BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS AND APPEALS

Published weekly by The Board of Standards and Appeals at its office at:
250 Broadway, 29th Floor, New York, N.Y. 10007.

Volume 100, No. 31 July 29, 2015

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160-15-BZ
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CALENDAR

AUGUST 18, 2015, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 18, 2015, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

826-86-BZ
APPLICANT – Eric Palatnik, P.C., for North Shore Tower Apartments, Inc., owner; Continental Communications, lessee.
SUBJECT – Application December 22, 2014 – Extension of Term of Special Permit (§73-11) permitting non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story building which expired on January 26, 2015. R3-2 zoning district.
PREMISES AFFECTED – 269-10 Grand Central Parkway, northeast corner of 267th Street, Block 08489, Lot 0001, Borough of Queens.
COMMUNITY BOARD #13Q

827-86-BZ
APPLICANT – Eric Palatnik, P.C., for North Shore Tower Apartments, Inc., owner; Continental Communications, lessee.
SUBJECT – Application December 22, 2014 – Extension of Term of Special Permit (§73-11) permitting non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story building which expired on January 26, 2015. R3-2 zoning district.
PREMISES AFFECTED – 270-10 Grand Central Parkway, northeast corner of 267th Street, Block 08489, Lot 0001, Borough of Queens.
COMMUNITY BOARD #13Q

828-86-BZ
APPLICANT – Eric Palatnik, P.C., for North Shore Tower Apartment, Inc., owner; Continental Communications, lessee.
SUBJECT – Application December 22, 2014 – Extension of Term of Special Permit (§73-11) permitting non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story building which expired on January 26, 2015. R3-2 zoning district.
PREMISES AFFECTED – 269-10 Grand Central Parkway, northeast corner of 267th Street, Block 08489, Lot 0001, Borough of Queens.
COMMUNITY BOARD #13Q

APPEALS CALENDAR

89-14-A
APPLICANT –Kramer Levin Naftalis & Frankel LLP, for 215 East 64th St. Co. LLC c/o Deniham Hospitality, owner.
SUBJECT – Application April 30, 2014 – Extension of Time to obtain a Class B Certificate of Occupancy to legalize a Gardens Hotel under MDL Section 120(b) (3), as provided under recent amendments under Chapters 225 and 566 of the Laws of New York 2010. R8B zoning district.
PREMISES AFFECTED – 215 East 64th Street, north side of East 64th Street between Second Avenue and Third Avenue, Block 01419, Lot 10, Borough of Manhattan.
COMMUNITY BOARD #8M

234-14-A
APPLICANT – Law Offices of Marvin B. Mitzner, for Ohmni Properties, owners.
SUBJECT – Application September 29, 2014 – Appeal of the NYC Department of Buildings' determination to not revoke a Certificate of Occupancy issued in 1989 and reinstate the Certificate of Occupancy issued in 1985.
PREMISES AFFECTED –738 East 6th Street, south side of East 6th Street between Avenue C and Avenue D, Block 00375, Lot 0028, Borough of Manhattan.
COMMUNITY BOARD #3M

AUGUST 18, 2015, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 18, 2015, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

156-14-BZ
APPLICANT – Lewis E. Garfinkel, for Harold Feder, owner.
SUBJECT – Application July 3, 2014 – Special Permit (§73-621) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141(b)). R4 zoning district.
PREMISES AFFECTED – 1245 East 32nd Street, east side of East 32nd Street 350', Block 07650, Lot 27, Borough of Brooklyn.
COMMUNITY BOARD #18BK

CALENDAR

179-14-BZ
APPLICANT – Law Office of Lyra J. Altman, for Lillian Romano and Elliot Romano, owners.
SUBJECT – Application July 29, 2014 – Special Permit (§73-622) for the enlargement and conversion of an existing two family residence to single family residence contrary to the rear yard requirement (ZR 23-47). R5 zoning district.
PREMISES AFFECTED – 1937 East 14th Street, east side of East 14th Street between Avenue S and Avenue T, Block 07293, Lot 74, Borough of Brooklyn.
COMMUNITY BOARD #15BK

229-14-BZ
APPLICANT – Jeffery A. Chester/GSHLLP, for Marmel Realty Associates Corp., owner; Lucille Roberts Health Club, Queens, LLC, lessee.
SUBJECT – Application September 23, 2015 – Special Permit (§73-36) to seek the legalization of an existing physical culture establishment (*Lucille Roberts*). C4-3A zoning district.
PREMISES AFFECTED – 55-05 Myrtle Avenue, corner of Madison Street and St. Nicholas Avenue, Block 03450, Lot 01, Borough of Queens.
COMMUNITY BOARD #5Q

239-14-BZ
APPLICANT – Eric Palatnik, P.C., for Peter Haskopoulous, owner.
SUBJECT – Application October 1, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (ZR 23-141) and side yards (ZR 23-461). R-2 Special Bay Ridge zoning district.
PREMISES AFFECTED – 8008 Harber View Terrace, between 80th Street and 82nd Street, Block 05975, Lot 0076, Borough of Brooklyn.
COMMUNITY BOARD #10BK

318-14-BZ
APPLICANT – Walter T. Gorman, P.E., P.C., for Leemilts Petroleum Inc., owner; Capitol Petroleum Group, lessee.
SUBJECT – Application December 5, 2014 – Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on October 27, 1987; Waiver of the Rules. C1-2 in R5 zoning district.
PREMISES AFFECTED – 1672-1680 86th Street aka 1-17 Bay 14th Street, south East Corner of Bay 14th Street, Block 06365, Lot 33, Borough of Brooklyn.
COMMUNITY BOARD #11BK

31-15-BZ
APPLICANT – Snyder & Snyder, LLP, for City University of New York, owner; Sprint Spectrum L.P., lessee.
SUBJECT – Application February 19, 2015 – Special Permit (§73-30) to permit the modification of an existing wireless facility. R3-2 zoning district.
PREMISES AFFECTED – 2800 Victory Boulevard, Canterbury Avenue and Victory Boulevard on Loop Road, Block 02040, Lot 0001, Borough of Staten Island.
COMMUNITY BOARD #2SI

75-15-BZ
APPLICANT – Sheldon Lobel, PC, for TEP Charter School Assistance, Inc., owner.
SUBJECT – Application April 3, 2015 – Variance (§72-21) to permit the construction of a school (UG 3) (*TEP Charter School*) contrary to front setback requirements (§24-522). C1-4/R7-2 zoning district.
PREMISES AFFECTED – 153-157 Sherman Avenue, 100' east of the intersection of Academy Street and Sherman Avenue, Block 02221, Lot 0005, Borough of Manhattan.
COMMUNITY BOARD #12M

Ryan Singer, Executive Director

MINUTES

REGULAR MEETING
TUESDAY MORNING, JULY 21, 2015
10:00 A.M.

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

SPECIAL ORDER CALENDAR

169-91-BZ
APPLICANT – Kramer Levin Naftalis & Frankel LLP., for New York University, owner.
SUBJECT – Application November 15, 2015 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment which expired on May 18, 2013; Amendment to reflect a change in the operator and to permit a new interior layout; Waiver of the Rules. M1-5B zoning district.
PREMISES AFFECTED – 404 Lafayette Street aka 708 Broadway, Lafayette Street and East 4th Street, Block 00545, Lot 6, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez. . .4
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, an extension of the term for a previously granted special permit for a physical culture establishment (PCE), which expired on May 18, 2013, and an amendment to BSA-approved plans to reflect a new proposed interior layout for the PCE; and

WHEREAS, a public hearing was held on this application on June 16, 2015, after due notice by publication in *The City Record*, and then to decision on July 21, 2015; and

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

WHEREAS, certain members of the community, including members of Community Board 2, the NoHo Neighborhood Association, the Greenwich Village Society for Historic Preservation and certain members of the faculty of New York University testified at the hearing and provided testimony in opposition to the application (collectively, the "Opposition"), citing the following primary concerns: (1) the PCE will be utilized by significantly more people than represented by the applicant because it is intended to be a temporary replacement of the university's Jerome S. Coles Sports and Recreation Center (the "Recreation Center"); (2) the operation of the PCE by New York University will negatively impact the character of the surrounding neighborhood; and (3) the operation of the PCE by NYU renders the use of the subject site a prohibited, non-commercial Use Group 3a university use, and not a PCE use; and

WHEREAS, the subject site is a through-block with approximately 96.67 feet of frontage on the west side of Lafayette Street and 25.04 feet of frontage along the east side of Broadway, between Astor Place and East 4th Street, in Manhattan, within an M1-5B zoning district and also within the NoHo Historic District; and

WHEREAS, the site is occupied by an eight-story with cellar commercial building, the cellar and first and second floors of which are occupied by an existing PCE, which was authorized under the subject BSA Calendar Number upon an application under sections 73-03 and 73-36 of the Zoning Resolution of the City of New York; and

WHEREAS, as stated, on May 18, 1993, the underlying special permit was granted on May 18, 1993, pursuant to which World Gym New York, Inc. was to operate the PCE on the cellar and first floor of the Lafayette Street portion of the subject building;

