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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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Volume 100, No. 36

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## DIRECTORY

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## CONTENTS

DOCKET .....	467
<b>SPECIAL HEARING</b>	
<b>CALENDAR</b> of September 18, 2015	
Morning .....	468
<b>CALENDAR</b> of September 22, 2015	
Morning .....	468
Afternoon .....	469

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# CONTENTS

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**MINUTES of Regular Meetings,  
Tuesday, August 25, 2015**

Morning Calendar .....470

**Affecting Calendar Numbers:**

122-93-BZ	895 Broadway, Manhattan
1207-66-BZ	305 Washington Avenue aka 321 DeKalb Avenue, Brooklyn
84-93-BZ	671-677 Timpson Place, Bronx
182-95-BZ	2465 Broadway, Manhattan
183-95-BZ	2473 Broadway, Manhattan
156-03-BZ	135-35 Northern Boulevard, Queens
127-15-BZ	135-35 Northern Boulevard, Queens
301-03-BZ	1103 East 22 <sup>nd</sup> Street, Brooklyn
297-12-A	28-18/20 Astoria Boulevard, Queens
271-14-A thru 282-14-A	15, 25, 26, 35, 36, 45, 46, Patricia Court, Staten Island
37-15-A	2020 Demerest Road, Queens
300-08-A	39-35 27th Street, Queens
163-14-A thru 165-14-A	502, 504, 506 Canal Street, Manhattan
91-15-A	55 Englewood Avenue, Staten Island
222-13-BZ	2472 Coney Island Avenue, Brooklyn
64-14-BZ	1320 East 23rd Street, Brooklyn
244-14-BZ	22 West 32nd Street, Manhattan
18-15-BZ	90 5th Avenue, Manhattan
55-15-BZ	405 West 55th Street, Manhattan
148-14-BZ	11 Avenue A, Manhattan
204-14-BZ	55 Wythe Avenue, Brooklyn
270-14-BZ	203 East 92nd Street, Manhattan
61-15-BZ	540 West 26th Street, Manhattan

Afternoon Calendar .....486

**Affecting Calendar Numbers:**

19-15-BZ	92-77 Queens Boulevard, Queens
29-15-BZ	200-204 East 61st Street aka 1011-102 3 <sup>rd</sup> Avenue, Manhattan

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# DOCKETS

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New Case Filed Up to August 25, 2015

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## **190-15-BZ**

51-57 Carmine Street, Northwest corner of Carmine & Bedford Street, Block 0582, Lot(s) 035, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to propose a new six-story and bulkhead mixed building with ground floor commercial use and residential use on the upper floors, total of 20 affordable apartments, located within an R6, C2-6 zoning district. R6,C2-6 district.

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## **191-15-A**

51-99 Manilla Street, On the corner of the intersection formed by Manilla Street and Kneeland Avenue, Block 02467, Lot(s) 0205, Borough of **Queens, Community Board: 4**. Proposed development of a five two-story two-family attached residential buildings partially within the bed of an unmapped street, contrary to Article 3, Section 35 of the General City Law. R4 district.

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## **192-15-A**

51-101 Manilla Street, Located on the corner of the intersection formed by Manilla Street and Kneeland Avenue, Block 02467, Lot(s) 0206, Borough of **Queens, Community Board: 4**. Proposed development of a five two-story two-family attached residential buildings partially within the bed of an unmapped street, contrary to Article 3, Section 35 of the General City Law. R4 district.

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## **193-15-A**

51-105 Manilla Street, Located on the corner of the intersection formed by Manilla Street and Kneeland Avenue, Block 02467, Lot(s) 0207, Borough of **Queens, Community Board: 4**. Proposed development of a five two-story, two-family attached residential buildings partially within the bed of an unmapped street, contrary to Article 3 Section 35 of the General City Law. R4 district.

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## **194-15-A**

51-111 Manilla Street, Located on the corner of the intersection formed by Manilla Street and Kneeland Avenue, Block 02467, Lot(s) 209, Borough of **Queens, Community Board: 4**. Proposed development of a five two-story two-family attached residential buildings partially within the bed of an unmapped street, contrary to Article 3, Section 35 of the General City Law. R4 district.

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## **195-15-A**

51-107 Manilla Street, Located on the corner of the intersection formed by Manilla Street and Kneeland Avenue, Block 02467, Lot(s) 208, Borough of **Queens, Community Board: 4**. Proposed development of a five two-story two-family attached residential buildings partially within the bed of an unmapped street, contrary to Article 3, Section 35 of the General City Law. R4 district.

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## **196-15-BZ**

250 Mercer Street, Between West 3rd and West 4th Streets, Block 0535, Lot(s) 7501, Borough of **Manhattan, Community Board: 1**. Special Permit §73-36: to permit an Physical Culture Establishment (PCE), Haven Spa, that will occupy the first floor of a 16-story residential building in a C6-2 district. C6-2 district.

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## **197-15-A**

32 Berry Street, On the northwest corner of the intersection of Berry Street and North 12th Street, Block 02283, Lot(s) 038, Borough of **Brooklyn, Community Board: 3**. Determination made by Department of Buildings Technical Affairs that under ZR42-561 a proposed advertising sign, comprising 750 sq. ft.. Of surface area, may not be located at the premises, facing a Special Mixed Use District (M1-1)/R6A M1-1 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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## **SPECIAL HEARING SEPTEMBER 18, 2015, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a special hearing, Friday morning, September 18, 2015, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**ZONING CALENDAR**

### **269-14-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for 89-40 Realty LLC/Yaron Rosenthal, owner; Sun Star Services, lessee.

SUBJECT – Application November 3, 2014 – Special Permit §73-36) to permit the physical culture establishment (*Massage Envy Spa*) on the first floor level of an existing commercial building in a C2-2 in R4 zoning district.

PREMISES AFFECTED – 89-44 Metropolitan Avenue, southeast corner of Metropolitan Avenue and Aubrey Avenue, Block 03872, Lot 33, Borough of Queens.

**COMMUNITY BOARD #5Q**

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### **36-15-BZ**

APPLICANT – Warshaw Burstein, LLP, for CAC Atlantic, LLC, owner; 66 Boerum Place Fitness Group, LLC., lessee.

SUBJECT – Application February 25, 2015 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*) on portions of the cellar, first and second floors of a new building. C6-2A (SDBD) zoning district.

PREMISES AFFECTED – 66 Boerum Place aka 239 Atlantic Avenue, northwest corner of the intersection formed by Atlantic Avenue and Boerum Place, Block 00277, Lot(s) 1 & 10, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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### **72-15-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Florence Polizzotto, owner; Blink Flatlands Avenue, Inc., lessee.

