.

\* \* \*

## ZR § 52-11 *Continuation of Non-Conforming Uses*

### General Provisions

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

\* \* \*

## 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

\* \* \*

## Administrative Code § 28-502.4 – Reporting Requirement

An outdoor advertising company shall provide the department with a list with the location of signs,

sign structures and sign locations under the control of such outdoor advertising company in accordance with the following provisions:

(1)The list shall include all signs, sign structures and sign locations located (i) within a distance of 900 linear feet (274 m) from and within view of an arterial highway; or (ii) within a distance of 200 linear feet (60 960 mm) from and within view of a public park with an area of ½ acre (5000 m) or more...

\* \* \*

## 1 RCNY § 49-15 – Sign Inventory to be Submitted with Registration Application

...(d)(5) Each sign shall be identified as either “advertising” or “non-advertising.” To the extent a sign is a non-conforming sign, it must further be identified as “non-conforming advertising” or “non-conforming non-advertising.” A sign identified as “non-conforming advertising” or “non-conforming non-advertising” shall be submitted to the Department for confirmation of its non-conforming status, pursuant to section 49-16 of this chapter.

\* \* \*

## 1 RCNY § 49-16 – Non-conforming Signs

(a) With respect to each sign identified in the sign inventory as non-conforming, the registered architect or professional engineer shall request confirmation of its non-conforming status from the Department based on evidence submitted in the registration application. The Department shall review the evidence submitted and accept or deny the request within a reasonable period of time. A sign that has been identified as non-conforming on the initial registration application may remain erected unless and until the Department has issued a determination that it is not non-conforming; and

\* \* \*

## 1 RCNY § 49-43 – Advertising Signs

Absent evidence that revenue from the sign is clearly incidental to the revenue generated from the use on the zoning lot to which it directs attention, the following signs are deemed to be advertising signs for purposes of compliance with the Zoning Resolution:

(a) Signs that direct attention to a business on the zoning lot that is primarily operating a storage or warehouse use for business activities conducted off the zoning lot, and that storage or warehouse use occupies less than the full building on the zoning lot; or

(b) All signs, other than non-commercial, larger than 200 square feet, unless it is apparent from the copy and/or depictions on the sign that it is used to direct the attention of vehicular and pedestrian traffic to the business on the zoning lot.

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# MINUTES

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## RELEVANT DOB POLICY AND PROCEDURE NOTICES

Technical Policy and Procedure Notice No. 14/1988

### Documentation in Support of Existing Use

[T]he following shall be a guideline, in order of preference, for the acceptable documentation in support of [an] existing use for legalization or proof of continual non-conforming use:

- a) Records of documentation from any City Agency. Such records may include, but not be limited to, tax records, multiple dwelling registration cards, I cards from HPD and cabaret licenses.
- b) Records, bills, documentation from public utilities indicating name and address of business and time period bills cover.
- c) Any other documentation or bills indicating the use of the building, such as telephone ads, commercial trash hauler invoices, liquor licenses, etc.
- d) Only after satisfactory explanation or proof that the documentation pursuant to (a), (b) or (c) does not exist, affidavits regarding the use of a building will be accepted to support either an application for legalization or as proof concerning whether or not a prior non-conforming use was continual per ZR 52-61. However, where such affidavits are submitted, they may be accepted only after the Borough Superintendent has reviewed them with close scrutiny; and

\* \* \*

Operations Policy and Procedure Notice No. 10/1999

### Signs Presumed to be Not Accessory / Advertising

In the following instances, there will be a rebuttable presumption that the proposed sign is not accessory, i.e., there will be a rebuttable presumption that the sign is an advertising sign.

- a. A sign proposed in connection with a principal use whose activity on the zoning lot consists primarily of storage or a warehouse for its business activities conducted off the zoning lot and where the principal use occupies less than the full building on the zoning lot.

## ISSUE ON APPEAL

WHEREAS, the Board notes that the Appellant and DOB agree that advertising sign use was established at the Premises as of May 31, 1968; and

WHEREAS, in addition, the Board notes that the Appellant and DOB agree that messages for New York Bus

Service were displayed on the side of the building at the Premises from 1981 to 1988; and

WHEREAS, accordingly, at issue is whether the display of such messages constituted a discontinuance of the advertising sign use, per ZR § 52-61; and

### THE APPELLANT'S POSITION

WHEREAS, the Appellant contends that the Final Determination should be reversed because the Sign has been used for advertising since before May 31, 1968 until the present, without any two-year period of discontinuance, making it a protected non-conforming advertising sign pursuant to ZR §§ 42-55(c)(2) and 52-11; and

WHEREAS, the Appellant concedes that the 1981 Permit was for an accessory business sign, but asserts that the Sign never actually displayed messages regarding the principal use of the Premises; and

WHEREAS, specifically, the Appellant states that although from 1981 to 1988, the Sign hosted messages relating to New York Bus Service in ostensible accordance with the 1981 Permit, during that time period the Sign continued to satisfy the definition of "advertising sign" because New York Bus Service did not conduct any operations at the Premises; and

WHEREAS, in support of this assertion, the Appellant submitted several affidavits from individuals claiming personal knowledge of the use of the Premises during the time period in question; the affiants include: (1) the vice president of the corporate entity ("Peter's Bag Corp.") that owned the Premises from 1965 through 1987; (2) the chief financial officer of Peter's Bag Corp. from 1987 through 1989; (3) a purchasing and inventory manager for New York Bus Service from 1980 through 1996; (4) a sign painter who worked at the Premises and painted the Sign from 1977 until 1994; and (5) the principal of OTR; each of the affiants assert that New York Bus Service did not occupy the Premises; and

WHEREAS, the Appellant asserts that, taken together, the sworn statements demonstrate that New York Bus Service had no presence at the Premises other than the Sign; and

WHEREAS, the Appellant also attacks the validity of the 1981 Permit, arguing that it does not contain a sufficient basis for the conclusion that New York Bus Service was the principal use of the Premises such that a New York Bus Service sign could be permitted as a business sign; and

WHEREAS, the Appellant asserts that the 1981 Permit does not include any direct evidence of New York Bus Service's use of the building located at the Premises as a warehouse; as such, the Appellant asserts that the 1981 Permit was issued based on a clear misstatement of fact; and

WHEREAS, the Appellant states that the Community Board Chairman's letter does not attest to New York Bus Service's actual presence at the Premises and that the Declaration merely implies but does not state that New York Bus Service conducts business at the Premises; and

WHEREAS, the Appellant also submitted the following evidence, which it contends contradicts the notion

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2 The parties disagree over the number of signs and the calculation of the total surface area occupied by the advertising sign use; however, the Board declines to take a position on this issue for reasons set forth below.

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# MINUTES

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that New York Bus Service had business operations at the Premises when the 1981 Permit was issued: (1) New York Bus Service letterhead from the 1980s, showing its address off the New England Thruway at Exit 13; (2) the 1980 Bronx Yellow Pages listing New York Bus Service at Hutchinson Avenue; and (3) the 1980 Bronx Address Book listing only Peter's Bag Corp. at the Premises; and

WHEREAS, as to the Reconsideration in the 1981 Permit application, the Appellant states that it lacked factual support, and, as such, was clearly granted in error and must be disregarded by DOB and by the Board, citing BSA Cal. No. 251-12-A (330 East 59th Street, Manhattan), in which the Board upheld a DOB determination that a reconsideration was issued in error and could not be relied upon because the Board agreed with DOB that the reviewing official at DOB failed to consider the relevant dates under the Zoning Resolution and BSA Cal. Nos. 95-12-A and 96-12-A (2284 12th Avenue, Manhattan), in which the Board reversed a DOB determination that a reconsideration was issued in error, finding insufficient evidence that DOB clearly issued the reconsideration in error; and

WHEREAS, the Appellant contends that the 1981 Permit was merely a sham and that it should be disregarded from the Board's analysis of whether advertising sign use was continuous at the Premises; and

WHEREAS, the Appellant asserts that DOB's recognition of the sham accessory permit is embodied in Operations Policy and Procedure Notice No. 10/1999 ("OPPN 10/99"), which was issued to govern DOB's handling of permit applications for signs in proximity to arterial highways, and in 1 RCNY 49-43(a), which deems certain signs on zoning lots with warehouses advertising signs; and

WHEREAS, the Appellant notes that in BSA Cal. Nos. 24-12-A and 147-12-A (2368 12th Avenue, Manhattan), the Board sustained DOB's application of Rule 49-43(a) and the OPPN 10/99 to reject registration of two signs as accessory where accessory sign permits had been obtained and the principal use of the zoning lot was purported to be a warehouse, but the evidence of the *bona fides* of the warehouse operation was found by DOB to be insufficient; and

WHEREAS, the Appellant asserts that the facts and circumstances of BSA Cal. Nos. 24-12-A and 147-12-A (2368 12th Avenue, Manhattan) and those surrounding the Sign are similar; however, in that case, DOB repudiated the permits based on the OPPN 10/99 and Rule 49-43(a), but in this case, DOB ignores evidence suggesting that the 1981 Permit was a sham and asserts that it was properly issued; and

WHEREAS, the Appellant states that, accordingly, even if the Board agrees with DOB that the 1981 Permit was properly issued, the Board should find that the arrangement constituted a sham and that the Sign was always used for advertising; and

WHEREAS, in conclusion, the Appellant asserts that the record contains an overwhelming factual basis for the

Board to conclude that the Sign has been used continuously for advertising since before May 31, 1968, and, that, absent the erroneous issuance of the 1981 Permit by DOB, there would be no question as to the Sign's continuity and right to protection under ZR §§ 42-55 and 52-11; and

WHEREAS, as such, the Appellant asserts that the Final Determination should be reversed, the Sign registration application accepted, and the 2012 Permit application approved; and

## DOB'S POSITION

WHEREAS, DOB asserts that to the extent that an advertising sign use was established as non-conforming at the Premises, such use cannot be recognized as non-conforming today because the New York Bus Company sign displayed in 1981 was legalized pursuant to a permit for an as-of-right accessory sign; as such, per ZR § 52-61, the Sign lost its non-conforming status; and

WHEREAS, DOB states that in 1981, ZR § 42-52 generally allowed accessory business signs with no restriction on size, illumination or proximity to an arterial highway or park; in contrast, ZR § 42-53 prohibited advertising signs within 200 feet and within view of an arterial highway (which continued the prohibition on arterial advertising signs that has existed since June 28, 1940); and

WHEREAS, DOB asserts that in 1981, where a sign was in proximity to an arterial highway and purported to be accessory to a warehouse, the sign was presumed to be an advertising sign (DOB notes that this presumption was later formalized as OPPN 10/99 and Rule 49-43(a)); and

WHEREAS, accordingly, DOB states that when it initially reviewed the 1981 Permit application, it determined that the application lacked sufficient evidence to overcome the presumption that the New York Bus Service sign was an advertising sign; and

WHEREAS, however, DOB states that it ultimately determined that the applicant had provided sufficient documentation to overcome the presumption of advertising; and

WHEREAS, in particular, DOB asserts that it relied on multiple representations in the 1981 Permit application documents that the sign was an accessory use to an on-site business, including: (1) the application job description, which was certified by a registered architect and states that the application is "filed for business sign painted on easterly wall of building in accordance with plans filed herewith"; (2) the Amendment, which was also certified by a registered architect and states that "a storage and office facility is maintained in this building by the company whose sign is located on the easterly wall of said building"; and (3) the Declaration, made by the vice president of Peter's Bag Corp., which implies that New York Bus Service conducts business on the Premises when it declares that the Sign will be removed when it ceases to conduct business; and

WHEREAS, further, DOB notes that the 1981 Permit application includes the Community Board letter, which implies but does not directly state that the proposed sign is a business sign rather than an advertising sign; and

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# MINUTES

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WHEREAS, therefore, DOB states that, in 1981, it had a sufficient basis to issue the 1981 Permit legalizing the accessory sign; and

WHEREAS, likewise, DOB asserts that the Appellant has not in the course of this proceeding advanced a sufficient reason to question the validity of or repudiate the issuance of 1981 Permit; and

WHEREAS, to support this assertion, DOB cites to the Board's decision in BSA Cal. Nos. 95-12-A and 96-12-A (2284 12th Avenue, Manhattan); in that case, DOB states that the Board found that where the record reflects DOB's prior acknowledgement that a sign use was legally established and there is no sufficient evidence to invalidate that determination, it should not be disturbed or disregarded; and

WHEREAS, DOB states that the evidence provided by the Appellant allegedly demonstrating that the 1981 Permit was a sham is unpersuasive; and

WHEREAS, specifically, DOB states that the Appellant erroneously relies on four affidavits—two from former officers of Peter's Bag Corp., and one each from a former manager of New York Bus Service, a sign painter, and the president of OTR Media Group, Inc.—to support its sham argument; and

WHEREAS, DOB contends that these affidavits are not sufficient to demonstrate that the accessory sign permit was issued in error and do not undermine the position that an accessory sign was displayed from 1981 through 1988 in accordance with the 1981 Permit; and