WHEREAS, On October 8, 1996, prior to the expiration of the underlying special permit, which was set to expire on May 18, 2003, the Board granted an amendment to permit a change in the operator of the PCE to 708 Gym Corp., d/b/a Crunch, and also permitted an increase in the cellar space occupied by the PCE, an extension of time to obtain a certificate of occupancy and a change in the hours of operation of the PCE; and

WHEREAS, on August 9, 2005, the Board granted an extension of the term of the special permit (from May 18, 2003), an amendment to the cellar and first floor plans and the legalization of an enlargement of the PCE onto the second floor of the subject building, so that the total floor area occupied by the PCE was increased to 29,726 sq. ft.; and

WHEREAS, a certificate of occupancy for the PCE was issued on May 11, 2006; and

WHEREAS, the underlying special permit expired on May 18, 2013; and

WHEREAS, New York University acquired the subject property on October 28, 2014; and

WHEREAS, the applicant seeks to extend the term of the special permit for an additional ten years, to change the operator of the PCE to New York University, and to amend the approved plans to reflect a new layout for the PCE (the applicant does not seek an increase in the floor area of the PCE, nor does it seek to relocate the PCE within the building); and

WHEREAS, the Landmarks Preservation Commission has approved the proposed alterations of the building by Certificate of No Effect No. 17-785, dated May 21, 2015; and

WHEREAS, the applicant states that it intends to operate the PCE primarily for the benefit of its students, faculty and staff, but notes that a limited number of memberships will be made available for purchase by eligible residents within Manhattan Community Board 2; and

WHEREAS, in response to the Opposition's concerns about the volume of visitors, the applicant provided testimony and written submissions stating that the PCE will not be utilized by more than approximately 1,000 guests per day notwithstanding that the website for the Recreation Center, which is being closed, states that it is used by approximately 3,500 members per day; the applicant represents that the

average number of daily users of the Recreation Center is 1,471 and that the number on the website reflects the maximum number of individuals who could be accommodated in a single day at the Recreation Center, and further represents that the university expects fewer than 1,471 daily users of the PCE because the PCE cannot accommodate all of the activities, and does not house all of the facilities, available at the Recreation Center; and

WHEREAS, the Board notes that the ZR § 12-10 provides that "[a] 'physical culture or health establishment' is any establishment or facility, including *commercial* and non-*commercial* clubs, which is equipped and arranged to provide instruction, services, or activities which improve or affect a person's physical condition by physical exercise or by massage" and, thus, does not require that the operator be a commercial entity; and

WHEREAS, further the Board notes that the proposed facility's uses are consistent with (and will use the same space) as those that have occupied the site for more than 20 years and that the uses are also consistent with Use Group 9 gymnasium uses, which are permitted in the subject zoning district; and

WHEREAS, accordingly, the Board finds that the proposed use is within the definition of physical culture establishment and meets the criteria of the special permit, just as the prior use did; and

WHEREAS, the applicant proposes to maintain the hours of operation of the prior PCE, which are 24 hours per day, Monday through Friday; Saturdays, from 6:00 a.m. to 10:00 p.m. and Sundays, from 8:00 a.m. to 10:00 p.m.; and

WHEREAS, at hearing the Board asked the applicant to address open DOB and Environmental Control Board ("ECB") violations; and

WHEREAS, in response, the applicant submitted a statement into the record indicating that five of eleven DOB violations and three of fourteen ECB violations were issued against New York University and that a number of the violations relate to scaffolding which was erected at the subject building prior to the applicant's purchase thereof, but also that the applicant is taking all necessary steps and paying all fines to remove all of the violations issued against the property, regardless of whether they were issued to the applicant or a predecessor owner; and

WHEREAS, at hearing the Board asked the applicant to address discrepancies between the previously approved drawings and the drawings of the proposed PCE; and

WHEREAS, in response, the applicant states that (1) an inadvertent omission from the drawing of the proposed cellar of the boundary between the PCE and certain mechanical space was corrected; (2) the stairs and elevators located in the areas labeled "Stair B" and "Stair C" are intended to provide emergency egress from the PCE and other portions of the subject building, and are not otherwise associated with the PCE; and (3) the elevator of "Stair C" will be used to provide access to the cellar level of the PCE as required; and

WHEREAS, accordingly, the Board finds that the proposed extension of term, change in operator and amendment of the BSA-approved plans to reflect a new interior layout of the PCE are appropriate, with the conditions set forth below; and

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated May 18, 1993, so that as amended this portion of the resolution shall read: "to grant an extension of the special permit for a term of ten years from the expiration of the last grant, to change the operator of the PCE to New York University, and to permit the legalization of interior layout modifications, *on condition* that all work and site conditions shall comply with drawings marked "Received July 2, 2015"–(6) sheets; and *on further condition*:

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

THAT this grant shall be limited to a term of ten years from May 18, 2013, expiring May 18, 2023;

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

THAT a certificate of occupancy shall be obtained within one year of the date of this grant;

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

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

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

(DOB Application No. 122416769)

Adopted by the Board of Standards and Appeals, July 21, 2015.

340-41-BZ

APPLICANT – Nasir J. Khanzada, PE, for Paul Sinanis, owner; S & J Service Station, Incorporated, lessee.

SUBJECT – Application June 27, 2014 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B), with accessory uses, which expired on May 1, 2012; Amendment to permit the enlargement of an existing canopy, the addition of a fuel dispenser and small convenience sales area; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 72-09 Main Street, Block 06660, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to September 1, 2015, at 10 A.M., for continued hearing.

584-55-BZ
APPLICANT – Nasir J. Khanzada, PE, for Gurnam Singh, owner.
SUBJECT – Application June 11, 2014 – Amendment (§11-412) of a previously approved variance which permitted the alteration of an existing Automotive Service Station (UG 16B). The amendment seeks to permit the conversion of the accessory auto repair shop to a convenience store and alter the existing building. C2-4/R7-2 zoning district.
PREMISES AFFECTED – 699 Morris Avenue, southwest corner of East 155th Street and Park Avenue, Block 2422, Lot 65, Borough of Bronx.
COMMUNITY BOARD #2BX
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez... 4
Negative:.....0

ACTION OF THE BOARD – Laid over to September 1, 2015, at 10 A.M., for decision, hearing closed.

110-99-BZ
APPLICANT – Law Office of Jay Goldstein, for Lessiz Realty, LLC., owner; 14-18 Fulton servicing, lessee.
SUBJECT – Application March 2, 2015 – Extension of Term of a previously approved Variance (§72-21) to permitted the legalization of an existing garage and automotive repair shop (Use Group l6B), which expired on June 27, 2010; Amendment to permit minor modifications to the interior layout; Waiver of the Rules. R6B zoning district.
PREMISES AFFECTED – 56-58 Kosciusko Street, south side of Kosciuszko Street between Nostrand and Bedford Avenues, Block 01783, Lot 0034, Borough of Brooklyn.
COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to September 1, 2015, at 10 A.M., for continued hearing.

APPEALS CALENDAR

278-13-A
APPLICANT – Isaac Szpilzinger, Esq., for 121 Varick St. Corp., owner.
SUBJECT – Application September 27, 2013 – Appeal of Department of Buildings' determination that the advertising sign was not established as a lawful non- conforming use. M1-6 zoning district/SHSD.
PREMISES AFFECTED – 121 Varick Street, southwest corner of Varick Street and Dominick Street, Block 578, Lot 67, Borough of Manhattan.
COMMUNITY BOARD #2M
ACTION OF THE BOARD – Application Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

THE RESOLUTION –

WHEREAS, on March 5, 1998, under application No. 101835221, the New York City Department of Buildings ("DOB") issued a permit (the "Permit") for a 75' x 75' illuminated advertising sign located at a point approximately fifty feet above curb level on the south-facing wall of the twelve-story building known as and located at 121 Varick Street, in Manhattan (the "Sign," located on the "Building"), which occupies the subject site at the southwest corner of the intersection of Varick Street and Dominick Street, in an M1-6 zoning district within the Special Hudson Square District (the "Site"); and

WHEREAS, DOB revoked the Permit upon the issuance of the Borough Commissioner's Revocation of Approvals and Permits, dated June 13, 2011 (the "Revocation"); and

WHEREAS, the subject appeal comes before the Board in response to a Final Determination, dated August 28, 2013, by DOB First Deputy Commissioner Thomas J. Fariello (the "Final Determination"), which was issued in response to the appellant's submission of a Zoning Resolution Determination Form (the "ZRD1") in which the appellant sought a rescission of the Revocation; and

WHEREAS, the Final Determination states, in pertinent part, that:

> The request for a rescission of the Borough Commissioner's Revocation of Approval and the reinstatement of Permit No. 101835221 is hereby denied… the advertising sign is within view of multiple "approaches" to an arterial highway (the Holland Tunnel), and is, therefore, not permitted pursuant to ZR 42-55...; and

WHEREAS, this appeal is brought on behalf of 121 Varick St. Corp., the owner of the subject Building and Site (the "Appellant")1; and