SUBJECT – Application March 31, 2015 – Special Permit (§73-36) to permit a physical culture establishment (*Blink Fitness*) within an existing commercial building under alteration. C2-3(R5D+R4-1) zoning district.

PREMISES AFFECTED – 9029 Flatlands Avenue, northeast corner of intersection of Flatlands Avenue and East 92nd Street, Block 08179, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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### **78-15-BZ**

APPLICANT – Eric Palatnik, P.C., for 201 East 66th Street LLC., owner; 66th Street Fitness Corp., lessee.

SUBJECT – Application April 9, 2015 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*Crunch Fitness*) on the first floor and sub-cellar of a twenty one (21) story mixed-use building. C1-9 zoning district.

PREMISES AFFECTED – 201 East 66th Street aka 1131 Third Avenue, between 66th and 67th Street, Block 01421, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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*Ryan Singer, Executive Director*

## **SEPTEMBER 22, 2015, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 22, 2015, 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**

### **526-76-BZ**

APPLICANT – Vito J Fossella, P.E., for 1492 Victory Blvd. LLC., owner.

SUBJECT – Application May 19, 2014 – Amendment of a previously approved variance which permitted the conversion of a three story building consisting of two family residence and a store into a three story office building which expired on December 21, 1981. The Amendment seeks to eliminate the term. R2 zoning district.

PREMISES AFFECTED – 1492 Victory Boulevard, south side of Victory Boulevard, Block 00681, Lot 33, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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### **27-91-BZ**

APPLICANT – Land Planning and Engineering Consultants, P.C., for Eldar Blue, LLC, owner.

SUBJECT – Application July 14, 2014 – Extension of Term of a previously approved variance for a two-story commercial building which expired June 14, 2014; Amendment to eliminate the length of term of variance due to the recently zoning change. C1-2/R3 zoning district.

PREMISES AFFECTED – 1931 Richmond Avenue, Block 02030, Lot 8, Borough Staten Island.

**COMMUNITY BOARD #5SI**

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# CALENDAR

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## **156-92-BZ**

APPLICANT – Eric Palatnik, P.C., for Parisi Patel, Inc., owner.

SUBJECT – Application December 22, 2014 – Extension of Term of the variance (§72-21) which permitted medical office use in an existing building contrary to side yard regulation at the basement and first floor levels, which expired March 1994; Waiver. R5 zoning district.

PREMISES AFFECTED – 1835 Bay Ridge Parkway, between 18th Avenue and 19th Avenue, Block 06216, Lot 60, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

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## **APPEALS CALENDAR**

## **67-13-A**

APPLICANT – Board of Standards and Appeals  
OWNER OF PREMISES - OTR MEDIA GROUP, INC & OTR 945 Zerega.

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

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

**COMMUNITY BOARD #9BX**

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**SEPTEMBER 22, 2015, 1:00 P.M.**

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

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## **ZONING CALENDAR**

## **69-15-BZ**

APPLICANT – Glenn V. Cutrona, AIA, for Murray Page 74 LLC, owner.

SUBJECT – Application March 30, 2015 – Variance (§72-21) a proposed eating and drinking establishment with accessory drive through facility, located within an R3X/C1-1/SRD zoning district.

PREMISES AFFECTED – 245 Page Avenue, between Richmond Valley Road and Amboy Road, Block 08008, Lot 74, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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*Ryan Singer, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, AUGUST 25, 2015 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 122-93-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 895 Broadway LLC, owner.

SUBJECT – Application September 24, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (*Equinox*) which expired on September 20, 2014; Amendment to permit the expansion of the use into the second floor. M1-5M zoning district.

PREMISES AFFECTED – 895 Broadway, west side of Broadway, 27.5' south of intersection of Broadway and E. 20th Street, Block 00848, Lot 15, Borough of Manhattan.

#### COMMUNITY BOARD #5M

**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 re-opening to amend the resolution and an extension of the term of a previously granted special permit that expired on September 20, 2014; and

WHEREAS, a public hearing was held on this application on July 14, 2015 after due notice by publication in *The City Record*, and then to decision on August 25, 2015; and

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

WHEREAS, Community Board No. 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is an irregular “L-shaped” lot with approximately 82 feet of frontage along the west side of Broadway, starting approximately 27 feet south of East 20<sup>th</sup> street, continuing southward, and approximately 25 feet of frontage along the south side of East 20<sup>th</sup> Street, starting approximately 95 feet west of Broadway, continuing westward, within an M1-5M zoning district, in Manhattan; and

WHEREAS, the site has approximately 11,725 sq. ft. of lot area, and is occupied by a cellar and five-story commercial building; and

WHEREAS, on September 20, 1994, under the subject calendar number, the Board granted a special permit application pursuant to Z.R. § 73-36, to permit, in an M1-5M zoning district, the use of the cellar, first floor and mezzanine of the existing five-story commercial building as a physical

culture establishment (“PCE”); and

WHEREAS, on January 10, 2006, also under the subject calendar number, the Board granted an amendment to the subject special permit resolution to legalize an enlargement of the PCE and extension of the term, which expired on September 20, 2014; and

WHEREAS, the instant applicant was filed within 30 days of the expiration of the expired term; and

WHEREAS, the instant application seeks to: (1) extend the term of the special permit for ten years; and (2) amend the resolution to permit an additional enlargement of the PCE use at the second floor of the subject building; and

WHEREAS, the applicant represents that PCE currently occupies 21,709 sq. ft. of floor area, and the proposed 1,150 sq. ft. expansion of the PCE on the second floor of the building will increase size of the PCE to 22,859 sq. ft., exclusive of 10,188 sq. ft. of floor space in the cellar of the building; and

WHEREAS, the applicant represents that PCE will continue to operate as *Equinox* and that the hours of operation will continue to be: Monday through Thursday – 6 a.m. to 11 p.m.; Friday – 6 a.m. to 10 p.m.; and Saturday and Sunday – 8 a.m. to 9 p.m.; and

WHEREAS, the Board finds that a ten-year extension and the requested amendment is appropriate, with the conditions set forth below.

*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 September 20, 1994, so that as amended this portion of the resolution shall read: “to permit the legalization of interior changes to the PCE including the expansion to the second floor of the building, and an extension of the term of the special permit for a term of ten years; *on condition* that the expansion shall substantially conform to drawings as filed with this application, marked ‘Received May 12, 2015’–(7) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years from September 20, 2014, expiring September 20, 2024;

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

THAT a new Certificate of Occupancy for the premises shall be obtained by August 25, 2016;

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

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) 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. 104366151)

Adopted by the Board of Standards and Appeals, August 25, 2015.