WHEREAS, DOB notes that under Technical Policy and Procedure Notice No. 14/1988 ("TPPN 14/88"), affidavits cannot be the sole basis for demonstrating a use; and

WHEREAS, DOB asserts that the affidavit of the vice president of Peter's Bag Corp. is particularly questionable since the 1981 Permit application appears to bear his signature; of the two contradictory statements from this affiant, the statement made contemporaneously with the filing of the permit application stating that the sign was accessory to the New York Bus Service's use of the premises to conduct its business is more credible than a conflicting statement made 32 years later as to the actual use of the sign; and

WHEREAS, DOB also states that the sign painter's statement that he did not see any offices or storage for New York Bus Service inside the building in 1977 does not prove exclusive use of the building located at the Premises by other tenants; and

WHEREAS, in addition, DOB states that the Appellant's evidence that Peter's Bag Corp. occupied the Premises in 1980 and that New York Bus Service had facilities at locations during the 1980s other than at the Premises does not prove that New York Bus Service did not also operate a storage facility at the Premises when the 1981 Permit was issued; nor does the Appellant's evidence of New York Bus Service facilities in other locations prove that the statements made in connection with the 1981 Permit

application were untrue and made with the intent to circumvent the law; and

WHEREAS, DOB also observes that evidence of a contemporaneous use provided on behalf of the current occupant of the building, such as that reviewed by DOB in 1981, is likely to be more credible than evidence of a historical use; and

WHEREAS, finally, DOB observes that whereas BSA Cal. Nos. 95-12-A and 96-12-A (2284 12th Avenue, Manhattan) involved a determination that a sign was entitled to non-conforming use status, here, DOB determined in 1981 that the Sign was *conforming*; in such a case, DOB asserts that there is even less cause to overturn a DOB determination since non-conforming uses are disfavored under the Zoning Resolution; and

WHEREAS, accordingly, DOB states that it properly issued the Final Determination denying registration of the Sign as a non-conforming advertising sign; and

## CONCLUSION

WHEREAS, the Board finds that DOB properly denied the Sign registration because the use of the Sign for advertising was discontinued for a period of more than two years; and

WHEREAS, in particular, the Board finds that, based on the record, the Sign was used to display messages that were accessory to the principal use of the warehouse at the Premises for more than two years, beginning in 1981, when the 1981 Permit was obtained to legalize an existing business sign for New York Bus Service, until 19883; and

WHEREAS, the Board agrees with DOB that the Appellant has not submitted sufficient evidence to demonstrate that DOB clearly erred in issuing the 1981 Permit; and

WHEREAS, the Board also agrees with DOB that the Reconsideration issued in connection with the 1981 Permit was properly issued and supported by substantial evidence, including numerous contemporaneous assertions by different people—an officer of the corporate entity that owned the Premises at the time, the job applicant, and the Chairman of the Community Board—each with an obligation under the Administrative Code not to provide false or misleading statements to DOB; as noted above, the officer of the corporate entity that owned the Premises stated that "when New York Bus Service ceases to use a portion of [the Premises] to conduct their business, the sign indicating their business will be removed from the face of [the Premises]," the job applicant stated that "[the Sign] complies with section 42-51 of the Zoning Resolution for a business sign," and the Chairman of the Community Board stated that he had "no objection to the sign as a business sign"; and

WHEREAS, the Board notes that the job applicant, as a registered architect, also had an ethical obligation not to provide false statements or misleading statements in a permit

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3 Based on the record, the parties agree that messages for the New York Bus Service were displayed on the Sign from 1981 until 1988.

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# MINUTES

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application; and

WHEREAS, the Board disagrees with the Appellant that a parsing of the 1981 Permit application documents indicates that no one actually stated that New York Bus Service occupied the Premises; rather, the Board finds that the clear intent of the documents and the statements made therein was to convince DOB that New York Bus Service occupied the Premises so that DOB would grant a permit legalizing the New York Bus Service sign, which, as noted above, measured 11,297 sq. ft. in surface area and was located 35 feet from the Bruckner Expressway and was permitted as an accessory business sign but prohibited as an advertising sign; and

WHEREAS, as to the Appellant's affidavits asserting that New York Bus Service did not use the Premises while the New York Bus Service sign was displayed, the Board agrees with DOB that they are not a sufficient basis to conclude that the 1981 Permit was issued in error; and

WHEREAS, the Board observes that although the Appellant's affidavits suggest the existence of a sham accessory permit, affidavits are the least valuable form of evidence of a use according to TPPN 14/88, and, as such, they must be scrutinized closely and are insufficient to establish a fact, absent supporting documentation; and

WHEREAS, under close scrutiny, the Board finds the affidavits unpersuasive, as follows: (1) the affidavit of the vice president of Peter's Bag Corp. is directly contradicted by statements made by the vice president himself in connection with the 1981 Permit application; (2) the affidavit from chief financial officer of Peter's Bag Corp. could only be based on personal knowledge acquired during 1987 or 1988, because the CFO states that he was employed by Peter's Bag Corp. from 1987 through 1989; (3) the affidavit of the purchasing and inventory manager for New York Bus Service from 1980 through 1996 is vague and contradicted by evidence in the record; (4) the affidavit of the sign painter who worked at the Premises is insufficient to prove the actual use of the building since it is unclear when and how often he visited the building and how much of the building he actually observed; and (5) the affidavit of the principal of OTR is not based on personal knowledge and may be tainted by OTR's interest in the outcome of the appeal; and

WHEREAS, the Board also noted, importantly, that none of the affiants claims to have occupied the building during the time period in question; as such, the affidavits are of limited value when weighed against contemporaneous statements to the contrary that were made proactively in support of a permit application; and

WHEREAS, as for the non-affidavit evidence submitted by the Appellant, the Board agrees with DOB that it is of limited evidentiary value; and

WHEREAS, specifically, the Board agrees with DOB that documentary evidence that Peter's Bag Corp. occupied the Premises in 1980 and that New York Bus Service had facilities at locations during the 1980s other than at the Premises does not prove that New York Bus Service did not also operate a storage facility at the Premises when the 1981 Permit was issued; similarly, the Appellant's evidence of

New York Bus Service facilities in other locations do not prove that it did not also maintain a storage facility at the Premises; and

WHEREAS, accordingly, the Board agrees with DOB that neither the Reconsideration nor the 1981 Permit was issued in error; as such, and consistent with the Board's rationale in BSA Cal. Nos. 95-12-A and 96-12-A (2284 12th Avenue, Manhattan), the Board declines to overrule DOB's 1981 determination; and

WHEREAS, the Board also rejects the Appellant's assertion that the facts in the instant matter are similar to those in BSA Cal. Nos. 24-12-A and 147-12-A (2368 12th Avenue, Manhattan); and

WHEREAS, the Board notes that the 1981 Permit was subjected to a full plan examination, including a rigorous fact-finding inquiry on the issue of the principal use of the Premises, and supported by a Commissioner-level reconsideration and a restrictive declaration by the owner of the Premises; in contrast, the accessory permits obtained in BSA Cal. Nos. 24-12-A and 147-12-A (2368 12th Avenue, Manhattan) were filed under professional certification and signed off nearly four years after the adoption of OPPN 10/99; and

WHEREAS, additionally, the Board notes that when the 1981 Permit was obtained, the Sign was subject to ZR § 42-53 (the pre-cursor to ZR § 42-55), which was amended on February 21, 1980 to, among other things, confer non-conforming use status upon advertising signs subject to the arterial highway restrictions to the extent of their size as of May 1, 1968; and

WHEREAS, accordingly, at hearing, the Board questioned why there was no attempt in 1981 to legalize the Sign as an advertising sign under ZR § 42-53; in response, the Appellant speculated that the evidence of the Sign's establishment and/or continuous use (under ZR § 52-61), was unavailable at the time; and

WHEREAS, thus, the Board observes that it is reasonable to conclude that the 1981 Permit was obtained for an accessory sign because there was insufficient evidence to support a permit application to "grandfather" an advertising sign pursuant to the 1980 amendment to ZR § 42-53 and ZR § 52-61; and

WHEREAS, as to the Appellant's assertion that even if the 1981 Permit was not issued in error, the Board should find that, based on the record, the New York Bus Service sign was, by definition, an advertising sign because the message displayed was related to a business operated off the zoning lot, the Board disagrees; and

WHEREAS, the Board observes that, according to TPPN 14/88, the highest value documentation for demonstrating a use is a record from a city agency; the 1981 Permit is a record from a city agency, namely, DOB, the agency responsible for regulating the use and occupancy of buildings; by issuing the 1981 Permit, DOB made an official statement about not only the accessory use authorized by the permit (the New York Bus Service sign), but also the principal use of the Premises (a storage facility for New

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# MINUTES

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York Bus Service); the Appellant’s evidence to the contrary consists of affidavits, which are the lowest value evidence under TPPN 14/88; further, as noted above, the affidavits contain statements that are vague, virtually unsupported, contradictory, and/or self-serving; and

WHEREAS, therefore, the Board finds that DOB properly determined that to the extent that a non-conforming advertising sign use was established at the Premises, such use was discontinued, per ZR § 52-61, from 1981 until 1988 when an accessory sign was maintained; as such, DOB properly rejected the Appellant’s registration of the Sign as a non-conforming advertising sign and properly denied the 2012 Permit application; and

WHEREAS, the Board notes that a secondary issue arose in the context of the appeal regarding the number of signs and total surface area of advertising sign use displayed as of May 31, 1968; the Appellant contends that, based on a 1967 photo, an 11,297 sq.-ft. sign existed at the Premises as of May 31, 1968; DOB contends that the 1967 photo shows that six separate signs existed with less than 11,297 sq. ft. of surface area; in essence, the parties disagree over how the surface area of a sign is measured under the applicable provisions of the Zoning Resolution; however, the Board finds that the precise size of the Sign (or signs) as of May 31, 1968 is inconsequential, since, for the reasons set forth above, the Board finds that no advertising sign is permitted at the Premises, per ZR §§ 42-55 and 52-61; therefore, the Board does not take a position on this issue; and

*Therefore it is Resolved* that this appeal, challenging a Final Determination issued on January 14, 2013, is denied.

Adopted by the Board of Standards and Appeals, January 28, 2014.

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## 131-13-A & 132-13-A

APPLICANT – Sheldon Lobel, P.C., for Rick Russo, owner.  
SUBJECT – Application May 10, 2013 – Proposed construction of a residence not fronting on a legally mapped street, contrary to General City Law Section 36. R2 & R1 (SHPD) zoning districts.

PREMISES AFFECTED – 43 & 47 Cecilia Court, Cecilia Court off of Howard Lane, Block 615, Lot 210, Borough of Staten Island.

### COMMUNITY BOARD #1SI

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

#### THE VOTE TO GRANT –

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

Negative: Commissioner Montanez.....1

#### THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated April 24, 2013, acting on Department of Buildings Application Nos. 520117506 and 520117490 read, in pertinent part:

The street giving access to proposed building is not duly placed on the official map of the City of New

York therefore:

A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law

B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to Section 502.1 of the 2008 NYC Building Code; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, with continued hearings on October 22, 2013, November 26, 2013, and December 17, 2013, and then to decision on January 28, 2014; and

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

WHEREAS, City Councilmember Debbie Rose submitted testimony in opposition to the application, citing fire safety concerns; and

WHEREAS, certain members of the surrounding community, including a community group known as the Serpentine Art & Nature Commons, Inc. (the “Opposition”), provided written and oral testimony in opposition to the application citing the following concerns: (1) the slope of the roadway and its distance will interfere with firefighting operations; (2) the proposal is contrary to a private agreement (a November 1950 restrictive covenant) concerning the site and other nearby parcels; and (3) the Board previously denied a GCL § 36 waiver application concerning the site in part because the Fire Department disapproved the application; and

WHEREAS, the subject site is located on Cecilia Court off of Howard Lane, partially within an R1-1 zoning district and partially within an R2 zoning district, within the Special Hillside Preservation District; and

WHEREAS, the applicant states that the site does not front a mapped street, but has access to Howard Avenue, a mapped street, via a private utility and access easement known as Howard Lane, which was recorded on December 12, 1950 but does not appear on the City Map; the applicant notes that Howard Lane has a width of 16 feet, a slope of approximately 12.2 percent and that the distance between the proposed building and Howard Avenue along Howard Lane is 550 feet; and

WHEREAS, the applicant states that the site is vacant; however, it has been the subject of a series of Board and City Planning actions over the years; specifically, on February 28, 1989, under BSA Cal Nos. 26-86-A, 27-86-A and 28-86-A, the Board denied applications filed pursuant to GCL § 36 to permit construction of three single-family residences not fronting on a mapped street; on January 6, 1998, under BSA Cal. No. 209-07-A, the Board granted an application filed pursuant to GCL § 36 to permit the construction of one single-family residence not fronting on a mapped street; in 2001, the Department of City Planning approved an authorization application filed under ULURP No. N000523 ZAR to allow the construction of a single-family residence on former Lot