WHEREAS, this appeal turns on whether the Sign is located within 200 feet of, and within view of, an arterial highway such that the Permit was unlawful when it was issued; and

WHEREAS, as discussed in greater detail below, the Board concludes that the Sign is within 200 feet of, and within view of a point north of Broome Street, between Varick Street and Hudson Street, with a latitude of 40.724658 and a longitude of -74.007033 (the "Vantage Point"), which the Board finds to be located on an approach to the Holland Tunnel which has been designated as an arterial highway for purposes of ZR § 42-55 (previously § 42-53); as such, the Permit was properly revoked and this appeal is denied; and

WHEREAS, a public hearing was held on this application on September 9, 2014, after due notice by publication in *The City Record*, with a continued hearings on January 27, 2015, April 14, 2015, and May 19, 2015, and then to decision on July 21, 2015; and

WHEREAS, the premises and surrounding area had site

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1 Both the Appellant and DOB have been represented by counsel throughout this appeal.

and neighborhood examinations by Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

BACKGROUND AND PROCEDURAL HISTORY

WHEREAS, the Board notes that the Holland Tunnel consists of a central subaqueous portion and enclosed approach tunnels at either side of the central subaqueous portion; the enclosed approach tunnels are connected to the street grade by open-cut approach ramps; and

WHEREAS, on the Manhattan side of the subaqueous portion of the Holland Tunnel, the enclosed approach tunnel diverges into two tubes; the "South Tube" (Manhattan bound), which leads to St. John's Rotary, located south of Laight Street, between Varick Street and Hudson Street; and the "North Tube" (New Jersey bound) which is accessed via a series of entrance roadways bounded by Canal Street and Watts Street, to the south, Hudson Street, to the west, Varick Street, to the east, and Broome Street, to the north (the "Entrance Roadways");

WHEREAS, the property on which the Entrance Roadways are located is owned by the Port Authority of New York and New Jersey (the "Port Authority"); and

WHEREAS, the Site is located on the northeast quadrant of the block north of the Entrance Roadways, which is bounded by Dominick Street, to the north, Varick Street, to the east, Broome Street, to the south and Hudson Street, to the west; and

WHEREAS, the subject block is bisected by the open-cut approach which connects the North Tube to the Entrance Roadways; and

WHEREAS, the entrance onto the open-cut approach into the North Tube is located on the north side of Broome Street, between Varick Street and Hudson Street (the "Broome Street Entrance"), the Vantage Point is located north of the Broome Street Entrance, on the open-cut approach to the North Tube; and

WHEREAS, DOB issued the Permit on March 5, 1998, under Application No. 101835221 for an illuminated advertising wall sign; and

WHEREAS, at the time the Permit was issued, ZR § 42-53, effective February 21, 1980 and applicable in the subject M1-6 zoning district, prohibited advertising signs located within 200 feet of and within view of an arterial highway; and

WHEREAS, the Permit was revoked on June 13, 2011, upon DOB's determination that the Sign is "within view of multiple 'approaches' to an arterial highway (the Holland Tunnel), and is, therefore, not permitted pursuant to ZR 42-55"; and

WHEREAS, DOB issued the Final Determination, in which it denied the Appellant's request that it rescind its revocation of the Permit, on August 28, 2013; and

WHEREAS, the Appellant seeks a reversal of the Final Determination on the grounds that (1) there are no approaches to the Holland Tunnel and, as such, the Final Determination was issued in error; (2) even if the Holland Tunnel has an approach, such approach is not a "designated arterial highway," for the purpose of ZR § 42-55, which is the basis of the Final Determination; and (3) even if the Holland Tunnel and its approaches constitute a "designated arterial highway," for the purpose of ZR § 42-55, the Sign is not within 200 feet of or within view of any such "designated arterial highway"; and

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

WHEREAS, the Board notes that for the purpose of this appeal it is examining the narrow issues of whether the Sign is within 200 feet of and within view of the Vantage Point and whether the Tunnel Approach, defined below, is, based on the Board's examination of the Vantage Point, a roadway or approach which constitutes an arterial highway for purposes of ZR § 42-55; the Board need not, and does not, reach a conclusion as to whether the Sign is within view of and within 200 feet of the remainder of the Entrance Roadways or whether the remainder of the Entrance Roadways constitute arterial highways for purposes of ZR § 42-55;and

RELEVANT STATUTORY PROVISIONS and the MASTER PLAN

ZR § 42-53

Additional Regulations for Advertising Signs

M1 M2 M3

In all districts, as indicated no *advertising sign* shall be located, nor shall an existing *advertising sign* be structurally altered, relocated, or reconstructed, within 200 feet of an arterial highway or of a *public park* with an area of one-half acre or more, if such *advertising sign* is within view of such arterial highway or *public park*. For the purposes of this Section, arterial highways shall include all highways which are shown on the Master Plan of Arterial Highways and Major Streets, as "principal routes", "parkways", or "toll crossings", and which have been designated by the City Planning Commission as arterial highways to which the provisions of this Section shall apply. Beyond 200 feet from such arterial highway or *public park*, an *advertising sign* shall be located at a distance of at least as many linear feet therefrom as there are square feet of *surface area* on the face of such *sign*...

* * *

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 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*...

For the purposes of this Section, arterial highways shall include all highways that are shown on the Master Plan of Arterial Highways and Major Streets as "principal routes," "parkways" or "toll crossings," and that have been designated by the City Planning Commission as arterial highways to which the provisions of this Section shall apply.

* * *

ZR Appendix H

Designation of Arterial Highways

Pursuant to the provisions of Section 32-66 and 42-55 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) of the Zoning Resolution of the City of New York, the City Planning Commission has designated as arterial highways to which the provisions of Sections 32-66 and 42-55 apply, the following arterial highways which appear on the City Map and which are also indicated as Principal Routes, Parkways and Toll Crossings on the duly adopted Master Plan of Arterial Highways and Major Streets. . . .

TOLL CROSSINGS . . . Holland Tunnel and Approaches;

* * *

1 RCNY 49-01 Definitions

Approach. The term "approach" as found within the description of arterial highways indicated within Appendix C2 of the Zoning Resolution, shall mean that portion of a roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network; and

WHEREAS, the New York City Planning Commission Master Plan of Arterial Highways and Major Streets (the "Master Plan") was adopted on April 11, 1945 and last modified in 1963 (Map No. 04-CH-1); the City Planning Commission report associated with the Master Plan is CP 3493, report no. 3254, April 11, 1945 (the "CPC Report")3; and

WHEREAS, the Board notes that ZR § 42-53, which was in effect at the time the Permit was issued, was recodified as ZR § 42-55 on February 27, 2001; the Board notes further that in the context of this appeal, the relevant portions of the two provisions are identical; and

THE APPELLANT'S POSITION

WHEREAS, in support of its argument that the DOB's revocation of the Permit was in error, the Appellant asserts that the Sign is not within 200 feet of an arterial highway as defined in ZR § 42-55, which states, in pertinent part, that:

> For the purposes of this Section, arterial highways shall include all highways which are shown on the Master Plan of Arterial Highways and Major Streets, as "principal routes", "parkways", or "toll crossings", and which have been designated by the City Planning Commission as arterial highways to which the provisions of this Section shall apply…

and, as such, DOB's revocation of the Permit was in error; and

WHEREAS, specifically, the Appellant contends that the Final Determination should be reversed because (1) the roadways identified by DOB as "approaches" to the Holland Tunnel are neither approaches nor "arterial highways," thus the Sign was not erected in contravention of ZR § 42-53 (and is not in violation of § 42-55); and (2) the Sign is not within 200 feet of nor "within view" of any of the purported approaches to the Holland Tunnel; and

1. The Appellant's Argument that the "Approaches" Identified by DOB Do Not Constitute Arterial Highways for the Purposes of ZR § 42-53

a. The Appellant Maintains that the Holland Tunnel Does Not Have any Approaches

WHEREAS, the Appellant argues that the New York State enabling legislation for toll crossings between New York and New Jersey is silent as to the boundaries of the approaches to the Holland Tunnel, but describes the approaches to certain other toll crossings, suggesting that the Holland Tunnel has no designated approaches and, as such, no such approaches can be the basis of DOB's revocation of the Permit; and

WHEREAS, specifically, the Appellant maintains that the Port Authority has exclusive jurisdiction over the vehicular crossings between New York and New Jersey, including the Holland Tunnel, and that the locations of the approaches to New York City toll crossings, if any, are set forth in the Port Authority's enabling legislation and the New York Codes, Rules and Regulations; and

WHEREAS, the Appellant notes that Tile 21 of the New York Codes, Rules and Regulations, Chapter XXVI, Subchapter A, Article 1, Section 1200.3 states that a tunnel

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2 The Board notes that "Appendix H" to the Zoning Resolution was formerly known as "Appendix C", and that Rule 49 does not reflect the change, which took effect on February 27, 2001, and was purely administrative and had no substantive effect on the designation of any arterial highway.