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# MINUTES

## 1207-66-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Apple Art Supplies of New York, LLC., owner.

SUBJECT – Application December 10, 2014 – Extension of Term of a previously granted variance for the continued operation of a UG6 art supply and bookstore which expired July 5, 2012; Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 305 Washington Avenue aka 321 DeKalb Avenue, northeast corner of Washington Avenue & DeKalb Avenue, Block 1918, Lot 7501, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

**ACTION OF THE BOARD** – Laid over to September 18, 2015, at 10 A.M., for continued hearing.

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## 84-93-BZ

APPLICANT – Sheldon Lobel P.C., 671 Timpson Realty corp./Timpson Salvage Corp., owner.

SUBJECT – Application December 1, 2014 – Extension of Term of a previously Variance (§72-21) permitting the operation of a Use Group 18B scrap, metal, junk, paper or rags, storage sorting, and bailing facility, which expired on November 15, 2015. C8-3 zoning district.

PREMISES AFFECTED – 671-677 Timpson Place, West of the intersection formed by Timpson Place, Bruckner Boulevard and Leggett Avenue, Block 2603, Lot(s) 190, 192, 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 18, 2015, at 10 A.M., for decision, hearing closed.

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## 182-95-BZ

APPLICANT – Rothkrug & Spector LLP, for 2465 Broadway Associates LLC., owner.

SUBJECT – Application October 14, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a PCE (*Equinox Fitness Club*) which expires on November 1, 2015; Amendment to expand the PCE into the cellar and the full third floor; Waiver of the Rules. C4-6A/R8 zoning district.

PREMISES AFFECTED – 2465 Broadway, West side of Broadway, 50' south of southwest corner of intersection of Broadway and West 92nd Street, Block 01239, Lot 52, Borough of Manhattan.

### COMMUNITY BOARD #7M

**ACTION OF THE BOARD** – Laid over to October 16, 2015, at 10 A.M., for continued hearing.

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## 183-95-BZ

APPLICANT – Rothkrug & Spector LLP, for Haymes Broadway LLC, owner.

SUBJECT – Application October 14, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a PCE (*Equinox Fitness Club*) which expires on November 1, 2015; Amendment to expand the PCE into the cellar and the full third floor; Waiver of the Rules. C4-6A/R8 zoning district.

PREMISES AFFECTED – 2473 Broadway, southwest corner of intersection of Broadway and West 92nd Street, Block 01239, Lot 55, Borough of Manhattan.

### COMMUNITY BOARD #7M

**ACTION OF THE BOARD** – Laid over to October 16, 2015, at 10 A.M., for continued hearing.

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## 156-03-BZ

APPLICANT – Goldman Harris LLC., for Flushing Square, LLC., lessee.

SUBJECT – Application March 10, 2015 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the construction of a seventeen story mixed-use commercial/community facility/residential condominium building which expires on January 31, 2016; Amendment. R6/C2-2 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of intersection of Main Street and Northern Boulevard, Block 04958, Lot(s) 48,38, Borough of Queens.

### COMMUNITY BOARD #7Q

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 18, 2015, at 10 A.M., for decision, hearing closed.

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## 127-15-BZ

APPLICANT – Goldman Harris LLC., for Flushing Square, LLC., owner.

SUBJECT – Application May 29, 2015 – Special Permit (§73-66) to permit the construction of building in excess of the height limits established pursuant Z.R. §§61-211 & 61-22. The proposed building was approved by the Board pursuant to BSA Calendar Number 156-03-BZ. C2-2/R6 zoning district

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of intersection of Main Street and Northern Boulevard, Block 04958, Lot(s) 48, 38, Borough of Queens.

### COMMUNITY BOARD #7Q

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 18, 2015, at 10 A.M., for decision, hearing closed.

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# MINUTES

## 301-03-BZ

APPLICANT – Law Office of Lyra J. Altman, for 1103 East 22nd LLC., owner.

SUBJECT – Application April 29, 2014 – Extension of Time to Complete Construction and Waiver of the rules for a single family home enlargement under 73-622 approved on January 13, 2004. R2 Zoning district.

PREMISES AFFECTED – 1103 East 22<sup>nd</sup> Street, east side of East 22nd Street between Avenue J and Avenue K, Block 07604, Lot 31, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to October 20, 2015, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 297-12-A

APPLICANT – Law Office of Fredrick A. Becker, for 28-20 Astoria Blvd LLC., owner.

SUBJECT – Application April 6, 2015 – Extension of Time to complete construction in connection with a previously approved common law vested rights application. R6-A (C1-1) zoning district.

PREMISES AFFECTED – 28-18/20 Astoria Boulevard, south side of Astoria Boulevard, approx. 53.87' west of 29th Street, Block 00596, Lot 0045, Borough of Queens.

### COMMUNITY BOARD #1Q

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

THE RESOLUTION –

WHEREAS, this application seeks a determination from the Board that the owner of the subject site has obtained the right to complete construction of a five-story, mixed residential and community facility building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on August 25, 2015, after due notice by publication in *The City Record*, with a decision rendered on that date; and

WHEREAS, the site is located on the south side of Astoria Boulevard, between 28th Street and 29th Street; and

WHEREAS, the site has a lot area of 6,701 sq. ft. and 45.85 feet of frontage along Astoria Boulevard; and

WHEREAS, under construction at the site is a seven-story mixed residential and commercial building with an FAR of 3.0, and 28 dwelling units (the “Building”); and

WHEREAS, the subject site is currently located partially within an R6B zoning district and partially within an R6A (C1-3) zoning district, but was formerly located within an R6 (C1-2) zoning district; and

WHEREAS, the Building complies with the former R6 (C1-2) zoning district parameters; specifically with respect to floor area; and

WHEREAS, on February 13, 2008, the Department of

Buildings (“DOB”) issued New Building Permit No. 402604669-01-NB (hereinafter, the “Building Permit”) authorizing construction of the Building; and

WHEREAS, however, on May 25, 2010 (the “Enactment Date”), the City Council voted to adopt the Astoria Rezoning, which rezoned the site to partially R6B and partially R6A (C1-3), as noted above; and

WHEREAS, as a result of the rezoning, the Building does not comply with the district parameters regarding floor area ratio and building height; and

WHEREAS, the applicant notes that ZR § 11-31(c)(1) classifies the construction authorized under the Permit as a “minor development”; and

WHEREAS, the applicant notes that, per ZR §§ 11-331 and 11-332, where all work on foundations for a minor development has been completed prior to the effective date of an applicable amendment to the Zoning Resolution, work may continue for two years, and if after two years, construction has not been completed and a certificate of occupancy has not been issued, the permit shall automatically lapse and the right to continue construction shall terminate; and

WHEREAS, the applicant states that, as of the Enactment Date, the entire foundation for the building was completed; and

WHEREAS, accordingly, the applicant states, DOB recognized the owner’s right to continue construction under the Permit for two years until May 25, 2012, pursuant to ZR § 11-331; and