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# MINUTES

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210; and

WHEREAS, the applicant now seeks to construct two, three-story, single-family residences contrary to GCL § 36 and to change the slope of Howard Lane to 7.3 percent; and

WHEREAS, by letter dated August 26, 2013, the Fire Department stated that the residences are proposed on a private roadway having a substandard width, contrary to the Fire Code, but that it would not object to their construction provided that the residences are fully-sprinklered in accordance with New York City Building Code § 903 and the Fire Interim guidelines, which state that the Fire Department will grant a modification for construction of new occupancy group R-3 (one-family and two-family) dwellings with modified fire apparatus access if the building is designed, constructed, and maintained in accordance with New York City Building Code § 903; and

WHEREAS, on September 3, 2013, the applicant submitted a revised site plan to address the request of the Fire Department; and

WHEREAS, at hearing, the Board raised concerns regarding the slope of the roadway and the firefighting apparatus access; and

WHEREAS, in response, the applicant submitted a letter, a survey, and a site plan, which contends that: (1) the existing roadway was constructed prior to the current Fire Code requirements and Special Hillside Preservation District regulations and has served as access for emergency services to the existing homes fronting the roadway for many years; and (2) the Fire Department firefighting manual indicates that the maximum roadway slope for a tower ladder is 15 percent, which is more than the existing mean slope of 12.2 percent and significantly more than the proposed mean slope of 7.3 percent; therefore, the applicant asserts that either slope is within the acceptable slope for firefighting purposes; and

WHEREAS, by letter dated October 22, 2013, the Opposition raises concerns regarding the information provided by the applicant as to the length and slope of the grade; and

WHEREAS, by letter dated October 28, 2013, the Fire Department informed the Board that, based on additional information regarding the site, it now objected to the proposed roadway because it included grades substantially in excess of ten percent, contrary to Fire Code § 503.2.7; and

WHEREAS, following a series of discussions and letters among the parties, the Fire Department approved the revised proposal, subject to the following conditions: (1) the residences will be fully-sprinklered; (2) a Fire Code-compliant apparatus turnaround will be installed; (3) two new fire hydrants will be installed; (4) a new eight-inch water main from Howard Avenue to the northerly end of the private road will be installed; and (5) the applicant will provide satisfactory evidence to the Department of Buildings that there is unrestricted permanent access along the length of the private road to the applicant's property line; and

WHEREAS, in response to the issues identified by the Opposition regarding Howard Lane, which is a private easement, the applicant acknowledged that it would be required to seek authorization from the other parties to the

1950 restrictive covenant in order to implement certain Fire Department conditions; and

WHEREAS, on January 15, 2014, the applicant submitted a revised site plan that was reviewed and approved by the Fire Department; and

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

*Therefore it is Resolved*, that the decisions of the Staten Island Borough Commissioner, dated July 15, 2013, acting on Department of Buildings Application Nos. 520117506 and 520117490 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawings filed with the application marked "Received January 15, 2014" (2) sheets; and *on further condition*

THAT the proposal will comply with all applicable zoning district requirements and all other applicable laws, rules, and regulations;

THAT all required approvals from the Department of City Planning will be obtained prior to the issuance of building permits;

THAT the building will be fully sprinklered in accordance with BSA-approved plans;

THAT a Fire Code-compliant apparatus turnaround will be installed;

THAT two new fire hydrants will be installed;

THAT a new eight-inch water main from Howard Avenue to the northerly end of the private road will be installed;

THAT the applicant will provide satisfactory evidence to the Department of Buildings that there is unrestricted permanent access along the length of the private road to the applicant's property line;

THAT there will be "No Parking" along the entire length of the easement;

THAT the conditions requested by the Fire Department be implemented before the Temporary Certificate of Occupancy and Certificate of Occupancy are issued;

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

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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

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

Adopted by the Board of Standards and Appeals on January 28, 2014.

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# MINUTES

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## 230-13-A

APPLICANT – Nikolaos Sellas, for L & A Group Holdings LLC, owners.

SUBJECT – Application August 8, 2013 – Proposed construction of a four-story residential building located within the bed of a mapped street (29th Street), contrary to General City Law Section 35. R6A/R6B zoning district.

PREMISES AFFECTED – 29-19 Newtown Avenue, northeasterly side of Newtown Avenue 151.18' northwesterly from the corner formed by the intersection Newtown Avenue and 30th Street, Block 597, Lot 7, Borough of Queens.

### COMMUNITY BOARD #4Q

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 7, 2013, acting on Department of Buildings Application No. 420839150, reads in pertinent part:

Proposed construction partially located in bed of mapped street as per GCL 35; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

WHEREAS, an application for the adjacent site, Lot 9, was decided on the same date, pursuant to BSA Cal. No. 231-13-A (29-15 Newtown Avenue, Queens); and

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

WHEREAS, this is an application to allow the construction of a four-story multiple dwelling partially within the bed of 29th Street, a mapped but unbuilt street; and

WHEREAS, the subject site is located on the east side of Newton Avenue between 28th Street and 30th Street, partially within an R6A zoning district and partially within an R6B zoning district; and

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

WHEREAS, by letter dated September 3, 2013, the Fire Department states that it has reviewed the proposal and has no objection to its approval; and

WHEREAS, by letter dated September 11, 2013, the Department of Environmental Protection (“DEP”) states that: (1) there is a 12-inch diameter private combined sewer and an eight-inch diameter city water main in 29th Street between Newton Avenue and Astoria Boulevard; and (2) Amended Drainage Plan, dated February 15, 1935, sheet 1 of 3, for the above referenced location, calls for a future 12-inch diameter combined sewer in the bed of 29th Street between Newton

Avenue and Astoria Boulevard; and

WHEREAS, DEP’s letter further states that it requires the applicant to submit a survey/plan showing: (1) the width of mapped 29th Street and the width of the widening portion of the street at the above referenced location; and (2) the distance from the lot line of Lot 7 to the terminal manhole of the 12-inch diameter private combined sewer, the end cap of the eight-inch diameter city water main, and the hydrant in the bed of 29th Street, between Newton Avenue and Astoria Boulevard; and

WHEREAS, in response to DEP’s request, the applicant submitted an updated survey; and

WHEREAS, by letter dated November 25, 2013, DEP states that, based on the survey submitted by the applicant, the future 12-inch diameter combined sewer crossing Lot 7 and Lot 9 will not be required, and, therefore, DEP has no objection to the proposed applications; and

WHEREAS, by correspondence dated January 17, 2014 the Department of Transportation (“DOT”) states that it has reviewed the proposal and has no objections; and

WHEREAS, the DOT notes that according to the Queens Borough President’s Topographical Bureau: (1) Newton Avenue from 28th Street to 30th Street is a mapped street with width of 70 feet on the City Map and was acquired to full width on July 11, 1914; (2) 29th Street between Astoria Avenue and Newton Avenue has a Corporation Counsel Opinion of dedication for 37 feet, as in use on May 2, 1922; and (3) the portion of 29th Street within the proposed development site is mapped at a width of 45 feet width on the City Map and the City does not have title; and

WHEREAS, DOT also notes that the improvement of 29th Street at this location (Block 597, Lot 7) is not presently included in DOT’s Capital Improvement Program; and

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

*Therefore it is Resolved*, that the decision of the Queens Borough Commissioner, dated August 7, 2013, acting on Department of Buildings Application No. 420839150, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawing filed with the application marked “Received January 22, 2014” one (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations will be complied with; and *on further condition*:

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

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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

THAT the Department of Buildings must ensure

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# MINUTES

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

Adopted by the Board of Standards and Appeals on January 28, 2014.

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## 231-13-A

APPLICANT – Nikolaos Sellas, for Double T Corp., owner.  
SUBJECT – Application August 8, 2013 – Proposed construction of a six-story residential building located within the bed of a mapped street (29th Street), contrary to General City Law Section 35. R6A/R6B zoning district.

PREMISES AFFECTED – 29-15 Newtown Avenue, northeasterly side of Newtown Avenue, 203.19' northwesterly from the corner formed by the intersection of Newtown Avenue and 30<sup>th</sup> Street, Block 596, Lot 9, Borough of Queens.

### COMMUNITY BOARD #4Q

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

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 7, 2013, acting on Department of Buildings Application No. 420839169, reads in pertinent part:

Proposed construction partially located in bed of mapped street as per GCL 35; and

WHEREAS, a public hearing was held on this application on December 17, 2013, after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

WHEREAS, an application for the adjacent site, Lot 7, was decided on the same date, pursuant to BSA Cal. No. 230-13-A (29-19 Newtown Avenue, Queens); and

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

WHEREAS, this is an application to allow the construction of six-story multiple dwelling partially within the bed of 29th Street, a mapped but unbuilt street; and

WHEREAS, the subject site is located on the east side of Newton Avenue between 28th Street and 30th Street, partially within an R6A zoning district and partially within an R6B zoning district; and

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

WHEREAS, by letter dated September 3, 2013, the Fire Department states that it has reviewed the proposal and has no objection to its approval; and

WHEREAS, by letter dated September 11, 2013, the

Department of Environmental Protection (“DEP”) states that: (1) there is a 12-inch diameter private combined sewer and an eight-inch diameter city water main in 29th Street between Newton Avenue and Astoria Boulevard; and (2) Amended Drainage Plan, dated February 15, 1935, sheet 1 of 3, for the above referenced location, calls for a future 12-inch diameter combined sewer in the bed of 29th Street between Newton Avenue and Astoria Boulevard; and

WHEREAS, DEP’s letter further states that it requires the applicant to submit a survey/plan showing: (1) the width of mapped 29th Street and the width of the widening portion of the street at the above referenced location; and (2) the distance from the lot line of Lot 7 to the terminal manhole of the 12-inch diameter private combined sewer, the end cap of the eight-inch diameter city water main, and the hydrant in the bed of 29th Street, between Newton Avenue and Astoria Boulevard; and

WHEREAS, in response to DEP’s request, the applicant submitted an updated survey; and

WHEREAS, by letter dated November 25, 2013, DEP states that, based on the survey submitted by the applicant, the future 12-inch diameter combined sewer crossing Lot 7 and Lot 9 will not be required, and, therefore, DEP has no objection to the proposed applications; and

WHEREAS, by correspondence dated January 17, 2014 the Department of Transportation (“DOT”) states that it has reviewed the proposal and has no objections; and

WHEREAS, the DOT notes that according to the Queens Borough President’s Topographical Bureau: (1) Newton Avenue from 28th Street to 30th Street is a mapped street with width of 70 feet on the City Map and was acquired to full width on July 11, 1914; (2) 29th Street between Astoria Avenue and Newton Avenue has a Corporation Counsel Opinion of dedication for 37 feet, as in use on May 2, 1922; and (3) the portion of 29th Street within the proposed development site is mapped at a width of 45 feet width on the City Map and the City does not have title; and

WHEREAS, DOT also notes that the improvement of 29th Street at this location (Block 596, Lot 9) is not presently included in DOT’s Capital Improvement Program; and

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

*Therefore it is Resolved*, that the decision of the Queens Borough Commissioner, dated August 7, 2013, acting on Department of Buildings Application No. 420839169, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction will substantially conform to the drawing filed with the application marked “Received January 22, 2014” one (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations will be complied with; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed

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# MINUTES

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DOB/other jurisdiction objection(s);

THAT DOB will review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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

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

Adopted by the Board of Standards and Appeals on January 28, 2014.

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## 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 March 11, 2014, at 10 A.M., for continued hearing.

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## 348-12-A & 349-12-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Starr Avenue Development LLC, owner.

SUBJECT – Application December 28, 2012 – Proposed construction of two one-family dwellings located within the bed of a mapped street, contrary to General City Law, Section 35. R2 zoning district.

PREMISES AFFECTED – 15 & 19 Starr Avenue, north side of Starr Avenue, 248.73 east of intersection of Bement Avenue and Starr Avenue, Block 298, Lot 67, Borough of Staten Island.

### COMMUNITY BOARD #1SI

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

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## 98-13-A

APPLICANT – Eric Palatnik, P.C., for Scott Berman, owner.

SUBJECT – Application April 8, 2013 – Proposed two-story two family residential development which is within the unbuilt portion of the mapped street on the corner of Haven Avenue and Hull Street, contrary to General City Law 35. R3-1 zoning district.

PREMISES AFFECTED – 107 Haven Avenue, Corner of Hull Avenue and Haven Avenue, Block 3671, Lot 15, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Laid over to March 4, 2014, at 10 A.M., for adjourned hearing.

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## 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 March 11, 2014, at 10 A.M., for adjourned hearing.

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## 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** – Laid over to February 25, 2014, at 10 A.M., for continued hearing.

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## 127-13-A

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Brusco Group, Inc., owner.

SUBJECT – Application May 1, 2013 – Appeal under Section 310 of the Multiple Dwelling Law to vary MDL Sections 171-2(a) and 2(f) to allow for a vertical enlargement of a residential building. R8 zoning district.