3 The Master Plan superseded the "New York City Planning Commission Master Plan of Express Highway, Parkways and Major Streets" which was adopted by the City Planning Commission in 1940 and last modified in 1941.

is defined as "any tunnel within the jurisdiction of the Port Authority between the portals thereof, but shall not include the plazas, approaches and highway connections thereto"; and

WHEREAS, the Appellant argues that, taken in conjunction with the fact that the Port Authority's enabling legislation references approaches to the George Washington Bridge and the then un-built Lincoln Tunnel, but not the already existing Holland Tunnel, the foregoing definition imposes boundaries of the Holland Tunnel that do not include anything beyond the portals of said tunnel; and

b. The Appellant Maintains that there are not any Approaches to the Holland Tunnel Shown on the Master Plan

WHEREAS, the Appellant argues that none of the purported "approaches" identified by DOB, located at the Entrance Roadways, meet the statutory definition of "arterial highway" because they are not shown on the Master as a "principal route," "parkway," or "toll crossing"; and

WHEREAS, in support of this argument, the Appellant highlights that the Holland Tunnel is clearly identified on the Master Plan, depicted by a series of circles which represent a "Toll Crossing Under Authorities" as indicated on the legend of the Master Plan; and

WHEREAS, the Appellant maintains that the Master Plan does not depict, and, therefore, has not shown, an entrance roadway to the Holland Tunnel anywhere in Manhattan; and

WHEREAS, the Appellant argues that the CPC Report further evidences that the Master Plan does not show an approach to the Holland Tunnel at the entrance to the North Tube; and

WHEREAS, specifically, the Appellant argues that the CPC Report provides a list, with description, of each of the arterial routes shown on the Master Plan, and that the Holland Tunnel, listed under "Toll Crossings" is described as the facility which connects lower Manhattan with New Jersey and also will connect with the proposed Lower Manhattan Expressway; and

WHEREAS, the Appellant notes that the CPC Report does not list an "entrance roadway" to the Holland Tunnel, but does reference the then-proposed Lower Manhattan Expressway, which was never constructed, and argues that the omission of any other description of a connection between the tunnel and an entrance roadway establishes that there simply is no approach to the Holland Tunnel; and

WHEREAS, the Appellant argues that the two elements of the § 42-53 definition of "arterial highway" are conjunctive and, where the first is not met (i.e., where the subject roadway is not shown on the Master Plan) there is no need to consider the second (i.e., whether the subject roadway has been designated by the City Planning Commission as an arterial highway); and

WHEREAS, in support of its argument that both elements of the ZR § 42-53 definition of "arterial highways" must be satisfied and that, upon failing to meet the first element the second element need not be addressed, the Appellant refers to ZR § 12-10(h), which states, in relevant part, that:

> Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and", "or", or "either …. or", the conjunction shall be interpreted as follows: (1) "and" indicates that all the connected items, conditions, provisions or events shall apply…

and ZR § 12-10(c), which states, in relevant part, that:

> The word "shall" is always mandatory and not discretionary…; and

c. The Appellant Maintains that the City Planning Commission has Not Designated any of the Entrance Roadways as Arterial Highways

WHEREAS, Appellant contends that because the first prong of ZR § 42-55 is not met, the second prong, need not be considered; and

WHEREAS, notwithstanding the foregoing, the Appellant maintains that there are no roadways which have been designated by the CPC as arterial highways and, as such, the Permit should not have been revoked as unlawful under ZR § 42-55; and

WHEREAS, the Appellant notes that the "designation" text of Appendix C, now Appendix H, provides, in pertinent part, that:

> …the City Planning Commission has designated as arterial highways to which the provisions of Sections 32-66 and 42-55 apply, the following arterial highways which appear on the City Map and which are also indicated as Principal Routes, Parkways and Toll Crossings on the duly adopted Master Plan of Arterial Highways and Major Streets; and

WHEREAS, the Appellant notes that there are no approaches to the Holland Tunnel shown on the City Map or Master Plan; and

WHEREAS, the Appellant argues that the foregoing text does not contemplate the designation of "approaches" and provides only for the designation of "arterial highways" and that a roadway must, therefore, have been mapped as an "arterial highway" on the Master Plan and the City Map in order to be "designated" by CPC as an arterial highway to which the provisions of ZR § 42-53 apply; and

WHEREAS, in support of its argument that absent placement on the Master Plan and City Map as an arterial highway, none of the Entrance Roadways, or any other purported approach to the Holland Tunnel, could be designated by CPC as an arterial highway to which the provisions of ZR § 42-53 apply, Appellant cites to the CPC Report, which states, in pertinent part, that:

> Pursuant to Article V, § 21-B of the Zoning Resolution of the City of New York, effective June 28, 1940, the City Planning Commission hereby designates, as Express Highways to which provisions of § 21-B of the Zoning Resolution shall apply, all those streets which appear on the

City Map and which are also indicated as "express highway – legally mapped" and "express parkway – legally mapped" on the Master Plan of Express Highways, Parkways and Major Streets, duly adopted January 22, 1941…;4 and

WHEREAS, the Appellant argues that because none of the Entrance Roadways were ever placed on the City Map or Master Plan, that is, they were never legally mapped as a "principal route," "parkway," or "toll crossing," they cannot be designated as arterial highways; and

WHEREAS, the Appellant maintains that the inclusion of "Holland Tunnel and Approaches" in the Appendix H list of arterial highways to which ZR § 42-55 applies is in contravention of both the CPC Report as well as ZR § 42-55; and

WHEREAS, the Appellant argues further that the purported inconsistencies between the language of ZR § 42-55 and the list in Appendix H must be understood in light of ZR § 12-10(b), which states that:

> In case of any difference of meaning or implication between the text of this Resolution and any caption, illustration, summary table or illustrative table, the text shall control…

thus, the Appellant argues, the list in Appendix H does not support a finding that certain approaches to the Holland Tunnel are within the ambit of "arterial highways" to which ZR § 42-55 applies; and

WHEREAS, the Appellant further argues that even if the list in Appendix H did suggest that there are certain approaches to the Holland Tunnel which constitute "arterial highways" to which the provisions of ZR § 42-55 apply, ZR § 42-55 requires that such approaches be shown on the Master Plan, and, to the extent that such approaches are not shown on the Master Plan, their inclusion within Appendix H is irrelevant; and

d. The Appellant Maintains that DOB Impermissibly Relied on Rule 49 in Determining What Constitutes an Approach in this Instance

WHEREAS, the Appellant claims that the Final Determination is based, in part, upon DOB's reliance on the definition of "approach" codified in 1 RCNY 49-01 ("Rule 49"); and

WHEREAS, the Appellant argues that Rule 49, which went into effect on August 25, 2006, eight years after the Permit was issued, is inapplicable to the instant matter; and

e. The Appellant's Argument that ZR § 12-10(i) is Inapplicable to the Board's Analysis of ZR § 42-55 and Cannot Extend the Scope of Arterial Highways to Include Approaches

WHEREAS, the Appellant maintains that ZR § 12-10(i), which states that:

> The word "includes" shall not limit a term to the specified examples but is intended to extend its meaning to all other instances or circumstances of like kind or character.

has no bearing on the instant analysis, and does not extend the scope of ZR § 42-55 because ZR § 42-55 is clear on its face; and

WHEREAS, the Appellant maintains that the language of ZR § 42-55 is clear and unambiguous and as such it is inappropriate to resort to rules of construction "to broaden the scope and application of a statute, because no rule of construction gives [a] court discretion to declare the intent of the law when the words are unequivocal" (citing *Raritan Development Corp. v. Silva,* 91 NY2d 107 [1997]); and

WHEREAS, the Appellant further maintains that ZR § 12-10(i) is inapplicable because ZR § 42-55 does not provide a list of specified roadways which might constitute "specified examples" as contemplated in ZR § 12-10(i) but instead limits its applicability to those highways which are shown on the Master Plan, be they "principal routes", "parkways", or "toll crossings"; the Appellant concludes that ZR § 42-55 does not, therefore, provide a list of "examples" which could be extended upon an application of ZR § 12-10(i) to the word "includes"; and

WHEREAS, the Appellant also argues that extending the scope of ZR § 42-53 would lead to an irrational result because there are no approaches shown on the Master Plan; the Appellant maintains that employing a cannon of statutory construction to reach an irrational result is contrary to law; and

2. The Appellant's Argument that the Sign is not Within View of an Arterial Highway

a. The Appellant Maintains that the Sign is Not Within View of an Arterial Highway Because it is Not Visible to a Traveler in a Vehicle at the Vantage Point or any Other Point along the Entrance Roadways

WHEREAS, the Appellant maintains that the Sign is not perceptible from the eye of a driver or passenger (a traveler) in a vehicle at the Vantage Point and, therefore, the Sign is not visible from an arterial highway even if the Vantage Point qualifies as such; and

WHEREAS, the Appellant argues that the Sign is not visible to a traveler in a vehicle because of the obstruction of the roof of the vehicle; and

b. The Appellant Maintains that the Sign is Not Within View of an Arterial Highway Because only a Portion of the Display is Visible from the