WHEREAS, however, as of May 25, 2012, construction was not complete and a certificate of occupancy had not been issued; therefore, on that date the Permit lapsed by operation of law; and

WHEREAS, subsequently, the applicant sought a two-year extension to complete construction pursuant to the common law doctrine of vested rights, which the Board granted on April 23, 2013, under the subject calendar number (the “Previous Grant”); and

WHEREAS, the Board notes its determination in the Previous Grant that the Permit lawfully issued prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a lawfully-issued permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in *Putnam Armonk, Inc. v. Town of Southeast*, 52 AD 2d 10 (2d Dept 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance”; and

WHEREAS, however, notwithstanding this general framework, as discussed by the court in *Kadin v. Bennett*, 163 AD 2d 308 (2d Dept 1990) “there is no fixed formula which

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# MINUTES

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measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

WHEREAS, as noted above, the applicant obtained a permit to construct the Building and performed certain work prior to the Enactment Date; and

WHEREAS, the Board notes that work completed prior to the Enactment Date constituted substantial construction and/or substantial expenditures as stated or implied in the Previous Grant; and

WHEREAS, the applicant submits, and the Board finds, that the work performed prior and subsequent to the Previous Grant constitutes substantial construction and, similarly, that expenditures related thereto were similarly substantial; and

WHEREAS, specifically, the applicant notes that as of the Enactment Date, the owner of the site had completed demolition, excavation, footings and the entire foundation of the subject building, including foundation bracing and strapping and underpinning of the existing foundation; and

WHEREAS, the applicant notes further that construction pursuant to the initial permits continued after the Enactment Date; and

WHEREAS, the applicant notes further that as of May 25, 2012, the following work was complete: (1) demolition; (2) excavation; (3) footings and foundation work; and

WHEREAS, the applicant represents that a substantial portion of the structural steel for the building was also complete as of May 25, 2012; and

WHEREAS, the applicant states that subsequent to the Previous Grant it was able to obtain financing contingent thereupon, and that it obtained new construction loans in August of 2013, and re-commenced construction in September of 2013; and

WHEREAS, the applicant states that since the Previous Grant, the following additional work has been performed: (1) completion of the building exterior; (2) all rough plumbing, including sections; (3) installation of all framing, sheetrock and floors; (3) rough electrical work; (4) roof work; (5) HVAC installation; (6) connection to gas, water and sewer lines; and (7) controlled inspections, TR1s, TR2s, and TR3s; and

WHEREAS, the applicant notes that the Previous Grant included a finding that substantial expenditures were incurred at the Site; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant notes that, as reflected in the Previous Grant, as of the Enactment Date, soft cost expenditures accepted by the board were \$520,000.00 and hard cost expenditures were \$1,019,000.00, for a total expenditure of \$1,539,000.00; and

WHEREAS, the applicant represents that in addition to the foregoing expenditures made prior to the Enactment Date, the applicant has incurred an additional \$3,576,000.00 in hard

and soft costs since the Previous Grant, including \$3,105,000.00 in hard costs and \$471,000.00 in soft costs; and

WHEREAS, the applicant has submitted payments and receipts to substantiate the foregoing claim; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with the development costs; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as articulated in the Previous Grant, and as the applicant re-states, if the applicant is not allowed to complete construction of the building under the previous zoning the number of units it could construct would be reduced from 28 to 24, with a decrease in market value of more than \$3,000,000.00; and

WHEREAS, in addition to the loss of \$3,000,000.00, the applicant would incur additional loss if required to reconfigure the now substantially completed building, in the amount of \$3,600,000.00; and

WHEREAS, thus, the applicant concludes and the Board find that if the applicant were not allowed to complete construction under the Building Permit, it would incur a loss of \$6,600,000.00; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed and the expenditures made both before and after the Enactment Date, the representations regarding serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building has accrued to the owner of the premises.

*Therefore it is Resolved*, that this application made pursuant to the common law doctrine of vested rights requesting a reinstatement of Permit No. 402604669-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for two years from the date of this grant.

Adopted by the Board of Standards and Appeals, August 25, 2015.

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## **271-14-A thru 282-14-A**

APPLICANT – Eric Palatnik, P.C., for 91 Seguire Avenue LLC, owner.

SUBJECT – Application November 3, 2014 – To permit the proposed development consisting of seven one family homes and one-two family home, contrary Article 3 Section 36 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 15, 25, 26, 35, 36, 45, 46, Patricia Court, bound by Seguire Avenue, MacGregor Avenue, Herbert Street, Holton Avenue, Block 06680, Lot (s) 80, 9, 6, 8, 7, 24, 25, 26 Herbert Court, Block 06680, Lot 23, Borough of Staten Island.

## **COMMUNITY BOARD #3SI**

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

# MINUTES

condition.

## THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4

Negative:.....0

## THE RESOLUTION –

WHEREAS, the following decision was rendered by the New York City Department of Buildings (“DOB”) with respect to DOB Application Nos. 520193362, dated October 2, 2014, for 25 Patricia Court, Staten Island; DOB Application Nos. 520193406, dated October 14, 2014, for 26 Patricia Court, Staten Island; DOB Application Nos. 5201900007, dated October 14, 2014, for 26 Patricia Court (Garage Structure), Staten Island; DOB Application Nos. 520193380, dated October 2, 2014, for 35 Patricia Court, Staten Island; DOB Application Nos. 520193399, dated October 14, 2014, for 36 Patricia Court, Staten Island; DOB Application Nos. 520190034, dated October 14, 2014, for 36 Patricia Court (Garage Structure), Staten Island; DOB Application Nos. 520199776 dated October 2, 2014, for 45 Patricia Court, Staten Island; DOB Application Nos. 520199785, dated October 14, 2014, for 46 Patricia Court, Staten Island; DOB Application Nos. 520199794, dated October 14, 2014, for 46 Patricia Court (Garage Structure), Staten Island; DOB Application Nos. 520199767, dated October 2, 2014, for 26 Herbert Street, Staten Island; DOB Application Nos. 520201291, dated October 2, 2014, for 26 Herbert Street (Garage Structure), Staten Island:

The street giving access to the 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 the building fronting directly upon a legally mapped street or frontage space contrary to Sec. 502.1 of the 2008 NYC Building Code; and

WHEREAS, this is an application, filed pursuant to General City Law §36, to allow the proposed construction of eight one- and two-family homes (and, in four instances, garages) not fronting on a mapped street; and

WHEREAS, a public hearing was held on this application on July 14, 2015, after due notice by publication in *The City Record*, and then to decision on August 25, 2015; and

WHEREAS, the above-referenced lots, which do not front on a mapped street, are located to the east of Seguin Avenue, south of Herbert Street and North of Mac Gregor Avenue, within an R3X zoning district, within the Special South Richmond Development District, in Staten Island; and (the “Site”); and