PREMISES AFFECTED – 332 West 87th Street, south side of West 87th Street between West end Avenue and Riverside Drive, Block 1247, Lot 48 Borough of Manhattan.

### COMMUNITY BOARD #7M

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

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## 156-13-A

APPLICANT – Bryan Cave LLP, for 450 West 31<sup>st</sup> Street Owners Corp, owner; OTR Media Group, Inc., lessee.

SUBJECT – Application May 17, 2013 – Appeal of DOB determination that the subject advertising sign is not entitled to non-conforming use status. C6-4/HY zoning district.

PREMISES AFFECTED – 450 West 31<sup>st</sup> Street, West 31<sup>st</sup>

# MINUTES

Street, between Tenth Avenue and Lincoln Tunnel Expressway, Block 728, Lot 60, Borough of Manhattan.

## COMMUNITY BOARD #10M

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

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

## 214-13-A

APPLICANT – Slater & Beckerman, P.C., for Jeffrey Mitchell, owner.

SUBJECT – Application July 15, 2013 – Appeal seeking a determination that the owner has acquired a common law vested right to complete construction under the prior R3-2 zoning district. R3-X zoning district.

PREMISES AFFECTED – 219-08 141st Avenue, south side of 141st Avenue between 219th Street and 222nd Street, Block 13145, Lot 15, Borough of Queens.

## COMMUNITY BOARD #13Q

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

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

## 300-13-A

APPLICANT – Goldman Harris LLC, for LSG Fulton Street LLC, owner.

SUBJECT – Application November 7, 2013 – Proposed construction of a mixed-use development to be located partially within the bed of a mapped but unbuilt portion of Fulton Street, contrary to General City law Section 35 and the bulk regulations pursuant to §72-01-(g). C5-5/C6-4 zoning district.

PREMISES AFFECTED – 112,114 & 120 Fulton Street, Three tax lots fronting on Fulton Street between Nassau and Dutch Streets in lower Manhattan. Block 78, Lot(s) 49, 7501 & 45. Borough of Manhattan.

## COMMUNITY BOARD #1M

### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

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

*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## ZONING CALENDAR

### 279-12-BZ

APPLICANT – Akerman Senterfitt LLP, for Bacele Realty, owner.

SUBJECT – Application September 20, 2012 – Variance (§72-21) to permit a bank (UG 6) in a residential zoning district, contrary to §22-00. R4/R5B zoning district.

PREMISES AFFECTED – 27-24 College Point Boulevard, northwest corner of the intersection of College Point Boulevard and 28th Avenue, Block 4292, Lot 12, Borough of Queens.

## COMMUNITY BOARD #7Q

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

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 22, 2012, acting on Department of Buildings Application No. 420511495, reads in pertinent part:

Office use (UG 6) in R4/R5B is contrary to ZR 22-10; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R4 zoning district and partially within an R5B zoning district, the construction of a two-story commercial building to be occupied as a bank (Use Group 6) with five accessory off-street parking spaces and a drive-through, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on August 20, 2012, after due notice by publication in the *City Record*, with continued hearings on November 19, 2013 and December 17, 2013, and then to decision on January 28, 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 this application; and

WHEREAS, the subject site is located at the northwest corner of the intersection of College Point Boulevard and 28th Avenue, partially within an R4 zoning district and partially within an R5B zoning district; and

WHEREAS, the site has approximately 66 feet of frontage along College Point Boulevard, approximately 131 feet of frontage along 28th Street, and a lot area of 5,765 sq. ft. (1,845 sq. ft. within the R4 district and 3,919 sq. ft. within the R5B district); and

WHEREAS, the site is occupied by a vacant, two-story

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# MINUTES

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building with approximately 3,760 sq. ft. of floor area; and

WHEREAS, the applicant represents that from approximately 1947 until 2011, the building and site were occupied by a gasoline and automotive service station (Use Group 16) on the first story and a single-family dwelling on the second story; the applicant notes that the site has been subject to the Board's jurisdiction since 1947, when the Board granted a variance under BSA Cal. No. 359-47-BZ to permit the station; such grant expired in 1985 and was reinstated under BSA Cal. No. 5-00-BZ, for a term of ten years; the 2000 grant expired on October 3, 2010; and

WHEREAS, the applicant proposes to construct the following at the site: a two-story commercial building with 5,082 sq. ft. of floor area (0.88 FAR) to be occupied as a bank (Use Group 6); an accessory parking lot with five spaces; and a drive-through for bank services; and

WHEREAS, because Use Group 6 is not permitted within the subject residence districts (R4 and R5B, as noted above), the subject use variance is requested; 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 occupying the subject site in conformance with underlying district regulations: (1) the site's contamination; and (2) the site's proximity to manufacturing uses; and

WHEREAS, the applicant states that underground gasoline storage tanks were maintained in connection with the gasoline and automotive service station, and that the presence of such tanks resulted in subsurface contamination; such contamination, in turn, led to the development and implementation of a remediation plan under the supervision of the New York State Department of Environmental Conservation; and

WHEREAS, in support of this statement, the applicant provided estimates of costs associated with remediation of the site; and

WHEREAS, as to the adjacency of manufacturing uses, the applicant states that the site is located directly across the street from M1-1 and M1-2 zoning districts, which are occupied with industrial uses that render the site unsuitable for conforming uses; and

WHEREAS, in particular, the applicant states that there are five corner lots (including the subject site) at the intersection of 28th Avenue and College Point Boulevard and that all five contain manufacturing, industrial or automotive uses; accordingly, a residential or community facility building would have to be offered at discounted rates that would be insufficient to offset the costs of remediation and the inefficiencies inherent in developing a trapezoidal site; and

WHEREAS, based upon the above, the Board finds that the site's contamination and proximity to manufacturing uses create unnecessary hardship and practical difficulty in developing the site in conformance with use regulations; and

WHEREAS, the applicant assessed the financial feasibility of three scenarios: (1) an as-of-right mixed residential and community facility building; (2) an as-of-right community facility building; and (3) the proposal; and

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

WHEREAS, at hearing, the Board directed the applicant to clarify the costs associated with remediation of the contaminated site; and

WHEREAS, in response, the applicant submitted detailed calculations and an itemized cost breakdown; 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, in accordance with ZR § 72-21(c), the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the immediate area is characterized by low- to medium-density commercial and manufacturing uses; and

WHEREAS, the applicant states that there are non-conforming commercial and manufacturing uses on the two blocks directly north and directly south of the site along College Point Boulevard, and that the areas south and east of the site are almost exclusively commercial and manufacturing; and

WHEREAS, the applicant acknowledges that its two immediately adjacent lots are occupied by a mixed residential and commercial building on Block 4292, Lot 11 (which is directly north of the site) and a single-family residence on Block 4292, Lot 75, which is directly west of the site; however, the applicant states that the proposed bank office use is harmonious with a residential neighborhood, in that it has regular, daytime business hours and does not create any noise, traffic, or air quality impacts; further, the applicant has located the bank building on the southeastern-most corner of the lot and provided appropriate buffering measures, including a six-foot opaque fence with plantings; and

WHEREAS, the applicant also notes that the proposal has the support of a nearby homeowner's association; and

WHEREAS, the applicant represents and the Board agrees that the proposed bank (including its drive-through) will have significantly less traffic impacts on the neighborhood than the gasoline and automotive service station that previously occupied the site; and

WHEREAS, finally, the applicant states that a manufacturing use has occupied the site for nearly 70 years and that the change to office use brings the site more into conformance with the site's R4/R5B designation and its nearby residential uses; and

WHEREAS, at hearing, the Board directed the applicant to clarify the need for the second story and the drive-through, and their impacts on the parking requirements of the bank; and

WHEREAS, in response, the applicant submitted a

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# MINUTES

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letter from the prospective tenant of the space, which stated that both the second floor and the drive-through are essential to its banking operations; according to the bank, the second floor would provide space for loan officers and customer service representatives to meet with patrons but would not increase the number of employees working at the branch; as such, the second floor has no impact on the parking requirements of the bank; in addition, the applicant provided a parking survey that demonstrated the proposed five spaces would, in light of nearby on-street parking, be adequate to accommodate the expected parking demand of the bank; and

WHEREAS, as for the drive-through, the applicant states that it is an amenity that would be particularly desirable for its local patrons, who tend to be automobile-oriented; and

WHEREAS, 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 applicant states that the practical difficulties and unnecessary hardships associated with the site result from the shape of the site, its contamination, and its proximity to manufacturing uses; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, in accordance with ZR § 72-21(d); and

WHEREAS, the applicant represents and the Board agrees that, per ZR § 72-21(e), the proposal represents the minimum variance needed to allow for a reasonable and productive use of the site; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13-BSA-034Q, dated September 19, 2012; and

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

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

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 to permit, on a site partially within an R4 zoning district and partially within an R5B zoning district, the construction of a two-story commercial building to be occupied as a bank (Use Group 6) with five accessory off-street parking spaces and a drive-through, contrary to ZR § 22-10; *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 12, 2013"– (8) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: two stories; a maximum floor area of 5,082 sq. ft. (0.88 FAR); a maximum height of 26'-10"; a maximum lot coverage of 2,541 sq. ft.; and five accessory parking spaces;

THAT the building will be used as a bank;

THAT any change in use of the building will be subject to the Board's approval;

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

THAT signage will comply with C1 district regulations;

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

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

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, January 28, 2014.

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**81-13-BZ**

APPLICANT – Nasir J. Khanzada, for Aqeel Klan, owner.  
SUBJECT – Application February 28, 2013 – Re-Instatement (§11-411) of a variance which permitted an auto service station (UG16B), with accessory uses, which expired on November 6, 1992; Amendment (§11-413) to permit the change of use from auto service station to auto repair (UG 16B) with accessory auto sales; Waiver of the Rules. R2 zoning district.

PREMISES AFFECTED – 264-12 Hillside Avenue, Block 8794, Lot 22, Borough of Queens.

**COMMUNITY BOARD # 13Q**

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

THE VOTE TO GRANT –

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# MINUTES

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Affirmative: Chair Srinivasan, Vice Chair Collins,  
Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5

Negative:.....0

## THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, a reinstatement, a change in use, and an extension of term for the continued use of an automotive repair facility, which expired on November 6, 1992; and

WHEREAS, a public hearing was held on this application on July 9, 2013, after due notice by publication in *The City Record*, with continued hearings on October 29, 2013 and December 10, 2013, and then to decision on January 28, 2014; and

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

WHEREAS, the site is located at the northeast corner of Hillside Avenue and 265<sup>th</sup> Street within an R2 zoning district; and

WHEREAS, the site has 100 feet of frontage along Hillside Avenue, 100 feet of frontage along 265<sup>th</sup> Street, 10,000 sq. ft. of lot area, and is occupied by a one-story commercial building used for automotive repairs; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 11, 1958, when, under BSA Cal. No. 59-57-BZ, the Board granted a use variance to permit in a retail use district, the construction of a gasoline service station with office, sales, a lubricatorium, car washing, minor auto repairs, parking and storage of motor vehicles within 75 feet of a residence use district; and

WHEREAS, the grant was subsequently amended at various times; most recently, on October 12, 1983, the Board granted an extension of term for ten years to expire on November 6, 1992; and

WHEREAS, the applicant now seeks to reinstate the variance granted under BSA Cal. No. 59-57-BZ; and

WHEREAS, the applicant does not propose to enlarge the existing building and proposes to make certain improvements to the site conditions and to provide the following uses: automotive repair (Use Group 16B) with accessory office, limited automotive sales, lubricatorium, and hand washing; and

WHEREAS, the Board notes that, under its Rules, an applicant requesting reinstatement of a pre-1961 use variance must demonstrate that: (1) the use has been continuous since the expiration of the term; (2) substantial prejudice would result if reinstatement is not granted; and (3) the use permitted by the grant does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, as to continuity, the applicant represents that, although the term expired in 1992, the automotive use has been continuous from 1957 to the present; in support of this representation, the applicant submitted documentation

including a letter related to the gasoline service use from 1995 and the removal of the gasoline storage tanks in 2003, evidence of signage at the site, utility, and an affidavit from a neighbor noting observations of the existence of the use since 1996; and

WHEREAS, further, the applicant represents that substantial prejudice would result if reinstatement is not granted, because the site is occupied by an established business that would be required to cease operations; and

WHEREAS, as to the whether the existing use substantially impairs the appropriate use and development of adjacent properties, the applicant asserts that the garage has operated continuously at the site and has not increased in intensity since its establishment; further, the applicant notes that the historic building form has a peaked roof and brick façade, which is harmonious with the nearby residential character; and

WHEREAS, the applicant also asserts that the use of the site complies with all other findings related to its continued use: (1) the site has an area greater than 7,500 sq. ft.; (2) the facilities for lubrication and minor repairs are located within a completely enclosed building; (3) the site includes reservoir space for four autos awaiting repair as well as three employee parking spaces, one space for hand washing of autos, and two accessory car sales spaces; (4) the community is benefited by having a New York State inspection and auto repair facility; (5) by eliminating the gasoline service at the site, traffic in and out of the site has decreased; and (6) there is screening along lot lines shared with residential use; and