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4 Article V, § 21-B of the Zoning Resolution of the City of New York, effective June 28, 1940, is a precursor to ZR § 42-53 and states, in pertinent part, that:

> No advertising sign shall hereafter be erected, placed or painted, nor shall any existing advertising sign be structurally altered, in any use district within 200 feet of an arterial highway shown as a "principal route", "parkway" or "toll crossing" on the "Master Plan of Arterial Highways and Major Streets", provided such arterial highway has been designated by the City Planning Commission as an arterial highway to which the provisions of this section shall apply … if such advertising sign is within view of such arterial highway …

Vantage Point

WHEREAS, notwithstanding its contention that the Sign is not visible from the Vantage Point, the Appellant argues that to the extent that it is visible, only the upper left portion of the Sign can be perceived by travelers in a vehicle at the Vantage Point; and

WHEREAS, the Appellant argues that ZR § 42-55 regulates advertising signs within view of arterial highways and, as such, is not applicable when the only portion of a sign visible from such arterial highway is a patch of color without the other indicia of an advertising sign; and

c. The Appellant Maintains that DOB's Evidence that the Sign is Visible from the Broome Street Entrance is Inadmissible and Does Not Establish that the Sign is Within View to a Person Traveling in a Vehicle

WHEREAS, the Appellant argues that DOB's evidence that the sign is within view of the Vantage Point, images taken from "Google Street View" is inadmissible and does not speak to whether the Sign is perceivable by the eye of a driver or passenger in vehicle, but only reveals what can be seen from outside a vehicle; and

3. The Appellant's Argument that the Sign is not Within 200 Feet of the Vantage Point

WHEREAS, the Appellant states that the methodology employed by DOB in measuring the distance between the Sign and the Vantage Point is not dispositive because that measurement, in that it reflects the distance from the Vantage Point to a point at the base of the wall of the Building to which the Sign is affixed, is based on Rule 49's directive that the distance "shall be calculated as the length of a horizontal plane extending between a vertical plane reflecting the edge of the sign, sign structure or sign location closest to the … arterial highway and a vertical plane reflecting the portion of the … highway closest to the sign…"; and

WHEREAS, the Appellant argues that the foregoing standard cannot be the standard by which the distance between the Sign and the Broome Street Entrance is measured because Rule 49 was enacted after the Permit was issued and the Sign was erected; and

WHEREAS, the Appellant argues further that measuring the distance from the base of the Building to the Vantage Point prejudices the Appellant and is contrary to the Zoning Resolution definition of sign, which contemplates a writing or pictorial representation on a building or structure, not at the base of a building; and

WHEREAS, lastly, the Appellant maintains that the distance from the Sign to the Vantage Point was 207 feet; and

DOB'S POSITION

WHEREAS, DOB asserts that it properly revoked the Permit because the Sign violated regulations in effect at the time the Permit was issued and maintains that because the Sign was unlawful when erected it is not eligible to continue as a non-conforming use; and

WHEREAS, specifically, DOB argues that (1) the City Planning Commission designated the "Holland Tunnel and Approaches" as an arterial highway to which ZR § 42-53, now ZR § 42-55, applies; (2) the Entrance Roadways are approaches to the Holland Tunnel which constitute part of an arterial highway for the purposes of § 42-55; and (3) that the Sign is within view of and within 200 feet of three distinct approaches to the Holland Tunnel; and

1. DOB's Argument that the Master Plan shows the Holland Tunnel Toll Crossing, Including its Approaches

WHEREAS, DOB asserts that the Holland Tunnel and its approaches constitute a single arterial highway which is shown on the Master Plan; and

WHEREAS, DOB states that the Master Plan depicts a series of small circles labeled "Holland Tunnel" running from New Jersey across the Hudson River and ending at the Miller Highway; DOB states that the Master Plan identifies the small circles as "toll crossings under authorities" and concludes that the Holland Tunnel is, therefore, a highway which is shown on the Master Plan in satisfaction of the first prong of the two-prong definition of "arterial highway" provided in ZR § 42-53; and

WHEREAS, DOB refers the Board to the word "include" in ZR § 42-53, which states that "[f]or the purposes of this Section, arterial highways shall include all highways which are shown on the Master Plan…", and claims that the word "include" is, as per ZR § 12-10(i), intended to extend the meaning of the term "arterial highways" beyond specified examples (i.e., beyond those shown on the Master Plan) to all other instances or circumstances of like kind and character; and

WHEREAS, thus, DOB argues that, notwithstanding its position that the Holland Tunnel is clearly shown on the Master Plan, the Holland Tunnel and its approaches are, by virtue of the rules of construction which govern the Zoning Resolution, included among those highways contemplated in ZR § 42-53 even if the approaches themselves are not shown on the Master Plan; and

2. DOB's Argument that the City Planning Commission Designated the Approaches to the Holland Tunnel as Part of the Arterial Highway to which ZR § 42-55 Applies

WHEREAS, DOB argues that Appendix H to the Zoning Resolution provides a list of arterial highways to which ZR § 42-55 applies, and that such list includes approaches to the Holland Tunnel; and

WHEREAS, in support of its argument, DOB notes that Appendix H provides, in pertinent part, that:

> Pursuant to the provisions of … Section 42-53 (Additional Regulations for Advertising Signs) …, the City Planning Commission has designated as arterial highways which appear on the City Map and which are also indicated as Principal Routes, Parkways and Toll Crossings on the duly adopted Master Plan of Arterial Highways and Major Streets; and

WHEREAS, DOB notes further that Appendix H, under the heading "Toll Crossings," lists "Holland Tunnel and Approaches"; and

WHEREAS, DOB also notes that the CPC Report is consistent with the City Planning Commission's Appendix C list of arterial highways to which ZR § 42-53 applies in that the CPC Report states, in its description of "toll crossings" that "[t]he water crossings, provided as toll facilities by specially constituted Authorities, which *together with their approaches* are essential links in the arterial highway and major street system, are listed below according to the Authority having jurisdiction" (emphasis supplied by DOB); and

3. DOB's Argument that the Entrance Roadways are the Approaches to the Holland Tunnel Listed in Appendix C and Designated by CPC for the Purposes of ZR § 42-55

WHEREAS, DOB states that the Master Plan is intended as a macroscopic framework for development that does not show precise lines for routes in order to depict general plans for future growth and development; and

WHEREAS, DOB maintains that in light of the foregoing, the Master Plan shows only the general locations of the approaches to the Holland Tunnel, and that the precise locations of the approaches to the Holland Tunnel are to be determined in accordance with longstanding DOB practice, which is reflected in the definition of approach set forth in Rule 49 which states, in pertinent part, that

> …an approach as found within the description of arterial highways indicated within appendix C of the Zoning Resolution shall mean that portion of a roadway connecting the local street network to a bridge or tunnel and from which there is no entry or exit to such network; and

WHEREAS, DOB argues that there are multiple approaches along the Entrance Roadways; and

WHEREAS, specifically, DOB maintains that there are three points along the Entrance Roadways which, consistent with Rule 49 and the longstanding DOB practice upon which that rule is based, constitute an approach to the Holland Tunnel; the first approach identified by DOB is that roadway which begins at the intersection of Varick Street and Broome Street (the "Broome Approach"); the second approach identified by DOB is that roadway which begins at the Broome Entrance and continues to the North Tube, which DOB identifies as the "Tunnel Approach" (the Vantage Point is located on the roadway which DOB labels the Tunnel Approach); and the third approach identified by DOB is that roadway which begins at the intersection of Watts Street and Varick Street (the "Watts Approach"); and

WHEREAS, DOB maintains that Rule 49 codifies its longstanding administrative interpretation of Appendix C, and notes that the Appellant has not presented any evidence that DOB has ever recognized another interpretation of the term "approaches" as presented in that Appendix; and

4. DOB's Argument that the Sign is Within 200 feet of the Tunnel Approach

WHEREAS, DOB states that the Appellant has conceded that the Sign is within 200 feet of the Holland Tunnel and argues that it is therefore within 200 feet of the Broome Approach and the Tunnel Approach; and

WHEREAS, moreover, DOB states that the Sign is located approximately 140 feet from the Tunnel Approach and submitted a Pictometry analysis to the Board in support of this contention; and

WHEREAS, DOB states that it is its longstanding practice to measure the distance of signs from an arterial highway horizontally from the nearest point on the sign to the arterial highway's nearest street line; and

WHEREAS, in support of the foregoing contention, DOB cites a number of its official notifications, including: (1) Technical Policy and Procedure Notice # 1/97 (1997) (requiring a site survey which shows the distance between a sign and an arterial highway if the sign is within view of said arterial highway); (2) Operations Policy and Procedure Notice # 10/99 (1999) ("Distance is to be measured horizontally, from the nearest street line of the arterial highway … to the nearest point on the sign or sign structure."); and (3) 1 RCNY 49-15(d)(1) (2006) ("Such distance shall be calculated as the length of a horizontal plane extending between a vertical plane reflecting the edge of the sign … closest to the …arterial highway and a vertical plane reflecting the portion of the …. Arterial highway closest to the sign…"); and