WHEREAS, the applicant seeks to construct nine one- and two-family homes on the Site; eight of those one- and two-family homes will not front on a mapped street, and four of the eight which do not front on a mapped street will contain garages; and

WHEREAS, by letter dated May 13, 2015, as affirmed by

letter dated August 5, 2015, the FDNY stated that it has no objections to the proposed development, but conditioned its statement of no objection on the applicant meeting all of the conditions shown on the stamped, approved site plan provided to the FDNY by the applicant (“FDNY Access and Hydrant Plan Drawing A-001.00”); and

WHEREAS, specifically, FDNY imposed the following conditions, noted on FDNY Access and Hydrant Plan Drawing A-001.00, on the project, which are hereby adopted by the Board: (1) All buildings shall be provided with interconnected smoke alarms, which shall be designed and installed in accordance with the City of New York Building Code Section 907.2.1.0; (2) The Fire Department access roads (private roads) shall have an unobstructed width of not less than 34 feet (34’-0”) and shall satisfy the requirements of Section 25-21 of the Zoning Resolution; (3) Parking to be permitted on both sides of each private road; (4) Area in front of fire hydrants shall be marked with paint “no parking” on roadway eight feet (8’-0”) out from curb; (5) As per Fire Code Rule C503.1.1 (Apparatus Access Road) buildings or structures shall be accessible to department apparatus by the way of public street or an approved fire apparatus access road with an approved asphalt, concrete or other approved driving surface installed in accordance with the standards of the New York City Department of Transportation and capable of supporting the imposed load of department apparatus weighing at least 35,000 pounds; and (6) Each dwelling entrance shall be within 250 feet of a hydrant; (7) Mains servicing hydrants shall be eight inches or greater and cross-connected as per requirements; (8) all proposed one/two family detached residences (two story) to be fully sprinklered; and

WHEREAS, on August 24, 2015, the applicant submitted a revised site plan which included, *inter alia*, the conditions noted on FDNY Access and Hydrant Plan Drawing A-001.00 are incorporated into the Board-approved plans; 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 following decisions of the Department of Buildings (“DOB”):

- DOB Application Nos. 520193362, dated October 2, 2014, for 25 Patricia Court, Staten Island
- DOB Application Nos. 520193406, dated October 14, 2014, for 26 Patricia Court, Staten Island
- DOB Application Nos. 5201900007, dated October 14, 2014, for 26 Patricia Court (Garage Structure), Staten Island
- DOB Application Nos. 520193380, dated October 2, 2014, for 35 Patricia Court, Staten Island
- DOB Application Nos. 520193399, dated October 14, 2014, for 36 Patricia Court, Staten Island
- DOB Application Nos. 520190034, dated October 14, 2014, for 36 Patricia Court (Garage

# MINUTES

Structure), Staten Island

- DOB Application Nos. 520199776 dated October 2, 2014, for 45 Patricia Court, Staten Island
- DOB Application Nos. 520199785, dated October 14, 2014, for 46 Patricia Court, Staten Island
- DOB Application Nos. 520199794, dated October 14, 2014, for 46 Patricia Court (Garage Structure), Staten Island
- DOB Application Nos. 520199767, dated October 2, 2014, for 26 Herbert Street, Staten Island
- DOB Application Nos. 520201291, dated October 2, 2014, for 26 Herbert Street (Garage Structure), Staten Island

are 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 all construction will substantially conform to the drawings filed with the application marked “August 25, 2015”-(1) sheet; and *on further condition*:

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

THAT the height of the dwellings shall not exceed 35 feet (35’-0”) above grade plane;

THAT all buildings shall be provided with interconnected smoke alarms, which shall be designed and installed in accordance with the City of New York Building Code Section 907.2.1.0;

THAT the Fire Department access roads (private roads) shall have an unobstructed width of not less than 34 feet (34’-0”) and shall satisfy the requirements of Section 25-21 of the Zoning Resolution;

THAT the in front of fire hydrants shall be marked with paint “no parking” on roadway eight feet (8’-0”) out from curb;

THAT all buildings or structures shall be accessible to department apparatus by the way of public street or an approved fire apparatus access road with an approved asphalt, concrete or other approved driving surface installed in accordance with the standards of the New York City Department of Transportation and capable of supporting the imposed load of department apparatus weighing at least 35,000 pounds as per Fire Code Rule C503.1.1 (Apparatus Access Road);

THAT hydrants shall be provided within the private road (Patricia Court) and each dwelling entrance shall be within 250 feet of a hydrant as shown on BSA-approved plans;

THAT all water mains servicing hydrants shall be eight inches or greater and cross-connected as per requirements;

THAT all proposed one/two family detached residences (two story) to be fully sprinklered with automatic sprinkler system;

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

THAT all the private road (Patricia Court) shall be screened from adjoining lots by landscape strips densely planted with evergreen shrubs at least 4 ft. high at time of planting, and of a type that may be expected to form a year-round defense screen at least 6 ft. high within three years of planting, such planting to be maintained in good condition at all times;

THAT the proposed development will comply in all respects with the conditions of NYSDEC Permit No. 2-6405-00609/0001, including, without limitation, requirements stated for plantings in the Area of No Land Alteration (as shown on the plans attendants to such permit);

THAT this approval is limited to the relief granted by the Board in response to specifically cited 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 August 25, 2015.

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## 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** – 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 January 29, 2015, acting on DOB Application No. 420606963, reads in pertinent part:

The request to allow the reconstruction of a demolished access ramp, located in the bed of a mapped street ... denied... Buildings or portions of buildings are not allowed within the bed of a mapped street, per General City Law (“GCL”) § 35... the proposed walkway structure is construction that is not permitted in the bed of a mapped street, and is only permitted if BSA grants approval pursuant to GCL § 35; and

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# MINUTES

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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 August 25, 2015; and

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

WHEREAS, this is an application to allow the reconstruction of a single-family residence and access ramp which was affected during Super Storm Sandy; the proposed reconstruction of the access ramp will be located partially within the bed of a mapped but unbuilt portion of Demerest Road, in Queens;

WHEREAS, the subject site is located on the east side of Van Brunt Road, south of East 21<sup>st</sup> Road, in an R3-2 zoning district; and

WHEREAS, the site, which is irregularly shaped, has approximately 12.5 feet of frontage along Van Brunt Road, and a combined depth of approximately 210 feet, widening to a width of approximately 26 feet at the rear of the site, which has a lot area of approximately 4,460 sq. ft.; and

WHEREAS, while the site fronts on Van Brunt Road, it is bisected by the proposed street extension of Demerest Road, and the proposed reconstruction of the applicant's access walkway is located within the bed of that mapped but unbuilt street; and

WHEREAS, the proposed development will conform and comply with all zoning regulations applicable in the subject R3-2 zoning district; and