WHEREAS, at hearing, the Board raised concern about (1) the condition of the perimeter brick wall including the presence of graffiti; (2) the presence of temporary signs and excessive signage; (3) the insufficiency of plantings; and (4) the nature of the automotive sales; and

WHEREAS, in response, the applicant provided (1) photographs reflecting the removal of graffiti; (2) the removal of temporary signage and other signage that was inconsistent with the original Board approval; (3) plans for the inclusion and maintenance of plantings; and (4) an explanation that the automotive sales use is limited and related to autos that have been repaired onsite and available for purchase; and

WHEREAS, the applicant states that there will be a total of three active employees on site and the hours of operation will be: Monday through Friday, 6:00 a.m. to 6:00 p.m.; Saturday, 10:00 a.m. to 5:00 p.m.; and Sunday, 10:00 a.m. to 1:00 p.m.; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term of an expired variance; and

WHEREAS, based on the applicant's representations, the Board finds that reinstatement of the subject variance is appropriate for a term of ten years is appropriate; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review

# MINUTES

and makes each and every one of the required findings under ZR § 11-411 to permit, within an R2 zoning district, the reinstatement of a prior Board approval for an automotive service station at the subject site, *on condition* that any and all work will substantially conform to drawings as they apply to the objection above noted, filed with this application marked 'Received January 14, 2014'- (3) sheets; and *on further condition*:

THAT the term of this grant will be for ten years, to expire on January 28, 2024;

THAT the layout of the site and the landscaping will be as reflected on the BSA-approved plans;

THAT the hours of operation will be limited to Monday through Friday, 6:00 a.m. to 6:00 p.m.; Saturday, 10:00 a.m. to 5:00 p.m.; and Sunday, 10:00 a.m. to 1:00 p.m.;

THAT signage will not exceed that reflected on the BS-approved plans;

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

THAT the number of automobiles parked on the site will be limited to those reflected on the BSA-approved plans;

THAT the above conditions will be listed 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.”  
(DOB Application No. 420551922)

Adopted by the Board of Standards and Appeals, January 28, 2014.

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## 167-13-BZ

### CEQR #13-BSA-147K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Michael Calabrese, owner.

SUBJECT – Application June 4, 2013 – Variance (§72-21) to permit the enlargement of an existing one-story automobile sales establishment, contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1614/26 86th Street and Bay 13 Street, southwest corner of 86th Street and Bay 13 Street, Block 6363, Lot 42, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

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

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 5, 2013, acting on Department of

Buildings Application No. 320748045, reads in pertinent part:

Enlargement to an existing one story automobile sales establishment (UG 16) in an R5 zoning district is contrary to Sections 22-10 ZR and 52-40. Prior variance under Cal. No. 103-94-BZ has expired; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the enlargement of an existing one-story building occupied by an automotive sales establishment (Use Group 16), which does not conform to district use regulations, contrary to ZR §§ 22-10 and 52-40; and

WHEREAS, a public hearing was held on this application on September 24, 2013, after due notice by publication in *The City Record*, with continued hearings on October 29, 2013, November 26, 2013, and December 17, 2013, and then to decision on January 28, 2014; and

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

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

WHEREAS, the subject site is located on the southwest corner of 86<sup>th</sup> Street and Bay 13<sup>th</sup> Street within an R5 zoning district; and

WHEREAS, the site has approximately 120 feet of frontage on 86<sup>th</sup> Street and 86 feet of frontage on Bay 13<sup>th</sup> Street, with a total lot area of 10,320 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story commercial building with 2,434 sq. ft. of floor area (0.24 FAR) used for an automotive dealership (Use Group 16) and open display of vehicles on the remainder of the lot; and

WHEREAS, the building was completed in 1958 pursuant to a variance adopted by the Board on May 7, 1957 under BSA Cal. No. 113-56-BZ, which allowed in business and residence use districts the construction of a gasoline service station, auto washing, lubrication, office, accessory sales, minor repairs with hand tools, parking and storage of more than five motor vehicles, and signs within 75 feet of the residence use district; and

WHEREAS, the term of the variance was extended in 1972 and again in 1983; in 1985, the variance was amended to eliminate the gasoline service station uses and limit the occupancy to automobile sales and accessory parking, including construction of an enlargement to the existing building; and

WHEREAS, on March 30, 1993, the variance was extended to expire on May 7, 2002; however, in 1995, pursuant to BSA Cal. No. 103-94-BZ, the Board granted a new variance application to allow for a one-story enlargement to an existing one-story building used for automobile sales; and

WHEREAS, the proposed enlargement allowed for expansion of the building to the western lot line and was designed to enclose the automobile sales and reduce the visual impact of the existing use; the variance included a 20-year

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# MINUTES

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term to expire on June 20, 2015; and

WHEREAS, the enlargement was never constructed and, ultimately, after the issuance of a new Certificate of Occupancy, which referenced BSA Cal. No. 103-94-BZ, it was discovered that the building and approval pursuant to BSA Cal. No. 113-56-BZ had not been superseded; and

WHEREAS, the applicant now proposes to enlarge the existing one-story building used for automobile sales as was previously approved by the Board under BSA Cal. No. 103-94-BZ; and

WHEREAS, the proposed enlargement would increase the size of the existing building to 5,184 sq. ft. (0.5 FAR) (1.0 FAR is the maximum permitted for a conforming use); and

WHEREAS, because the automotive sales use is not permitted in the subject zoning district, the applicant seeks a use variance to permit the enlargement of the Use Group 16 use; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the history of the site for automotive use; (2) the obsolescence of the subject building, built in 1957, for the existing use; and (3) the location on a commercial thoroughfare; and

WHEREAS, as to the history of use and the existing building, the applicant states that the building was designed for automotive uses and operated for such uses from at least 1957 to the present; and

WHEREAS, the applicant represents that the use has been established at the site for more than 50 years and that due to its history of automotive use and associated soil contamination it is precluding from performing significant excavation or creating a cellar; and

WHEREAS, the applicant states that as of right development would require complete demolition of the existing building and would likely involve significant environmental remediation for any below grade excavation due to the historic automotive use, which pre-dates modern environmental regulations; and

WHEREAS, the applicant notes that the proposed construction requires minimal soil disturbance, while allowing the use established by the variance and in continuous existence at the site, in some form, for more than 50 years to continue; and

WHEREAS, as to the existing building, the applicant notes that the current size and L-shape of the building, which has not been altered for almost 30 years, is too constrained to accommodate a modern automotive dealership; and

WHEREAS, the applicant notes that the size is insufficient compared to the standards of automotive dealerships in the immediate vicinity; and

WHEREAS, at the Board's request, the applicant performed an analysis of nearby automotive dealerships and concluded that when compared to the automotive dealerships within 1.7 miles of the site, the existing building is significantly smaller than all others; specifically, the other showrooms have floor area ranging from 4,950 sq. ft. to

20,150 sq. ft. – which is twice to ten times as large as the existing building; and

WHEREAS, further, the applicant concluded that the FAR for the other showrooms is well in excess of the existing 0.23 FAR and the proposed 0.5 FAR, which would be comparable to the smallest of the nearby showrooms; and

WHEREAS, as to the building's shape, the applicant notes that it is an irregular L-shape and that half of the building is set back from the street frontage in a way that diminishes marketability and street presence; and

WHEREAS, the applicant proposes to square-off the building, as proposed in 1994, so as to have a rectangular-shaped building which allows for increased visibility at the 86<sup>th</sup> Street frontage and also allows for improved circulation within the building; and

WHEREAS, primarily, the applicant states that the small size of the existing building precludes it from attracting major automotive companies, due to the inability to meet their design and marketing standards; and

WHEREAS, the applicant represents that an automotive company's model requires a regularly-shaped building with high visibility for its showroom from passersby; and

WHEREAS, the applicant represents that the lack of space creates a hardship in maintaining the existing building for a feasible automotive sales use; and

WHEREAS, the applicant notes that the proposed enlargement is consistent with the Board's approval for an enlargement and that the need for the enlargement remains the same as at the time of the 1994 approval; and

WHEREAS, the applicant asserts that the building is unusually-shaped and, as evidenced by the conclusion nearly 20 years ago, that it was obsolete for modern use; no change has occurred since the 1994 grant and, the applicant asserts that the conditions underlying the 1994 grant remain or have become worse; and

WHEREAS, as to the location, the applicant states that the site has 120 feet of frontage along 86<sup>th</sup> Street and that this portion of 86<sup>th</sup> Street is a busy, predominantly commercial street, which constrains the feasibility of conforming residential development; and

WHEREAS, the applicant notes that the north side of 86<sup>th</sup> Street is within a C8-1 zoning district and is occupied by commercial and even some manufacturing use; the block to the north across Bay 13<sup>th</sup> Street has a C1-2 zoning district overlay and is also occupied by commercial use; and

WHEREAS, based upon the above, the Board finds that the history of the site, and the characteristics of the historic building and its use are unique conditions which create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board notes that the current proposal to enlarge the building is the same as the 1994 proposal to enlarge the building, which the Board approved, but was never constructed; and

WHEREAS, accordingly, the Board concludes that the hardship of trying to accommodate a modern automotive

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# MINUTES

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dealership in the historic automotive services building has only become more pronounced; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a 2,445 sq. ft. automotive sales and showroom building with outdoor storage, like the existing conditions; and (2) the proposed 5,195 sq. ft. automotive sales and showroom building; and

WHEREAS, the study concluded that the existing model would not result in a reasonable return, but that the proposed enlargement would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict compliance with zoning will provide a reasonable return; and

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

WHEREAS, the applicant notes that the site is immediately adjacent to two commercial zoning districts: (1) to the north across 86<sup>th</sup> Street is a C8-1 zoning district where the automotive sales use would be permitted as of right and (2) to the east across Bay 13<sup>th</sup> Street is a C1-2 zoning district; and

WHEREAS, the applicant states that the surrounding portion of 86<sup>th</sup> Street is predominantly commercial in nature and the adjacent corner on 86<sup>th</sup> street and Bay 13<sup>th</sup> Street is occupied by a bank; and

WHEREAS, the applicant also notes that automotive use – either gasoline sales, service, or sales – has been present at the site, pursuant to the Board's grants for more than 50 years and that the proposed use will not increase the intensity of activity on the site, but rather enclose portions of a use that has been historically open and, thus, render it more compatible with other uses within the subject R5 zoning district; and

WHEREAS, the applicant asserts that the proposed enlargement would reduce the impact of the non-conforming use on the surrounding neighborhood, enclosing an open portion of the lot that contains vehicles, and while the variance includes an enlargement of the building, it does not include an enlargement or extension of the use, which will continue to occupy the entire zoning lot; and

WHEREAS, the applicant asserts that enlarging the showroom reduces the unenclosed sales area and will reduce the number of cars stored on the lot and will improve the appearance and operation of the site, more consistent with enclosed uses typically permitted in C1 and C2 zoning districts; and

WHEREAS, specifically, the applicant notes that the enlargement of the building will be along the western portion of the site adjacent to commercial use and will replace the open display of vehicles with an enclosed showroom that is more compatible with residential use; and

WHEREAS, as to bulk, the applicant notes that the C8-1 zoning district across the street would allow 1.0 FAR for the

automotive dealership use and that 1.0 FAR is the maximum permitted FAR for a conforming use in the subject R5 zoning district, thus, the proposed 0.5 FAR is compatible from a bulk perspective; and

WHEREAS, at hearing, the Board raised the following concerns: (1) whether the landscaping and buffering with the adjacent residential use was sufficient; (2) whether the signage complies with C1 zoning district regulations; (3) that there are excess banners; and (4) that there are excess vehicles on the site; and

WHEREAS, as noted, the Board also asked the applicant for an analysis of the parameters of other automotive dealerships in the area to establish the context for such use; and

WHEREAS, in response to the Board's concerns, the applicant submitted (1) a revised site plan reflecting increased landscaping and buffering with the adjacent residential use and a planted area at the front of the building; (2) a note that all future signage will comply with C1 zoning district signage regulations, rather than the C8-1 zoning district regulations as initially proposed; (3) photographs of the site reflecting the elimination of excess banners and the removal of graffiti; and (4) a response that excess vehicles had been removed and would be stored at a facility across the street, by agreement with the owner; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's historic use and conditions; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13-BSA-147K dated May 31, 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

# MINUTES

Statement are foreseeable; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a to permit, within an R5 zoning district, the enlargement of an existing one-story building occupied by an automotive sales establishment (Use Group 16), which does not conform to district use regulations, contrary to ZR §§ 22-10 and 52-40; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 22, 2014" – (4) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the enlarged building: a total floor area of 5,184 sq. ft. (0.5 FAR); a total height of 17'-0", a side yard with a minimum depth of 5'-0" along the southern lot line, as illustrated on the Board-approved plans;

THAT the hours of operation will be limited to Monday to Thursday, 9:00 a.m. to 9:00 p.m.; Friday and Saturday, 9:00 a.m. to 6:00 p.m.; and Sunday, 11:00 a.m. to 6:00 p.m.;

THAT signage on the site will comply with C1 district regulations;

THAT all fencing and landscaping be installed and maintained as reflected on the BSA-approved plans;

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

## 218-13-BZ

APPLICANT – Warshaw Burstein, LLP, for 37 W Owner LLC; Ultrafit LLC, lessee.