WHEREAS, DOB maintains that assuming that the distance between the Sign and the middle of the Broome Entrance was 207 feet, as the Appellant contends, and using a three-dimensional measurement, as opposed to a horizontal plane measurement, as Appellant maintains is proper, a measurement of the nearest point on the Sign to the nearest point on the Tunnel Approach places the Sign within 200 feet of the arterial highway as long as the Sign was less than 142 feet above curb level, based upon the horizontal distance between the Sign and the Tunnel Approach and the Pythagorean Theorem; and

WHEREAS, DOB notes that the Sign was approximately 100 feet above curb level; and

5. DOB's Argument that the Sign is Within View of the Tunnel Approach

WHEREAS, DOB maintains that an advertising sign is "within view" of an arterial highway when it can be viewed from a specific point on said arterial highway in any direction within 360 degrees; and

WHEREAS, DOB notes that the Board previously recognized the 360-degree standard as an objective standard to determine whether a sign is "within view" for purposes of ZR § 42-55 in BSA Cal Nos. 88- and 89-12-A (*462 Eleventh Avenue, Manhattan*, decided December 11, 2012) (upheld on appeal in *Van Wagner v BSA*, 2014 WL 461074) and 134-13-A (*538 Tenth Avenue, Manhattan*, decided October 22, 2013); and

WHEREAS, DOB argues that the Sign is visible from the Tunnel Approach, among other approaches along the Entrance Roadways; and

WHEREAS, DOB challenges the Appellant's argument that the view of the Sign from the Vantage Point is substantially obstructed and, therefore, the Sign is not "within view" for the purposes of ZR § 42-55 on the grounds that the standard advanced by the Appellant is a

subjective standard based on whether the message on the subject sign is effectively communicated to a traveler in a vehicle located on an arterial highway within 200 feet of said sign and, therefore, should be rejected; and

CONCLUSION

WHEREAS, the Board finds that the Sign is within 200 feet of, and within view of, an arterial highway such that the Permit was unlawful when issued and, therefore, that DOB's revocation of the Permit was proper; as such, the Final Determination is affirmed and the subject appeal is denied; and

The Sign is Within 200 Feet of the Vantage Point, Tunnel Approach and Holland Tunnel

WHEREAS, the Board notes that the Appellant concedes, by letter dated April 23, 2013, that the Sign is within 200 feet of the Holland Tunnel; and

WHEREAS, the Board credits DOB's argument that the Sign is within 200 feet of the Vantage Point and, therefore, the Tunnel Approach, using both the DOB's horizontal plane measurement as well as the Appellant's preferred three-dimensional calculation; and

The Sign is Within View of the Vantage Point and, therefore, the Tunnel Approach

WHEREAS, the Board finds that the Sign is within view of the Vantage Point and, therefore, the Tunnel Approach; and

WHEREAS, the Board rejects the Appellant's argument that the Sign is not visible to a traveler within a vehicle located at the Vantage Point and, as such, is not "within view" of the Tunnel Approach; and

WHEREAS, the Board notes its well-established endorsement of the "360 Degrees Standard" for what constitutes "within view" for the purpose of ZR § 42-55; specifically, the Board has ruled that a sign is within view if it can be viewed from a specific point on an arterial highway in any direction, 360 degrees (i.e., by a driver in the front seat of a convertible car with the top down facing forward, or a passenger in the back seat of a convertible car with the top down facing backward, or to the side); and

WHEREAS, the Board notes that it previously examined the proper standard for "within view" in BSA Cal. No. 134-13-A (*538 Tenth Avenue, Manhattan*, decided October 22, 2013), in which it ruled that the 360 Degrees Standard was the "proper standard in interpreting the meaning of the term 'within view'" and found that the 360 Degrees Standard "is the only objective measurement of whether a sign is within view of a motorist traveling along an arterial highway"; and

WHEREAS, the Board notes that the 360 Degrees Standard furthers the intent of the arterial highway restrictions on signs, which include reducing driver distraction and beautifying public spaces; and

WHEREAS, the Board notes, as it did in BSA Cal. No. 134-13-A, that the 360 Degrees Standard is consistent with its decision in BSA Cal. Nos. 88-12-A and 89-12-A (*462 Eleventh Avenue, Manhattan,* decided December 11, 2012), in which the Board held that the meaning of "within view" is an objective standard deliberately calculated to be without nuance so as to best effect the statutory goal to regulate signs within view of arterial highways; and

WHEREAS, the Board rejects the Appellant's argument that DOB impermissibly applied a definition of "within view" based on Rule 49, and notes that there is no evidence in the record contrary to DOB's assertion that Rule 49 is consistent with and merely codified an existing Departmental practice; and

WHEREAS, in determining whether a sign is visible, the Board employs objective, clear-cut standards and as such, rejects the Appellant's argument that the Sign is not visible from the Vantage Point because, to the extent that it is visible, only a portion of the Sign can be seen; and

WHEREAS, in rejecting the Appellant's argument, the Board notes that the Appellant's reliance on BSA Cal. No. 90-12-A (*111 Varick Street*, *Manhattan*, decided January 15, 2013) to support that argument is misplaced; in *111 Varick Street*, the Board concluded that in order to qualify as an "advertising sign," painted plywood affixed to a building must meet all criteria of the ZR § 12-10 definition of sign in that it must direct attention to or advertise a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot; the Board did not consider, and certainly did not conclude, that a writing, pictorial representation, emblem, flag or other figure of similar character only constituted a sign when the entirety of its message was communicated to a person viewing such writing, pictorial representation, emblem, flag or other figure of similar character; and

WHEREAS, the Board notes that viewing a portion of a sign can have the same deleterious impact as viewing the entirety of a sign as contemplated in the arterial highway restrictions on signs and, consistent with those restrictions, finds that if any portion of a sign is within view of an arterial highway, the "within view" element of ZR § 42-55 is met; and

WHEREAS, the Board notes that the foregoing is consistent with its determination in BSA Cal. No. 101-12-A (*13-17 Laight Street*, *Manhattan*, decided January 8, 2013) (upheld on appeal in *Take Two Outdoor Media v Board of Standards and Appeals,* 128 AD3d 563 (1st Dept 2015)), in which it stated that, for the purposes of whether a sign is "within view," the intended audience for the sign is irrelevant; and

WHEREAS, having concluded that the Sign is within view of and within 200 feet of the Vantage Point and, by extension, the Tunnel Approach, the Board must consider whether the Tunnel Approach qualifies as an arterial highway to which the provisions of ZR § 42-55 apply; and

The Tunnel Approach is an Approach to the Holland Tunnel to which the Provisions of ZR § 42-55 Apply

WHEREAS, the Board finds that the Tunnel Approach is an approach to the Holland Tunnel; and

WHEREAS, in so finding that the Tunnel Approach is an approach to the Holland Tunnel, the Board notes that the instant appeal does not require it to find that all of the roadways which make up the Entrance Roadways are approaches to the Holland Tunnel; however, the Board finds that it is beyond

dispute that the Tunnel Approach, an open cut approach ramp that connects the North Tube to the street grade at Broome Street and which is bordered by high walls on both sides and which feeds exclusively into the North Tube of the Holland Tunnel, is an "approach" using any reasonable interpretation of the word, and that it has been so since the Holland Tunnel began operating; and

WHEREAS, in addition to the fact that the Tunnel Approach is an approach by any reasonable interpretation, the Board finds that the Appellant failed to refute DOB's arguments that (1) the Rule 49 definition of an "approach" is consistent with the Department's long-standing, pre-Rule 49, interpretation of the term and was such at the time the Permit was issued or that (2) the Tunnel Approach does indeed qualify as an approach under such definition; and

The Tunnel Approach Constitutes an Arterial Highway For the Purpose of ZR § 42-55

WHEREAS, having determined that the Tunnel Approach is an approach to the Holland Tunnel and that the Sign is within 200 feet and within view of the Tunnel Approach, the Board must consider whether the Tunnel Approach constitutes an arterial highway for the purpose of ZR § 42-53 (and current ZR § 42-55), i.e., (1) whether it is shown on the City Map and the Master Plan as a principal route, parkway or toll crossing, and (2) whether it has been designated by the City Planning Commission as an arterial highway; and

WHEREAS, the Board finds that it does; and

WHEREAS, the Board notes that it is uncontested that the Master Plan depicts the Holland Tunnel; and

WHEREAS, additionally, the Board credits DOB's argument that the Master Plan, a macroscopic document, need not depict the Tunnel Approach, or any approach, in order for such approach to be subject to the regulations set forth in ZR § 42-55 where, as here, the accompanying CPC Report designated approaches to the Holland Tunnel and such designation is consistent with Appendix H; and

WHEREAS, the Board notes that its conclusion that the macroscopic Master Plan signifies the designation of the Holland Tunnel and, by extension, the Tunnel Approach, is consistent with the CPC Report, which lists the Holland Tunnel as a "toll crossing" and describes toll crossings as "…water crossings, provided as toll facilities by specially constituted Authorities, <u>which together with their approaches are essential links in the arterial highway and major street systems</u>" (emphasis added); and