WHEREAS, by letter dated June 8, 2015, the New York City Fire Department ("FDNY") states that it has no objections to the proposed application; and

WHEREAS, by letter dated August 19, 2015, the New York City Department of Environmental Protection ("DEP") states that it has no objections to the proposed application; and

WHEREAS, by letter dated May 8, 2015, the New York City Department of Transportation ("DOT") states that the improvement of Demerest Road at the site is not presently included in DOT's Capital Improvement Program; and

WHEREAS, the Board notes that pursuant to GCL § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements; 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 Board modifies the decision of the DOB, dated January 29, 2015, acting on DOB Application No. 420606963, by the power vested in it by Section 35 of the General City Law, and grants this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked "August 25, 2015"- (1) sheet; and *on further condition*:

THAT DOB will review and approve plans associated with the Board's approval for compliance with the underlying zoning regulations as if the unbuilt portion of the street were not mapped;

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

jurisdiction objection(s);

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

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

Adopted by the Board of Standards and Appeals on August 25, 2015.

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### 300-08-A

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

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

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

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to October 16, 2015, at 10 A.M., for continued hearing.

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### 163-14-A thru 165-14-A

APPLICANT – Ponte Equities, for Ponte Equities, Ink, owner.

SUBJECT – Application July 10, 2014 – Appeal seeking waiver of Section G304.1.2 of the NYC Building Code to permit a conversion of a historic structure from commercial to residential in a flood hazard area. C6-2A zoning district.

PREMISES AFFECTED – 502, 504, 506 Canal Street, Greenwich Street and Canal Street, Block 595, Lot 40, 39, 38, Borough of Manhattan.

### COMMUNITY BOARD #1M

**ACTION OF THE BOARD** – Laid over to October 27, 2015, at 10 A.M., for continued hearing.

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### 91-15-A

APPLICANT – Edward Lauria, for Gerard Petri, owner.

SUBJECT – Application April 23, 2015 – Proposed construction of building that does not front on a legally mapped street, pursuant Article 3 Section 36 of the General city Law. M1-1 zoning district.

PREMISES AFFECTED – 55 Englewood Avenue, 593.35' east of Arthur Kill Road, Block 07380, Lot 0029, Borough of Staten Island

### COMMUNITY BOARD #3SI

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 18, 2015, at 10 A.M., for decision, hearing closed.

# MINUTES

## ZONING CALENDAR

### 222-13-BZ

#### CEQR #14--BSA-014K

APPLICANT – Eric Palatnik, P.C., for 2464 Coney Island Avenue, LLC, owner.

SUBJECT – Application July 23, 2013 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. C8-1/R5 zoning district.

PREMISES AFFECTED – 2472 Coney Island Avenue, southeast corner of Coney Island Avenue and Avenue V, Block 7136, Lot 30, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – 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 June 25, 2013, acting on DOB Application No. 320269035, reads:

Proposed development is contrary to ZR Section 36-21 and requires a special permit pursuant to ZR section 73-44; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, on a site located partially within a C8-1 zoning district, and partially within an R5 zoning district, within the Special Ocean Parkway District, the reduction in the required number of accessory parking spaces for a proposed ambulatory diagnostic or treatment health care facility from 36 spaces to 18 spaces, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on August 19, 2014, after due notice by publication in The City Record, with continued hearings on November 18, 2014, January 27, 2015, March 10, 2015, April 21, 2015, and July 14, 2015, and then to decision on August 25, 2015; and

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

WHEREAS, Community Board 15, Brooklyn, recommends that the Board disapprove the instant application; and

WHEREAS, the subject site is a through lot with 100 feet of frontage along the east side of East 9<sup>th</sup> Street and 100 feet of frontage along the west side of Coney Island Avenue, between Avenue U, to the north, and Avenue V, to the south, partially within a C8-1 zoning district and partially within an R5 zoning district, within the Special Ocean Parkway District; and

WHEREAS, the site has approximately 12,720 sq. ft.

of lot area; and

WHEREAS, on March 17, 1964, under BSA Cal. No. 1059-63-BZ, the Board granted an application for a variance at the subject site to permit the extension of the public parking lot into that portion of the site which is located within the R5 zoning district; and

WHEREAS, the applicant is constructing a three-story building at the site, containing 15,342 sq. ft. of floor area as follows: (1) 3,206.50 sq. ft. of floor at the first floor of the building for a Use Group 8 automobile rental; (2) 1,494.09 sq. ft. of floor area at the first floor of the building for Use Group 6 retail; and (3) 10,641 sq. ft. of floor area at the first, second and third floors of the building for a Use Group 4 (Community Facility) ambulatory diagnostic or treatment health care facility; and

WHEREAS, the applicant proposes to provide the required number of accessory parking spaces for the retail uses at the site, however, pursuant to ZR § 73-44, the applicant seeks a reduction in the required number of parking spaces for the ambulatory diagnostic or treatment health care facility, as set forth below; and

WHEREAS, the applicant states that, pursuant to ZR § 36-21, 41 parking spaces are required for all uses at the site (36 for ambulatory diagnostic or treatment health care facility and five for the retail uses at the site); and

WHEREAS, the applicant calculates the ambulatory diagnostic or treatment health care facility office parking requirement as follows: pursuant to ZR § 36-21, within the C8-1 district, the subject Use Group 4 ambulatory diagnostic or treatment health care requires one accessory parking space for every 300 sq. ft. of floor area; thus, the proposed Use Group 4 office floor area at the site generates 36 required accessory parking spaces; however, the applicant seeks to provide 18 parking spaces, resulting in a deficit of 18 parking spaces; and

WHEREAS, the applicant calculates the retail parking requirement as follows: pursuant to ZR § 36-21, within the C8-1 district, the subject Use Group retail requires one accessory parking space for every 300 sq. ft. of floor area; thus, the proposed Use Group 6 retail floor area at the site generates five required accessory parking spaces; however, the applicant seeks to provide 10 parking spaces; and

WHEREAS, indeed, the applicant notes that in addition to the 23 spaces required under a strict application of ZR § 73-44, it will provide an additional five spaces (by virtue of the double stackers which will be placed in the commercial portion of the site) and nine non-accessory spaces provided in conjunction with the automobile rental use on the first floor of the subject building; and

WHEREAS, pursuant to ZR § 73-44, the Board may grant a special permit allowing a reduction in the required number of accessory off-street parking spaces for the Use Group 4 ambulatory diagnostic or treatment health care facility; in the subject C8-1 zoning district, the Board may reduce the required parking for such uses from one space per 400 sq. ft. of floor area to one space per 600 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 73-44, the Board must,

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# MINUTES

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prior to granting the waiver, determine that the use proposed in the B1 parking category and the Use Group 4 use are contemplated in good faith; and