SUBJECT – Application July 19, 2013 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Ultrafit*). C6-3A zoning district.

PREMISES AFFECTED – 136 Church Street, southwest corner of the intersection formed by Warren and Church Streets in Tribeca, Block 133, Lot 29, Borough of Manhattan.

## COMMUNITY BOARD #1M

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

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated July 16, 2013, acting on Department of Buildings ("DOB") Application No. 103703789, reads in pertinent part:

Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is not permitted as-of-right in a C6-3A zoning district pursuant to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-3A zoning district, the operation of a physical culture establishment ("PCE") on portions of the cellar and ground floor levels of an 11-story mixed residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 10, 2013 after due notice by publication in *The City Record*, and then to decision on January 28, 2014; and

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

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

WHEREAS, the subject site is located at the southwest corner of the intersection of Church Street and Warren Street, within a C6-3A zoning district within the Special Tribeca Mixed Use District; and

WHEREAS, the site has approximately 100 feet of frontage along Church Street, approximately 50 feet of frontage along Warren Street, and 5,029 sq. ft. of lot area; and

WHEREAS, the site is occupied by an 11-story mixed residential and commercial building; and

WHEREAS, the PCE is proposed to occupy approximately 2,686 sq. ft. of floor area on the ground floor of the building and 1,188 sq. ft. of floor space in the cellar, for a total PCE floor space of 3,784 sq. ft.; and

WHEREAS, the PCE will be operated as Ultrafit, LLC; and

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

WHEREAS, the hours of operation for the PCE will be seven days per week, from 5:00 a.m. to 11:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and

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# MINUTES

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issued a report which the Board has determined to be satisfactory; and

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

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

WHEREAS, at hearing, the Board directed the applicant to clarify the sound attenuation measures that will be provided, given that the building will contain residences; and

WHEREAS, in response, the applicant submitted a report from its acoustical consultant, which detailed the noise attenuation measures that will be provided; in addition, the plans have been amended to reflect that such noise attenuation measures that will be provided; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action discussed in the Environmental Assessment Statement, CEQR No. 14BSA011M dated July 18, 2013; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issued a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C6-3A

zoning district, the operation of a PCE on portions of the cellar and ground floor levels of an 11-story mixed residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 24, 2014” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 28, 2024;

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

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

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

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

THAT that the hours of operation of the PCE will be limited to daily, from 5:00 a.m. to 11:00 p.m.;

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

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

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

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

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**255-13-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 3560 WPR LLC & 3572 WPR LLC, owner; Blink Williamsbridge, Inc., lessee.

SUBJECT – Application September 5, 2013 – Special Permit (§73-36) to permit the operation of a physical culture (*Blink Fitness*) establishment within an existing commercial building. C2-4 (R7-A) zoning district.

PREMISES AFFECTED – 3560/84 White Plains Road, East side of White Plains Road at southeast corner of intersection of White Plains Road 213th Street. Block 4657, Lot(s) 94, 96. Borough of Queens.

**COMMUNITY BOARD #12BX**

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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# MINUTES

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Commissioner Ottley-Brown, Commissioner Hinkson and  
Commissioner Montanez .....5  
Negative:.....0

## THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough  
Commissioner, dated August 22, 2013, acting on  
Department of Buildings (“DOB”) Application No.  
103703789, reads in pertinent part:

Proposed physical culture establishment in a C2-4  
(R7A) district is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36  
and 73-03, to permit, on a site located in a C2-4 (R7A)  
zoning district, the operation of a physical culture  
establishment (“PCE”) in portions of the first and second  
story of a two-story commercial building, contrary to ZR §  
32-10; and

WHEREAS, a public hearing was held on this  
application on December 17, 2013, after due notice by  
publication in *The City Record*, and then to decision on  
January 28, 2014; and

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

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

WHEREAS, the subject site comprises adjacent tax  
lots (Lots 94 and 96) and spans the east side of White Plains  
Road between East 212th Street and East 213th Street,  
within a C2-4 (R7A) zoning district; and

WHEREAS, the site has 71.34 feet of frontage along  
East 212th Street, 200.67 sq. ft. along White Plains Road,  
55.19 feet of frontage along East 213th Street, and 12,350  
sq. ft. of lot area; and

WHEREAS, the site is occupied by two two-story  
buildings, which are proposed to be combined into a single  
building; and

WHEREAS, the applicant states that the PCE is  
proposed to occupy a portion of the first story (3,962 sq. ft. of  
floor area) combined building and the entirety of the second  
story (11,942 sq. ft.), for a total PCE floor area of 15,904 sq.  
ft.; and

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

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

WHEREAS, the hours of operation for the PCE will be  
Monday through Thursday, from 5:00 a.m. to 11:00 p.m.,  
Friday, from 5:00 a.m. to 10:00 p.m., and Saturday and  
Sunday, from 7:00 a.m. to 7:00 p.m.; and

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

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

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

WHEREAS, at hearing, the Board requested  
clarification regarding whether windows at the rear of the  
building would be maintained and whether the existing  
parking at the site was required; and

WHEREAS, in response, the applicant indicated  
that the windows would be sealed prior to the occupancy of  
the PCE and that the parking was provided prior to 1961 and  
that, as such, it was not required; and

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

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

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

WHEREAS, the Board has conducted an environmental  
review of the proposed action discussed in the Environmental  
Assessment Statement, CEQR No. 14BSA033X, dated  
September 3, 2013; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and  
Appeals issued a Negative Declaration prepared in accordance  
with Article 8 of the New York State Environmental  
Conservation Law and 6 NYCRR Part 617 and § 6-07(b)  
of the Rules of Procedure for City Environmental Quality  
Review and Executive Order No. 91 of 1977, as amended, and  
makes each and every one of the required findings under ZR  
§§ 73-36 and 73-03 to permit, on a site located in a C2-4  
(R7A) zoning district, the operation of a PCE in portions of  
the first and second story of a two-story commercial  
building, contrary to ZR § 32-10; *on condition* that all work

# MINUTES

shall substantially conform to drawings filed with this application marked “Received October 24, 2013” – Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on January 28, 2024;

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

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

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

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

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

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

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

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

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

Adopted by the Board of Standards and Appeals, January 28, 2014.

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**292-13-BZ**

APPLICANT – Sheldon Lobel, P.C., for Congregation Bet Yaakob, Inc., owner.

SUBJECT – Application October 23, 2013 – Variance (§72-21) to allow the development of a Use Group 4A house of worship (*Congregation Bet Yaakob*), contrary to floor area, open space ratio, front, rear and side yards, lot coverage, height and setback, planting, landscaping and parking regulations. R5, R6A and R5/OP zoning districts.

PREMISES AFFECTED – 2085 Ocean Parkway, northeast corner of the intersection of Ocean Parkway and Avenue U, Block 7109, Lots 56 & 50 (Tentative Lot 56), Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
 Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough

Commissioner, dated October 21, 2013, acting on Department of Buildings Application No. 320345710 reads, in pertinent part:

1. Proposed Floor Area exceeds the maximum allowed pursuant to ZR Sections 113-11, 23-141b, 23-17, 23-11, 24-17, 77-22
2. Proposed Open Space is less than minimum required pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-23
3. Proposed Lot Coverage exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141b, 23-17, 24-11, 24-17, 77-24
4. Proposed Front Yard is less than minimum required pursuant to ZR Sections 113-12, 23-45 and does not comply with planting requirements in ZR Section 23-451
5. Proposed Level of Front Yard is higher than level permitted pursuant to ZR Section 23-42
6. Proposed Front Yard does not comply with landscaping regulations per ZR 113-30
7. Proposed Rear Yard is less than rear yard required pursuant to ZR Sections 113-11b and 24-36
8. Proposed Side Yards are less than required pursuant to ZR Sections 113-11, 23-464
9. Proposed new building exceeds maximum Height and Setback requirements pursuant to ZR Sections 113-11, 23-631d, 24-17, 24-593, 23-633a2, 77-28
10. Proposed Side and Rear Yard Setbacks are less than required pursuant to ZR Sections 113-11 and 23-662
11. Proposed development provides less than required parking spaces pursuant to ZR Sections 113-561, 25-31, 25-35
12. Proposed clerestory exceeds max height for permitted obstructions pursuant to ZR Sections 113-11 and 23-62(l); and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a two- and three-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area, open space, lot coverage, front yard, level of front yard, side yard, rear yard, height and setback, side and rear setback, special landscaping, and parking, contrary to ZR §§ 23-11, 23-141, 23-17, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-62, 23-633, 23-662, 24-11, 24-17, 24-351, 24-36, 24-593, 25-31, 25-35, 77-22, 77-23, 77-24, 77-28, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561; and

WHEREAS, a public hearing was held on this application on November 19, 2013, after due notice by publication in *The City Record*, with a continued hearing on December 11, 2013, and then to decision on January 28,

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# MINUTES

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2014; and

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

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

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

WHEREAS, certain members of the community provided testimony in opposition to the proposal, citing concerns about the bulk and potential impact on light and air and potential noise impact associated with the building's mechanicals; and

WHEREAS, this application is being brought on behalf of Congregation Bet Yaakob (the "Synagogue"), a non-profit religious entity which will occupy the proposed Edmond J. Safra Synagogue building; and

WHEREAS, the subject site is located on the northeast corner of Ocean Parkway and Avenue U within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts; and

WHEREAS, on October 16, 2012, the Board granted a variance application pursuant to ZR § 72-21, under BSA Cal. No. 168-11-BZ, to permit the construction of a four-story synagogue on Block 7109, Lot 50 (formerly Lots 48 and 50) (the "Prior Variance"); the Prior Variance reflected a building with a maximum floor area of 20,461 sq. ft. (2.3 FAR), a maximum wall height of 60'-0" and a total height of 62'-4", a minimum open space of 1,866 sq. ft., and a maximum lot coverage of 6,968 sq. ft. (79 percent); and

WHEREAS, the applicant represents that construction pursuant to the Prior Variance has not commenced; and

WHEREAS, the applicant represents that subsequent to the Prior Variance, the Congregation purchased the adjacent Lot 56, which resulted in a redesign of the building and requires a new approval for the synagogue on combined Lots 50 and 56 that more fully meets the needs of the growing Congregation; and

WHEREAS, the merged lot has a total lot area of 14,840 sq. ft.; it was formerly occupied by a two-story home on former Lot 50 and a two-story home on former Lot 48, both of which were unoccupied and sealed at the time of purchase, and the newly-acquired Lot 56 is currently occupied by a two-story residence; and

WHEREAS, the inclusion of Lot 56 increases the lot area of the zoning lot from 8,840 sq. ft. to 14,840 sq. ft., which allows for construction of a larger synagogue building with a more accommodating layout; and

WHEREAS, the applicant proposes the following parameters: two/three stories; a floor area of 22,314 sq. ft. (1.5 FAR) (a maximum community facility floor area of 21,815 sq. ft. and an aggregate between the R5 and R6A zoning districts of 1.47 FAR is permitted); a lot coverage of 63 to 72 percent (maximum permitted lot coverage ranges from 45/55 to 60 percent); an open space of 28 to 36

percent (the minimum required open space ranges from 38 to 45 percent); a maximum wall height of 47'-10" and a maximum total height of 62'-0" (the maximum permitted height ranges from 35'-0" (R5) to 50'-0" (R6A)); the clerestory (skylight over the third floor) to a height of 57'-3", which is 9'-5" above the roof of the three-story front portion of the building (exceeds the maximum height of a permitted obstruction); the proposed level of the front and rear yards 3'-4" above the permitted curb level; and no parking spaces (a minimum of 23 parking spaces are required); and

WHEREAS, under the current application, the applicant initially proposed a new building height of 70'-0"; and

WHEREAS, however, in response to concerns raised by the Board at public hearing, the applicant reduced the building height to 59'-5" at the roof ridge in the R5 corner portion of the lot and to 62'-0" in the R6A interior lot portion of the site; and

WHEREAS, as to yards, the applicant notes that the site is partially a corner lot and partially an interior lot, thus the yard requirements vary across the site; however, it will provide a front yard with the required depth of 30'-0" along Ocean Parkway but no front yard along Avenue U (a front yard with a depth of 10'-0" is required); a side yard with a width of 8'-0" on the corner portion adjacent to the neighbor on Ocean Parkway; and a rear yard with a depth of 30'-0" on the L-shaped portion of the lot within the subdistrict, but no front yard in the interior portion of the lot; and