WHEREAS, the Board further notes its obligation to give effect to the language of the CPC Report cited above; and

WHEREAS, moreover, the Board finds that in the absence of the Tunnel Approach it would be impossible to access the North Tube and, by extension the Holland Tunnel itself, thus, the existence of an approach to the Holland Tunnel is not only grounded in the text but is also self-evident, and the Appellant's position that there are no approaches to the Holland Tunnel defies logic; and

WHEREAS, the Board finds that the CPC Report's characterization of toll crossings as including their approaches, coupled with its statement that "[t]hose crossings, constructed and operated as toll facilities by specific Authorities created by law, are shown as distinctive symbols on the modified Plan" suggests that City Planning intended that the Master Plan show the toll crossings themselves while recognizing that the approaches thereto could be designated but need not be depicted; and

WHEREAS, additionally, the Board cites City Planning Commission report CP 3606, report no. 3254 ("CPC Report 3606"), issued with the CPC Report on April 11, 1945, and notes that in considering changes to § 21-B of the 1916 Zoning Resolution, the precursor to ZR § 42-53 and ZR § 42-55, the City Planning Commission included, among the toll crossings to which § 21-B applies, the "Holland Tunnel and Approaches," further evidencing the City Planning Commission's intent to designate both the Holland Tunnel and its approaches while depicting only the tunnel itself on the Master Plan; and

WHEREAS, the Board notes further that Appendix C, now Appendix H, also has continued to list "Holland Tunnel and Approaches" under the "Toll Crossings" to which ZR § 42-53 and ZR § 42-55 applies; and

WHEREAS, the Board notes its obligation to give effect to the plain language of the CPC Report, CPC Report 3606, Appendix H, and ZR § 42-55, and notes that its decision herein harmonizes and effectuates the intent of those texts; and

WHEREAS, thus, the ZR § 42-55 criteria are met in that the Holland Tunnel and Tunnel Approach are effectively shown on the Master Plan and are designated in the CPC Report as an arterial highway, consistent with Appendix H of the Zoning Resolution, which lists the Holland Tunnel and Approaches as a designated arterial highway; and

WHEREAS, therefore, the Board has determined that the Tunnel Approach is an approach to the Holland Tunnel the existence of which is implied on the Master Plan and which has been designated by the City Planning Commission, in addition to being listed in Appendix H, hence it is an "arterial highway" to which ZR § 42-55 applies; the Board has further determined that the Sign is within 200 feet of the Holland Tunnel and Tunnel Approach, based on the Board's examination of the Vantage Point thereupon, and within view from the Vantage Point and, by extension, the Tunnel Approach; and

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated August 28, 2013, is hereby denied.

Adopted by the Board of Standards and Appeals, July 21, 2015.

37-15-A
APPLICANT – Jeffrey Geary, for Louis Devivo, owner.
SUBJECT – Application February 26, 2015 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-2 zoning district.
PREMISES AFFECTED – 2020 Demerest Road, Van Brunt Road and Demerest Road, Block 15485, Lot 0007, Borough of Queens.
COMMUNITY BOARD #14Q
ACTION OF THE BOARD – Laid over to August 25, 2015, at 10 A.M., for deferred decision.

ZONING CALENDAR

94-14-BZ
APPLICANT – Dennis D. Dell'Angelo, for Rivka Shapiro, owner.
SUBJECT – Application May 5, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (ZR 23-47). R2 zoning district.
PREMISES AFFECTED – 1150 East 22nd Street, west side of East 22nd Street, 140' north of Avenue "K", Block 7603, Lot 79, Borough of Brooklyn.
COMMUNITY BOARD #3BK
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez…4
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated April 28, 2014, acting on DOB Application No. 320951680, reads in pertinent part:

1. The proposed F.A.R. and O.S.R. constitutes an increase in the degree of existing non-compliance contrary to Sec.23-141 of the N.Y.C. Zoning Resolution;
2. Proposed horizontal enlargement provides less than the required rear yard contrary to Sec. 23-47 of the N.Y.C. Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed enlargement of a single-family three-story with cellar detached home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, and rear yards, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on November 18, 2014, after due notice by publication in *The City Record*, with continued hearings on December 16, 2014, January 30, 2015, February 24, 2015, March 24, 2015, April 21, 201 and June 2, 2015, and then to decision on July 21, 2015; and

WHEREAS, Vice-Chair Hinkson, Commissioner Montanez and Commissioner Ottley-Brown performed inspections of the subject site and neighborhood; and

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

WHEREAS, the subject site is located on the west side of East 22nd Street, between Avenue J and Avenue K, within an R2 zoning district; and

WHEREAS, the site has 40 feet of frontage along East 22nd Street and 4,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a non-complying, detached, three-story with cellar, single-family home with 2,038 sq. ft. of floor area (0.51 FAR); and

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

WHEREAS, the applicant now seeks to enlarge the building, resulting in an increase in the floor area from 2,038 sq. ft. (0.51 FAR) to 3,813.3 sq. ft. (0.95 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant also seeks to decrease its non-complying rear yard from 24'-2" to 20'-0", with a 24'-0" setback to the rear lot line at the second and third floors of the proposed building; the requirement is a minimum rear yard depth of 30'-0"; and

WHEREAS, the applicant also seeks to decrease its non-complying open space ratio from 149 percent to 63 percent; a minimum open space ratio of 150 percent is required; and

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

WHEREAS, the applicant initially proposed an enlargement that would have resulted in a building with 3,920 sq. ft. of floor area (0.98 FAR), a rear yard of 20'-0" with no setback to the rear lot line at the second and third floors, and an open space ratio of 61 percent; and

WHEREAS, at a hearing, the Board directed the applicant to: (1) reduce the amount of floor area requested; and (2) provide an analysis of the surrounding rear yard conditions to support the assertion that a rear yard with a depth of 20'-0" is consistent with neighborhood character and, upon consideration of the applicant's analysis, lessen the impact of the reduction in the depth of the rear yard by setting the second and third floors of the building back from the rear lot line; and increasing the open space ratio of the site; and

WHEREAS, the applicant argued to the Board that the proposed reduction in the rear yard of the building must be permitted by virtue of the fact that other sites within 400 feet of the subject site benefitted from special permits pursuant to which the depths of the rear yards of such sites were reduced; and

WHEREAS, the Board explicitly rejects the applicant's argument, and notes that under ZR § 73-01, in each specific case for which a special permit is requested of the Board,

the requirement for findings as set forth in ZR § 73-00 et. seq. are a condition precedent to the grant of such special permit, and notes further that the foregoing requirement is applicable notwithstanding the issuance of similar special permits in the vicinity of any particular site; and

WHEREAS, the Board also notes that its authority under ZR § 73-622 includes the ability to prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the area surrounding a site for which an application under ZR § 73-622 has been made; and

WHEREAS, in response to the Board's comments, the applicant reduced the floor area of the proposed building; increased the open space ratio of the site; and provided a 24'-0" set back from the rear lot line of the site at the second and third floors of the building; and

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

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

Therefore it is resolved, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed enlargement of a single-family three-story with cellar detached home, which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, and rear yards, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received June 23, 2015"–(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,813.3 sq. ft. (0.95 FAR), one side yard (to the north) with a minimum width of 5'-0", one side yard (to the south) with a minimum width of 10'-2", a minimum open space ratio of 63 percent, a rear yard with a minimum depth of 20'-0", and a building height of 29'-6" with a perimeter wall height for rear wall and side walls of 28'-6" and a minimum setback of 24'-0" from the rear lot line of the site at the second and third floors of the building, all as illustrated on the BSA-approved plans;

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

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by July 21, 2019; and

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

Adopted by the Board of Standards and Appeals, July 21, 2015.