WHEREAS, to satisfy the good-faith requirement, the applicant submitted an affidavit dated May 1, 2015; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, in addition, the special permit under ZR § 73-44 requires and the applicant represents that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, at hearing, the Board directed the applicant to demonstrate that the application satisfies 73-03(a); specifically, the Board requested additional information on how the proposed reduction in parking will impact the surrounding community in terms of parking and traffic; and

WHEREAS, in response, the applicant submitted a parking demand and utilization study, which reflects that the proposed reduction will not have significant negative impacts on the surrounding community; and

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

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-03 and 73-44 have been met; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14-BSA-014K, dated August 5, 2015; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and

Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 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 §§ 73-03 and 73-44 to permit, on a site located partially within a C8-1 zoning district, and partially within an R5 zoning district, within the Special Ocean Parkway District, the reduction in the required number of accessory parking spaces for a proposed ambulatory diagnostic or treatment health care facility from 36 spaces to 18 spaces, contrary to ZR § 36-21; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received August 5, 2015"—twelve (12) sheets, and on further condition:

THAT a minimum of 37 parking spaces shall be provided at the site;

THAT there shall be no change in the uses at the site without prior review and approval by the Board;

THAT a certificate of occupancy shall not be issued if either of the uses for which parking has been reduced has been changed to a use listed in parking category B, unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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

THAT the applicant shall provide landscaping as shown on the BSA-approved plans;

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 August 25, 2015;

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

Adopted by the Board of Standards and Appeals, August 25, 2015.

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# MINUTES

## 64-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Moshe Dov Stern & Goldie Stern, owners.

SUBJECT – Application April 29, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1320 East 23rd Street, west side of East 23rd Street between Avenue M and Avenue N, Block 7658, Lot 58, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**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 New York City Department of Buildings (“DOB”), dated April 8, 2014, acting on DOB Application No. 320778967, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required;
3. Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required;
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed enlargement of a single-family home which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio (“OSR”), side yards, and rear yards, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on September 9, 2014, after due notice by publication in *The City Record*, with continued hearings on October 28, 2014, December 9, 2014, January 13, 2015, March 24, 2015, April 28, 2015, May 19, 2015, and July 14, 2015, and then to decision on August 25, 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 23<sup>rd</sup> Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the site has 40 feet of frontage along East 23<sup>rd</sup> Street, a depth of 100 feet, and 4,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a single-family home with 2,124.82 sq. ft. of floor area (0.53 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 2,124.82 sq. ft. (0.53 FAR) to 4,015.64 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.5 FAR); and

WHEREAS, the applicant seeks to decrease the open space ratio from 138.3 percent to 54.6 percent; the minimum required open space ratio is 150 percent; and

WHEREAS, the applicant seeks to maintain and extend its non-complying side yard and reduce the width of its complying side yard so that the existing widths of 2’-9” and 12’-0” respectively shall be reduced to 2’-9” and 8’-0””; the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each; and

WHEREAS, the applicant seeks to decrease its non-complying rear yard from 24’-5” to 22’-0””; the requirement is a minimum depth of 30’-0””; and

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

WHEREAS, at hearing, the Board expressed concern about the impact of the proposed 20’-0” rear yard and the massing of the proposed building; and

WHEREAS, in response, the applicant increased the proposed rear yard to 22’-0” and changed the shape and style of the front dormer and curved edge of the roof of the building, to reduce the apparent mass thereof; 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 home which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio (“OSR”), side yards, and rear yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “Received August 6, 2015” –(14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,015.64 sq. ft. (1.0 FAR), a minimum open space ratio of 54.6 percent, side

# MINUTES

yards of 2'-9" and 8'-0", and a rear yard with a minimum depth of 22'-0", 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 August 25, 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, August 25, 2015.

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## 244-14-BZ

### CEQR #15-BSA-082M

APPLICANT – Eric Palatnik, PC, for Chong Duk Chung, owner.

SUBJECT – Application October 9, 2014 – Special Permit (§73-36) to operate a physical culture establishment (*K-Town Sauna*) within an existing building. C6-4 zoning district.

PREMISES AFFECTED – 22 West 32nd Street, 32nd Street between Fifth and Sixth Avenues, Block 00833, Lot 57, Borough of Manhattan.

### COMMUNITY BOARD #5M

**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 September 11, 2014, acting on DOB Application No. 121985174, reads, in pertinent part:

Proposed change of use to a physical culture establishment as defined by ZR 12-10 is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4 zoning district, a physical culture establishment (the “PCE”) on the third and fourth floors of a seventeen story commercial building, contrary to ZR § 32-10; 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 August 25, 2015; and

WHEREAS, Vice-Chair Hinkson and Commissioner

Ottley-Brown performed site and neighborhood inspections of the premises and surrounding area; and

WHEREAS, Community Board 5, Manhattan, recommends denial of this application; and

WHEREAS, the subject site has approximately 75 feet of frontage along the south side of West 32<sup>nd</sup> Street, between 5<sup>th</sup> Avenue, to the east, and Broadway, to the west, in Manhattan; and

WHEREAS, the site contains approximately 7,406 sq. ft. of lot area and is located within a C6-4 zoning district; it is occupied by a seventeen-story commercial building; and

WHEREAS, the proposed PCE shall occupy 13,263 sq. ft. of floor area on the third and fourth floors of the subject building; and

WHEREAS, the PCE shall operate as K-Town Sauna; and

WHEREAS, the PCE will operate 24 hours per day, seven days per week; and

WHEREAS, the applicant represents that PCEs which operate 24 hours per day, seven days per week, are common in the surrounding neighborhood, and has provided the Board with BSA resolutions approving applications for special permits issued pursuant to ZR § 73-36 which allow for such operation; and

WHEREAS, at a hearing, the Board inquired as to whether the proposed PCE qualified as such under the ZR § 12-10 definition of *Physical Culture Establishment*, specifically, the Board asked the applicant to establish that the relaxation services proposed at the subject PCE are accessory to the proposed physical exercise or massage services; and

WHEREAS, the applicant maintains that (1) the fact that the square footage allotted to relaxation services at the proposed PCE exceeds that which is allotted to the massage services is not dispositive with respect to the accessory nature of the relaxation services; (2) that, as demonstrated by a business plan submitted in support of the application, the proposed relaxation services are clearly incidental to the proposed PCE with respect to revenue; and (3) that relaxation services of the type proposed for the subject PCE are customarily found in connection with PCEs throughout New York City; 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

# MINUTES

community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

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

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

WHEREAS, the Board has conducted a review of the proposed Type II action discussed in the CEQR Checklist No. 15-BSA-082M, dated October 8, 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 permit, on a site within a C6-4 zoning district, a physical culture establishment (the "PCE") on the third and fourth floors of a seventeen story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 6, 2015," - Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on August 25, 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 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 August 25, 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, August 25, 2015.