WHEREAS, the proposal provides for the following uses: (1) a social hall, men's mikvah, and a kitchen at the cellar level; (2) the main men's sanctuary and Bet Midrash (accessory prayer room) and a Brit Milah at the first floor; (3) the women's sanctuary balcony, a kitchenette (warming pantry), boys' and girls' minyans (accessory prayer room) on the second floor; and (4) a young adult minyan, a board room, and two offices at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the growing congregation currently of approximately 600 worshippers; (2) to provide a separate worship space for male and female congregants; (3) to provide sufficient separation of space so that multiple activities may occur simultaneously; and (4) to provide accessory space including offices and a social hall; and

WHEREAS, the applicant states that the as-of-right building would have the following restrictions: a total height of 49'-0", a front yard of 30'-0" along Ocean Parkway, a front yard of 10'-0" along Avenue U, and a side yard of 13'-10"; it would allow for a social hall of only 3,090 sq. ft.; a main men's sanctuary of 1,250 sq. ft. (to accommodate 208 people); and a main women's sanctuary of 645 sq. ft. (to accommodate 120 people) – all of which are far too small to accommodate the Congregation; and

WHEREAS, further, the applicant asserts that only one Bet Midrash could be provided, instead of three, and a men's

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# MINUTES

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mikvah space could not be provided; and

WHEREAS, the applicant states that the height and setback waivers permit the double-height ceiling of the second floor main synagogue which is necessary to create a space for worship and respect and an adequate ceiling height for the second floor women's balcony; and

WHEREAS, the applicant states that the parking waiver is only related to the portion of the site within the R5 zoning district and that there is not a parking requirement for a house of worship under R6A zoning district regulations; and

WHEREAS, the applicant notes that approximately 95 percent of congregants live within walking distance of the site and must walk on certain days for reasons of religious observance; and

WHEREAS, the applicant states that 76 percent of the congregation lives within a three-quarter-mile radius of the site, which exceeds the 75 percent required under ZR § 25-35 to satisfy the City Planning Commission certification for a locally-oriented house of worship; and

WHEREAS, the applicant states that it requests a waiver of the Special Ocean Parkway District's special landscaping requirements for the front yard along Ocean Parkway as the front yard is necessary for a ramp and the main entrance; and

WHEREAS, the applicant notes that the site will be landscaped with trees and shrubbery along Avenue U, where the proposed building has 143'-0" of frontage, as well as along Ocean Parkway; and

WHEREAS, the applicant states that the congregation has occupied a nearby rental space for the past three years, which accommodates only 275 seats and is far too small to accommodate the current membership of 600 adults; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to construct a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, space for religious counseling, and a multipurpose room for educational and social programming; and

WHEREAS, as far as the changes from the proposal associated with the Prior Variance and the current proposal, the applicant states that the current proposal decreases the relief sought for FAR from 2.3 to 1.5 (1.47 FAR is the maximum permitted), open space, and lot coverage; and

WHEREAS, the applicant asserts that the proposed more uniform floor plate allows for a more functional floor layout and better circulation between the social hall, kitchen, and accessory storage; and

WHEREAS, further, the applicant notes that the modified proposal will allow for a total occupancy of 329 people in the social hall, rather than 221 people as approved by the Prior Variance; the current proposal also allows for a larger men's mikvah to be located at the cellar level rather than the first floor, as approved by the Prior Variance; and

WHEREAS, the applicant states that Jewish Law prescribes that congregants face east while praying, thus, the circular shape and downward sloping angle of the main sanctuary is designed in such a way to observe this religious

requirement while also increasing the floor area from the main sanctuary previously approved, which was located on the second floor; and

WHEREAS, the applicant notes that the new first floor design allows for a Bet Midrash (accessory prayer room) and a Brit Milah room, which are critical spaces for an Orthodox synagogue but could not be accommodated in the smaller building approved through the Prior Variance; and

WHEREAS, the applicant states that now the women's sanctuary balcony is on the second, rather than third floor and has an increase in occupancy of 31 people from 192 to 223 people and that the new design allows for three prayer rooms for young people; and

WHEREAS, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious 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 Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious 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, in addition to its programmatic needs, the applicant states that there are unique physical conditions of the site – including its L-shape; the narrow yet deep easternmost portion (formerly Lot 48); the location of multiple zoning district and special district boundary lines within the site; and the high groundwater condition; and the requirements for mechanical space, which contribute to the hardship at the site; and

WHEREAS, the applicant acknowledges that the Congregation created the irregular L-shape by merging two adjacent lots (former Lots 50 and 48), but that this lot area is critical to providing adequate space for a synagogue building with sufficient size to meet the programmatic needs; and

WHEREAS, further, the applicant notes that absent the lot merger, the 130'-0" depth and 18'-0" width of the easternmost portion of the site fronting on Avenue U presents unique physical conditions which support the request for waivers; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Synagogue create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the Board notes that certain of the site conditions contribute to the hardship associated with the site such as the irregularity of the long narrow easternmost portion; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Synagogue is a not-for-profit organization and the proposed development will be in furtherance of its not-for-

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# MINUTES

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profit mission; and

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

WHEREAS, the applicant states that the proposed use is permitted in the subject zoning districts; and

WHEREAS, as to bulk, the applicant performed a study of buildings within approximately a ½-mile radius of the site, which reflects that there are 18 buildings that are taller, contain more floor area and/or have a higher FAR than the proposed building; and

WHEREAS, specifically, the applicant states that there are eight buildings with a height of 62'-0" or greater within its study area; and

WHEREAS, further, the applicant notes that DOB has approved plans for a six-story 20-unit apartment building with a height of 70'-0" for the site adjacent to the east at 623 Avenue U; and

WHEREAS, as to yards, the applicant notes that the side yard and front yard conditions were existing longstanding non-compliances with the historic residential use of the site; and

WHEREAS, specifically, the applicant notes that the former homes had non-complying yard conditions, including that the home on Lot 50 was built to the front lot line along Avenue U and the home on Lot 48 only provided a front yard with a depth of 1'-11" on Avenue U and was built to the side lot line; and

WHEREAS, further, the applicant notes that although the yards do not meet the minimum yard requirements for a community facility, the proposal does reflect a front yard with a depth of 30'-0" along Ocean Parkway, a side yard with a width of 8'-0" adjacent to the neighboring site on Ocean Parkway, and a rear yard with a depth of 30'-0" is provided on former Lot 48; and

WHEREAS, the applicant also notes that unlike in the Prior Variance, no portion of the current proposal is located in the R5 (Special Ocean Parkway Subdistrict) portion of the site located to the rear of the adjacent homes; and

WHEREAS, as to the Special Ocean Parkway District's landscaping and front yard planting requirements, the applicant asserts that it will maintain landscaping and provide trees and shrubbery along Avenue U, where the Synagogue has 143'-0" of frontage, as well as plantings along Ocean Parkway; and

WHEREAS, in response to concerns the Board raised about the planting requirement along Ocean Parkway, the applicant increased the percentage of yard plantings from 41 percent to 50.1 percent; and

WHEREAS, as to parking, the applicant notes that the majority of congregants will walk to the site and that there is not any demand for parking; and

WHEREAS, further, as noted above, the applicant represents that 76 percent of congregants live within a three-quarter-mile radius of the site and thus are within the spirit of City Planning's parking waiver for houses of worship; and

WHEREAS, the Board notes that, based on the applicant's representation, this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship - but for the fact that a maximum of ten spaces can be waived in the subject R5 zoning district under ZR § 25-35; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, in response to questions raised about the proposed emergency generator, the applicant responded that it will only be used in the event of an emergency (and subject to a test for functioning once per month) and the sound level will be similar to existing sound levels in the surrounding neighborhood; and

WHEREAS, the applicant also notes that it proposed baffling with a height of 12'-0", which is the minimum height to adequately buffer the HVAC equipment on the roof, thus, lowering the height is not feasible; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Synagogue 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; and

WHEREAS, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue the relief needed to meet its programmatic needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14BSA060K, dated October 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

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# MINUTES

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environment that would require an Environmental Impact Statement are foreseeable; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within R5 (Special Ocean Parkway District), R6A (Special Ocean Parkway District), and R5 (Special Ocean Parkway Subdistrict) zoning districts, the construction of a two- and three-story building to be occupied by a synagogue, which does not comply with the underlying zoning district regulations for floor area, open space, lot coverage, front yard, level of front yard, side yard, rear yard, height and setback, side and rear setback, special landscaping, and parking, contrary to ZR §§ 23-11, 23-141, 23-17, 23-45, 23-451, 23-461, 23-464, 23-471, 23-53, 23-543, 23-631, 23-62, 23-633, 23-662, 24-11, 24-17, 24-351, 24-36, 24-593, 25-31, 25-35, 77-22, 77-23, 77-24, 77-28, 113-11, 113-12, 113-30, 113-503, 113-543, 113-544, and 113-561; *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 3, 2013” – Seventeen (17) sheets; and *on further condition*:

THAT the building parameters will be: two/three stories; a maximum floor area of 22,314 sq. ft. (1.5 FAR); a maximum wall height of 47’-10” and total height of 62’-0”; a minimum open space ratio of 36 percent on the corner portion of the lot and 28 percent on the interior portion of the lot; and a maximum lot coverage of 64 percent on the corner portion of the lot and 72 percent on the interior portion of the lot, as illustrated on the BSA-approved plans;

THAT sound attenuation measures be installed and maintained as reflected on the BSA- approved plans;

THAT landscaping be maintained as reflected on the BSA-approved plans;

THAT any change in control or ownership of the building will require the prior approval of the Board;

THAT the use will be limited to a house of worship (Use Group 4);

THAT no commercial catering will take place onsite;

THAT the above conditions will be listed on the certificate of occupancy;

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

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

THAT construction will proceed in accordance with ZR § 72-23;

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, January 28, 2014.

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**54-12-BZ**

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Llana Bangiyev, owner.

SUBJECT – Application March 9, 2012 – Variance (§72-21) to permit for the construction of a community facility and residential building, contrary to lot coverage (§23-141), lot area (§§23-32, 23-33), front yard (§§23-45, 24-34), side yard (§§23-46, 24-35) and side yard setback (§24-55) regulations. R5 zoning district.

PREMISES AFFECTED – 65-39 102nd Street, north side of 102nd Street, northeast corner of 66th Avenue, Block 2130, Lot 14, Borough of Queens.

**COMMUNITY BOARD #6Q**

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

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**303-12-BZ**

APPLICANT – Eric Palatnik, P.C., for Tabernacle of Praise, Inc., owner.

SUBJECT – Application October 25, 2013 – Variance (§72-21) to permit the development of a sub-cellar, cellar and three story church, with accessory educational and social facilities (*Tabernacle of Praise*), contrary to rear yard setback (§33-292), sky exposure plane and wall height (§34-432), and parking (§36-21) regulations. C8-1 zoning district.

PREMISES AFFECTED – 1106-1108 Utica Avenue, between Beverly Road and Clarendon Road, Block 4760, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #17BK**

**ACTION OF THE BOARD** – Laid over to March 4, 2014, at 10 A.M., for deferred decision.

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**6-13-BZ**

APPLICANT – Eric Palatnik, P.C., for Victor Pometko, owner.

SUBJECT – Application February 21, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage and floor area (§23-141), side yards (§23-461), and less than the minimum required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 176 Oxford Street, between Oriental Boulevard and Shore Boulevard, Block 8757, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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

# MINUTES

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**78-13-BZ**

APPLICANT – Sheldon Lobel, P.C., for S.M.H.C. LLC, owner.

SUBJECT – Application February 22, 2013 – Variance (§72-21) to permit a new four-story, four-unit residential building (UG 2), contrary to use regulations, ZR §42-00. M1-1& R7A/C2-4 zoning districts.

PREMISES AFFECTED – 876 Kent Avenue, located on the west side of Kent Avenue, approximately 91' north of Myrtle Avenue. Block 1897, Lot 56, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

**ACTION OF THE BOARD** – Laid over to March 4, 2014, at 10 A.M., for deferred decision.  
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**92-13-BZ & 93-13-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for FHR Development LLC, owner.

SUBJECT – Application March 21, 2013 – Variance (§72-21) to permit the construction of two semi-detached one-family dwellings, contrary to required rear yard regulation (§23-47). R3-1(LDGMA) zoning district.

PREMISES AFFECTED – 22 and 26 Lewiston Street, west side of Lewiston Street, 530.86 feet north of intersection with Travis Avenue, Block 2370, Lot 238, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

**ACTION OF THE BOARD** – Laid over to March 4, 2014, at 10 A.M., for continued hearing.  
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**95-13-BZ**

APPLICANT – Eric Palatnik, PC, for Lai Ho Chen, owner; Tech International Charter School, lessee.

SUBJECT – Application April 2, 2013 – Variance (§72-21) to permit the enlargement of an existing school (UG 3) at the second floor, contrary to §24-162. R6/C1-3 and R6 zoning districts.

PREMISES AFFECTED – 3120 Corlear Avenue, Corlear Avenue and West 231st Street, Block 5708, Lot 64, Borough of Bronx.