264-14-BZ
CEQR #15-BSA-093X
APPLICANT – Eric Palatnik, P.C., for GS 149 LLC, owner; Crunch LLC, lessee.
SUBJECT – Application October 24, 2014 – Special Permit (§73-36) to permit a physical culture establishment (*Crunch Fitness*) within portions of the existing commercial building. C4-4 zoning district.
PREMISES AFFECTED – 436 East 149th Street, south side of East 149th Street, approximately 215' west of intersection with Brook Avenue, Block 02293, Lot 46, Borough of Bronx.
COMMUNITY BOARD #1BX
ACTION OF THE BOARD – Application granted on condition.
THE VOTE TO GRANT –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez…4
Negative:.....0
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated July 1, 2015, acting on DOB Application No. 210049516, reads, in pertinent part:

> Proposed Physical Culture Establishment in a C4-4 zoning district is contrary to Section 32-10 Zoning Resolution and requires a special permit from the BSA pursuant to Section 73-36 Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to legalize, on a site within a C4-4 zoning district, a physical culture establishment (the "PCE") which currently operates in the cellar, first and second floors of a four-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 2, 2015 after due notice by publication in the *City Record*, and then to decision on July 21, 2015; and

WHEREAS, Vice-Chair Hinkson, Commissioner Montanez and Commissioner Ottley-Brown performed site and neighborhood inspections of the premises and surrounding area; and

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

WHEREAS, the subject site is located on a through lot with approximately 90.69 feet of frontage along the south side of East 149th Street and 100 feet of frontage on the north side of East 148th Street, between Bergen Avenue and Brook Avenue, in the Bronx;

WHEREAS, the site contains approximately 20,226 sq. ft. of lot area and is located within a C4-4 zoning district, it is

occupied by a four-story commercial building containing approximately 75,497 sq. ft. of floor area; and

WHEREAS, the PCE occupies 1,644 sq. ft. of floor space in the cellar of the building, 6,128 sq. ft. of floor area on the first floor of the building, and 10,292 sq. ft. of floor area on the second floor of the building; and

WHEREAS, the PCE operates and shall continue to operate as Crunch Fitness; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:00 a.m. to 11:00 p.m., and Sunday from 7:00 a.m. to 9:00 p.m.; and

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

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

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

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

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

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE operated without the special permit; and

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

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 15-BSA-093X, dated October 24, 2014; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 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 legalize, on a site within a C4-4 zoning district, a physical culture establishment which currently operates in the cellar, first and second floors of a four-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 11, 2015," - Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on March 20, 2025;

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

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

THAT noise abatement measures shall be implemented and maintained as reflected on the BSA-approved plans;

THAT the operator of the PCE shall ensure that no nuisance results from vibrations resulting from activity within the PCE;

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by July 21, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, July 21, 2015.

193-13-BZ

APPLICANT – Eric Palatnik, Esq., for Centers FC Realty LLC, owner.

SUBJECT – Application July 2, 2013 – Special Permit (§73-44) for the reduction in parking from 190 to 95 spaces to facilitate the conversion of an existing building to UG 6 office and retail use. C2-2/R6A & R-5 zoning districts

PREMISES AFFECTED – 4770 White Plains Road, White Plains Road between Penfield Street and East 242nd Street, Block 5114, Lot 14, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to September 22, 2015, at 10 A.M., for continued hearing.

303-13-BZ

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

SUBJECT – Application November 15, 2013 – Variance (§72-21) to allow a new mixed use building with 36 residential units and community facility space. R6 & C1-4 zoning districts.

PREMISES AFFECTED – 506-510 Brook Avenue, east side of Brook Avenue between 147th and 148th Street, Block 2274, Lot(s) 6, 7 and 8, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to September 22, 2015, at 10 A.M., for adjourned hearing.

98-14-BZ
APPLICANT – Rothkrug Rothkrug & Spector LLP, for 404-414 Richmond Terrace Inc., owner.
SUBJECT – Application May 8, 2014 – Variance (§72-21) to permit the reestablishment of a banquet facility (catering hall -UG 9) with accessory parking. Located in an R5 and R3A zoning districts within the St. George Historic District.
PREMISES AFFECTED – 404 Richmond Terrace, southeast corner of Richmond Terrace and Westervelt Avenue, Block 3, Lot(s) 40, 31, Borough of Staten Island.
COMMUNITY BOARD #1SI
ACTION OF THE BOARD – Laid over to September 1, 2015, at 10 A.M., for adjourned hearing.

182-14-BZ
APPLICANT – Eric Palatnik, PC, for Izhak Lati, owner.
SUBJECT – Application August 5, 2014 – Special Permit (§73-622) for the enlargement of an existing single family, two story dwelling contrary to floor area (ZR 23-141(b); side yards (ZR 23-461) and less than the minimum rear yard (ZR 23-47). R5 zoning district.
PREMISES AFFECTED – 1977 Homecrest Avenue, between Avenue "S" and Avenue "T", Block 7291, Lot 136, Borough of Brooklyn.
COMMUNITY BOARD #15BK
ACTION OF THE BOARD – Laid over to September 22, 2015, at 10 A.M., for continued hearing.

231-14-BZ
APPLICANT – Sheldon Lobel, PC, for Orangetheory Fitness, owner; OTF Man One, LLP, lessee.
SUBJECT – Application September 26, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (*Orangetheory Fitness*) within a portion of an existing commercial building. C6-3X zoning district.
PREMISES AFFECTED – 124 West 23rd Street, south side of West 23rd Street, between Avenue of the Americas and 7th Avenue, Block 00798, Lot 7507, Borough of Manhattan.
COMMUNITY BOARD #4M
ACTION OF THE BOARD – Laid over to September 1, 2015, at 10 A.M., for continued hearing.

319-14-BZ
APPLICANT – Eric Palatnik, P.C., for Shore Plaza LLC, owner; Staten Island MMA1, Inc., lessee.
SUBJECT – Application December 5, 2014 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*UFC Gym*). C43 zoning district.
PREMISES AFFECTED – 1781 South Avenue, within West Shore Plaza 1745-1801 South Avenue, Block 02800, Lot 37, Borough of Staten Island.
COMMUNITY BOARD #2SI
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez... 4
Negative:.....0
ACTION OF THE BOARD – Laid over to July 28, 2015, at 10 A.M., for decision, hearing closed.

REGULAR MEETING
TUESDAY AFTERNOON, JULY 21, 2015
1:00 P.M.

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

ZONING CALENDAR

213-14-BZ
APPLICANT – Law Office of Steven Simicich, for Wayne Bilotti, owner.
SUBJECT – Application August 29, 2014 – Variance (§72-21) for the construction of a single family detached home contrary to ZR 23-32 for minimum lot area. R2 zoning district.
PREMISES AFFECTED – 165 Wooley Avenue, Woolley Avenue between Lathrop and Garrison Avenues, Block 00419, Lot 13, Borough of Staten Island.
COMMUNITY BOARD #1SI
ACTION OF THE BOARD – Laid over to September 1, 2015, at 10 A.M., for postponed hearing.

219-14-BZ
APPLICANT – Slater & Beckerman, P.C., for People 4 Parks LLC., owner.
SUBJECT – Application September 4, 2014 – Variance (§72-21) to permit the construction of a three-story, single-family residence with one parking space. M1-1 zoning district.
PREMISES AFFECTED – 64 DeGraw Street, south side of DeGraw Street between Columbia and Van Brunt Streets, Block 00329, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #6BK
ACTION OF THE BOARD – Laid over to September 22, 2015, at 10 A.M., for continued hearing.

220-14-BZ and 221-14-BZ
APPLICANT – Slater & Beckerman, P.C., for Post Industrial Thinking, LLC, owner.
SUBJECT – Application September 4, 2014 – Variance (§72-21) to permit the construction of two 3-story single family residences. M1-1 zoning district.
PREMISES AFFECTED – 8 & 10 Underhill Avenue, west side of Underhill Avenue between Atlantic avenue and Pacific Street, Block 01122, Lot 37, Borough of Brooklyn.
COMMUNITY BOARD #8K

ACTION OF THE BOARD – Laid over to September 22, 2015, at 10 A.M., for continued hearing.

236-14-BZ
APPLICANT – Law Office of Stuart Klein, for The 5th Street Dorchester, Inc. c/o Brown Harris, owner; BLT Steak, LLC, lessee.
SUBJECT – Application October 1, 2014 – Special Permit (§73-241) to legalize the operation of an eating and drinking establishment (UG 6C) with entertainment, but not dancing, with a capacity of 200 persons or fewer. C5-3 (MID) zoning district.
PREMISES AFFECTED – 106 East 57th Street aka 104-114 East 57th Street, south side of East 57th Street, 90' from Park Avenue, Block 01311, Lot 0065, Borough of Manhattan.
COMMUNITY BOARD #5M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez... 4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 18, 2015, at 10 A.M., for decision, hearing closed.

18-15-BZ
APPLICANT – Frances R. Angelino, Esq., for 90 Fifth Owner, LLC, owner; Peak Performance NYC. LLC, lessee.
SUBJECT – Application January 28, 2015 – Special Permit (§73-36) to permit a physical culture establishment (*Peak Performance*) on 10th & 11th floors of an 11- story commercial building. C6-4M zoning district.
PREMISES AFFECTED – 90 5th Avenue, northwest corner of West 14th Street and Fifth Avenue, Block 00816, Lot 37, Borough of Manhattan.
COMMUNITY BOARD #5M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez... 4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 25, 2015, at 10 A.M., for decision, hearing closed.

61-15-BZ
APPLICANT – Deirdre A. Carson, Esq., for 540 W. 26th St. Property Investors llA, LLC., owner; Avenue World Holdings LLC., lessee.
SUBJECT–Application March 19, 2015 – Special Permit (§73-19) to permit the operation of a portion of a school known as Avenues (*The School*) Use Group 3A, located in a M1-5 zoning district.
PREMISES AFFECTED – 540 West 26th Street, an interior lot on the south side of West 26th Street, 100' east of intersection of 11th Avenue and West 26th Street, Block 0697, Lot 56, Borough of Manhattan.
COMMUNITY BOARD #4M
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez... 4
Negative:.....0

ACTION OF THE BOARD – Laid over to August 25, 2015, at 10 A.M., for decision, hearing closed.

Ryan Singer, Executive Director