**COMMUNITY BOARD #8BX**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to February 25, 2014, at 10 A.M., for decision, hearing closed.  
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**128-13-BZ**

APPLICANT – Sheldon Lobel, PC, for Zev and Renee Marmustein, owner.

SUBJECT – Application May 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141(b)); side yards (§23-461(a)); less than the required rear yard (§23-47) and perimeter wall height (§23-631(b)) regulations. R3-2 zoning district.

PREMISES AFFECTED – 1668 East 28th Street, west side of East 28th Street 200' north of the intersection formed by East 28th Street and Quentin Road, Block 6790, Lot 23, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to March 4, 2014, at 10 A.M., for continued hearing.  
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**130-13-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, for Venetian Management LLC, owner.

SUBJECT – Application May 7, 2013 – Re-Instatement (§11-411) of a variance which permitted a one-story motor vehicle storage garage with repair (UG 16B), which expired on February 14, 1981; Amendment (§11-413) to change the use to retail (UG 6); Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 1590 Nostrand Avenue, southwest corner of Nostrand Avenue and Albemarle Road. Block 5131, Lot 1. Borough of Brooklyn.

**COMMUNITY BOARD #17BK**

**ACTION OF THE BOARD** – Laid over to March 4, 2014, at 10 A.M., for continued hearing.  
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**153-13-BZ**

APPLICANT – Eric Palatnik, PC, for Williamsburg Workshop, LLC, owner; Romi Ventures, LLC, lessee.

SUBJECT – Application May 10, 2013 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Soma Health Club*) contrary to §32-10. C4-3 zoning district.

PREMISES AFFECTED – 107 South 6th Street, between Berry Street and Bedford Avenue, Block 2456, Lot 34, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

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

## 157-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 1368 23rd Street, LLC, owner.

SUBJECT – Application May 17, 2013 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1368 & 1374 East 23rd Street, west side of East 23rd Street, 180' north of Avenue N, Block 7658, Lot 78 & 80, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to March 4, 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 March 11, 2014, at 10 A.M., for continued hearing.

## 207-13-BZ

APPLICANT – Harold Weinberg, P.E., for Harold Shamah, owner.

SUBJECT – Application July 3, 2013 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 177 Hastings Street, east side of Hastings Street, between Oriental Boulevard and Hampton Avenue, Block 8751, Lot 456, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

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

## 212-13-BZ

APPLICANT – Eric Palatnik, P.C., for Andrey Novikov, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-622) for the enlargement of an existing single family

home contrary to floor area, open space and lot coverage (ZR 23-141) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 151 Coleridge Street, Coleridge Street between Oriental Boulevard and Hampton Avenue, Block 4819, Lot 39, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

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

## 213-13-BZ

APPLICANT – Rothrug Rothkrug & Spector LLP, for Ridgeway Abstracts LLC, owner.

SUBJECT – Application July 12, 2013 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3A zoning district.

PREMISES AFFECTED – 3858-60 Victory Boulevard, east corner of intersection of Victory Boulevard and Ridgeway Avenue, Block 2610, Lot 22 & 24, Borough of Staten Island.

### COMMUNITY BOARD #2SI

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

## 228-13-BZ

APPLICANT – Herrick, Feinstein LLP by Arthur Huh, for 45 W 67th Street Development Corporation, owner; CrossFit NYC, lessee.

SUBJECT – Application August 1, 2013 – Special Permit (§73-36) to allow a physical culture establishment (*Cross Fit*) located in the cellar level of an existing 31-story building. C4-7 zoning district.

PREMISES AFFECTED – 157 Columbus Avenue, northeast corner of West 67th Street and Columbus Avenue, Block 1120, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #7M

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

## 236-13-BZ

APPLICANT – Warshaw Burstein, LLP by Joshua J. Rinesmith, for 423 West 55th Street, LLC, owner; 423 West 55th Street Fitness Group, LLP, lessee.

SUBJECT – Application August 13, 2013 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on the first and mezzanine floors of the existing building, and Special Permit (§73-52) to allow the fitness center use to extend 25'-0" into the R8 portion of the zoning lot. C6-2 & R8 zoning district.

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# MINUTES

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PREMISES AFFECTED – 423 West 55th Street, north side of West 55th Street, 275’ east of the intersection formed by 10th Avenue and West 55th Street, Block 1065, Lot 12, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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

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**274-13-BZ**

APPLICANT – Sheldon Lobel, P.C., for SKP Realty, owner; H.I.T. Factory Approved Inc., owner.

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

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

## CORRECTION

**This resolution adopted on January 14, 2014, under Calendar No. 360-65-BZ and printed in Volume 99, Bulletin Nos. 1-3, is hereby corrected to read as follows:**

**360-65-BZ**

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

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

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

**COMMUNITY BOARD #8M**

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

THE VOTE TO GRANT –

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

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

Negative:.....0

THE RESOLUTION –

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

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

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

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

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

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

WHEREAS, representatives from Carnegie Hill Neighbors, the Board of Managers of 111 East 88<sup>th</sup> Street, the Board of Directors of 1105 Park Avenue, and certain members of the surrounding community provided testimony in opposition to the application (the “Opposition”) citing the following concerns: (1) the effect of the expansion on neighboring properties with respect to natural light, ventilation, solar glare, shadows, noise, aesthetics, traffic during construction, and long-term property values; (2) the scale of the expansion in comparison to other mid-block, R8B

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# MINUTES

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buildings; (3) the fact that the site is already non-complying and has previously obtained bulk variances; (4) the absence of community outreach and Community Board support for the application; (5) the lack of an initial environmental assessment study (“EAS”) and the lack of time to review and respond to the EAS that was prepared; (6) the failure to address the (a), (c), and (e) findings of ZR § 72-21; (7) the misapplication of the Cornell doctrine for educational and religious institutions; (8) the precedent being set for other educational institutions within the mid-block contextual districts and citywide; and (9) the failure of Dalton to examine alternative sites and proposals; and

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

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

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

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

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

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

WHEREAS, in the early 1990s, due to increased enrollment, Dalton sought additional classroom space; accordingly, on March 3, 1992, pursuant to the subject calendar number, Dalton obtained an amendment to the grant (the “Prior Amendment”) to allow the expansion within the Building’s envelope of the tenth-story library mezzanine and the insertion of a floor slab into the double-height gymnasium to convert the gymnasium into two new classroom floors (the 11<sup>th</sup> and 12<sup>th</sup> stories); the Prior Amendment allowed for 7,092 sq. ft. of additional floor area and required relief from FAR regulations under the current R8B zoning (also height and setback relief attributed to minor work on the cornice and roof); the construction permitted by the Prior Amendment was completed in 1995; and

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

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

WHEREAS, the applicant proposes to construct a two-story 12,164 sq. ft. enlargement above the 12<sup>th</sup> floor which

will result in 98,960.4 sq. ft. of floor area (9.67 FAR), 14 floors, and a total height of 170’-5’’; a rooftop greenhouse will add 6’-5’’ of height at its peak (the “Enlargement”); and

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

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

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

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

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

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

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

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

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

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# MINUTES

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organization devoted to helping young people discover and develop a passion for STEM; and

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

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

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

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

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

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

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

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

accounting for these periods, the adjusted weekly-utilization rate for regular classrooms is 89.83 percent; and

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

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

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

WHEREAS, the applicant notes the following specific use of the Enlargement: two stories with approximately 12,164 sq. ft. of floor area; the 13<sup>th</sup> floor, containing approximately 6,100 sq. ft. of floor area, would have an approximately 480 sq. ft. machine room (the "Machine Room"), an approximately 1,200 sq. ft. high school robotics/engineering laboratory (the "High School Engineering Lab," and together with the Machine Room, collectively, the "High School Facility"), an approximately 420 sq. ft. high school computer science classroom, an approximately 950 sq. ft. middle school robotics/engineering lab (the "Middle School Facility") and an approximately 500 sq. ft. middle school computer science classroom; the 14<sup>th</sup> floor, also approximately 6,100 sq. ft., would contain an approximately 1,300 sq. ft. greenhouse, an approximately 1,200 sq. ft. science research lab, and three classrooms, each approximately 460 sq. ft.; and

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

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

WHEREAS, additionally, the new facility will allow middle school students access to robotics and engineering classes, including the Fab Lab; sufficient space to undertake long-term research projects; new science electives such as Quantum Mechanics, Advanced Environmental Science,

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# MINUTES

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Evolutionary Ecology, Astronomy II, Electronics, and Marine Biology that require lab projects; and

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

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

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

WHEREAS, , the applicant states that the New York State Court of Appeals has held that in a residential district educational institutions cannot be required to show an affirmative need to expand as a condition precedent to the issuance of a discretionary approval by a zoning board. *See, e.g., Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986); *Lawrence School Corp. v. Lewis*, 578 N.Y.S.2d 627 (N.Y.A.D. 2 Dept., 1992); and

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

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

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

WHEREAS, the applicant asserts that the proposed variance would allow Dalton to add 12,164 sq. ft. of instructional and research space in two additional floors at the top of the Building; the Enlargement will not lead to an increase in enrollment, nor will it result in additional traffic in the area; the principal affect will be on the eastern views

of apartments on the top floors of 1095 Park Avenue, the building to the immediate west; and

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

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

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

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

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

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

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

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

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

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

WHEREAS, the applicant notes that 1095 Park Avenue is an 18-story building, with its zoning lot having 159 feet of frontage on East 89<sup>th</sup> Street, the western 100 feet

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# MINUTES

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are in an R10 district, and the remaining 59 feet, including the portion in which the affected windows are located, are in the same R8B district as the Building; and

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

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

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

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

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

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

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

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

WHEREAS, the Opposition asserts that the application should have been filed as a new variance application instead of as an amendment on the Special Order Calendar, and it cites Westwater v. New York City Bd. of Stds. and Appeals,

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

WHEREAS, additionally, the Opposition asserts that the EAS is deficient in the following respects: (1) it fails to acknowledge that the expansion results in a building that is more similar to the adjacent R10 district than to Dalton's mid-block R8B district; (2) the shadow study addressed the incremental impact of the expansion rather than the impact of the Building as a whole; (3) the urban design analysis erroneously compared Dalton to Park Avenue buildings rather than buildings within the mid-block R8B; (4) the air quality study did not include the effects of the expansion on buildings other than 1095 Park Avenue; (5) the construction impacts discussion ignores the fact that work will have to be performed outside of school hours; (6) the EAS does not address that this is the third variance application filed at the site; and (7) the Opposition also takes exception with the timing of the submission of the EAS, and states that it is contrary to SEQRA's goal of incorporating environmental considerations into the decision making process at the earliest opportunity; and

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

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

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

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

WHEREAS, the applicant asserts that the Community Board has been afforded more time to review the EAS than if it had been submitted with the initial application because if the EAS had been submitted along with the initial

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# MINUTES

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application, it is unlikely that the Community Board would have had the opportunity to review critiques of the EAS as provided by the Opposition's consultants and likely that it would not have had more than 60 days to review; and

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

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

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

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

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

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

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

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

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

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

ranging from 80 to 160 feet (based on distances shown on the Sanborn Map); and

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

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

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

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

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

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

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

WHEREAS, the Board accepts the programmatic needs as legitimate and finds that the applicant has

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# MINUTES

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sufficiently described the specific needs for the proposed new floors and articulated a clear need for all of the proposed floor area; and

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

WHEREAS, the Board notes that the streetwall, height and setback waivers are necessary so that the Building may follow the institutional model of uniform floor plates to promote efficiencies and have floor to floor heights that are appropriate for classroom and laboratory use and can accommodate building services; and

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

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

WHEREAS, the Board finds that the amendments including the additional 12,164 sq. ft. and the additional two stories and 27 feet in height will still allow the subject building to meet the (c) finding; and

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

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

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

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

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

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

WHEREAS, as a result, on the south side of the

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

WHEREAS, the Board further notes that the surrounding midblocks, particularly to the south (between East 85<sup>th</sup> and 88<sup>th</sup> streets between Lexington and Park avenues) and to the west (between East 88<sup>th</sup> and East 89<sup>th</sup> streets between Park and Madison avenues) are zoned for 10.0 FAR (R10 equivalent) and allow building heights of 185 feet under the contextual envelope; and

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

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

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

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

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

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

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

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

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

WHEREAS, the Board notes that the applicant states that Dalton does not plan to increase its enrollment; thus, the Board finds that the Building with the proposed Enlargement will relieve the high demand for classroom space and allow flexibility in the future to accommodate new programmatic

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# MINUTES

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needs as they arise such that additional enlargements would not be warranted; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports a grant of the requested amendment with the conditions listed below.

*Therefore it is Resolved*, that the Board of Standards and Appeals reopens and amends the resolution, dated June 8, 1965, to grant the noted modifications to the previous approval; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received October 9, 2013' - (10) sheets; and *on further condition*:

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

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

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

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

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

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

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

**The resolution has been amended. Corrected in Bulletin Nos. 4-5, Vo. 99, dated February 5, 2014.**