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## 18-15-BZ

### CEQR #15-BSA-148M

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

**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 January 12, 2015, acting on DOB Application No. 104490025, reads, in pertinent part:

A Physical Culture Use is not permitted as of right in a C6-4M zoning district as per sections 32-10 and 73-36 of the NYC Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-4M zoning district, a physical culture establishment ("PCE") on the 10<sup>th</sup> and 11<sup>th</sup> floors of an 11-story commercial building, contrary to ZR §32-10; and

WHEREAS, a public hearing was held on this application on July 21, 2015, after due notice by publication in the *City Record*, and then to decision on August 25, 2015; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a corner lot located at the northwest corner of the intersection formed by the intersection of West 14<sup>th</sup> Street and Fifth Avenue, in Manhattan, within an a C6-4M zoning district; and

WHEREAS, the site has approximately 100 feet of frontage along West 14<sup>th</sup> Street and approximately 103 feet of frontage along Fifth Avenue, and approximately 10,325 sq. ft. of lot area; and

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

WHEREAS, the PCE will occupy 8,750 sq. ft. of floor area on the 10<sup>th</sup> floor of the building and 8,750 sq. ft. of floor area on the 11<sup>th</sup> floor of the building, occupying a total of 17,500 sq. ft. of floor area; and

WHEREAS, the PCE operates as Peak Performance; and

WHEREAS, the applicant represents that the hours of operation for the PCE shall be, Monday through Friday, from 5:00 a.m. to 10:00 p.m., and on Saturday and Sunday from 6:00 a.m. to 7:00 p.m.; and

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

# MINUTES

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

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

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

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

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

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

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 15-BSA-148M, dated January 28, 2015; 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 permit, on a site within a C6-4M zoning district, a physical culture establishment (“PCE”) on the 10<sup>th</sup> and 11<sup>th</sup> floors of an 11-story commercial building, contrary to ZR §32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 21, 2015” - Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on August 25, 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 Board-approved plans;

THAT sound attenuation measures shall be installed and/or maintained as shown on the Board-approved plans;

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 August 25, 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, August 25, 2015.

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## 55-15-BZ

### CEQR #15-BSA-173M

APPLICANT – Elise Wagner, Kramer Levin Naftalis & Frankel LLP, for Alvin Alley Dance Foundation, lessee.

SUBJECT – Application March 13, 2015 – Variance (§72-21) to allow for the enlargement of a Alvin Alley Dance foundation's existing building to provide additional dance studios, classrooms, and offices, located within an R8/C1-5, C6-2 Clinton Preservation Area zoning district.

PREMISES AFFECTED – 405 West 55th Street, located on the northwest corner of Ninth Avenue and West 55th Street. Block 01065, Lot 29. Borough of Manhattan.

### COMMUNITY BOARD #4M

**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 March 2, 2015, acting on DOB Application No. 122231441, reads in pertinent part:

The proposed floor area exceed maximum permitted FAR in R8/C1-5 and C6-2 zoning districts, contrary to ZR 96-101. The proposed lot coverage increases the degree of existing lot coverage non-compliance for portions of the zoning lot located both within 100 feet of a wide street and more than 100 feet of a wide street, contrary to ZR 96-102. The proposed building height exceeds the maximum permitted height and setback regulations for the portions of the building located both within 100 feet of a wide street and more than 100 feet of a wide street, contrary to ZR 96-104(c). The proposed number of office workers exceeds the maximum number of 50 permitted for central office functions in a Use Group 4 philanthropic or non-profit institution without sleeping accommodations, contrary to ZR 22-14 ... A variance (ZR 72-21) is required from the Board of Standards and Appeals.

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 (C1-5) zoning district, and also within a C6-2 zoning district, within the Preservation Area of the Special Clinton District, the enlargement of an existing building to accommodate the programmatic needs of the Alvin Ailey Dance Foundation, which does not comply with zoning

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# MINUTES

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regulations for floor area, lot coverage, building height, and number of office workers, contrary to ZR §§ 96-101, 96-102, 96-104(c), and 22-14; and

WHEREAS, a public hearing was held on this application on July 28, 2015 after due notice by publication in the *City Record*, and then to decision on August 25, 2015; and

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

WHEREAS, Community Board 4, Manhattan, recommends that the Board disapprove this application; and

WHEREAS, this application is brought on behalf of the Alvin Ailey Dance Foundation, Inc. (“Alvin Ailey”), a non-profit organization dedicated to dance performance and education; Alvin Ailey is an umbrella organization comprised of (1) the Alvin Ailey Dance Theater, a dance company established in 1958 which uses the subject building as a rehearsal space for approximately 15 weeks each year; (2) Ailey II, a dance company which concentrates on the development of young artists, and which uses the subject building as a rehearsal and performance space for approximately 16 weeks each year; (3) the Ailey School, an accredited institutional member of the National Association of Schools of Dance, which was established in 1969 as the official school of Alvin Ailey and which is located at the subject building; (4) the Ailey Arts in Education and Community Outreach Programs; and (5) the Ailey Extension, which provides open classes for adults age 16 and older, as well as recreational classes for children and teens, within the subject building; and

WHEREAS, the Ailey School enrolls approximately 1,280 students each semester, with an annual enrollment of approximately 3,000 students, eighty percent of whom receive discounted tuition and ninety percent of whom receive free tuition; students attend multiple classes per week at the subject building; the Ailey School includes a professional division, which offers a Bachelor of Fine Arts in dance, in conjunction with Fordham University’s College at Lincoln Center, a three year certificate program for post-secondary school students, a one year study for U.S. and international college students, a six week summer program for high school and college students, and dance classes for candidates enrolled in Pace University’s Actor’s Studio Drama School; and

WHEREAS, during the academic year, students enrolled in the Ailey School’s professional division attend classes at the subject building between one and five days per week; and

WHEREAS, the Ailey School also includes a pre-professional junior division with an enrollment of 1,027 students; the junior division includes a joint high school program with the Professional Performing Arts School, a New York City public school; students enrolled in the junior division attend classes at the subject building between one and five days per week; and

WHEREAS, the applicant represents that Alvin Ailey employs approximately 415 people in the foregoing divisions; 87 full-time and 328 part-time and seasonal employees, 131 of whom require office space within the existing building; and

WHEREAS, the subject site is a located at the northwest

corner of the intersection of Ninth Avenue and West 55<sup>th</sup> Street, within an R8 (C1-5) zoning district, and also within a C6-2 zoning district, within the Preservation Area of the Special Clinton District; and

WHEREAS, the trapezoidal site has 84.2 feet of frontage along the west side of Ninth Avenue and 150 feet of frontage along the north side of West 55<sup>th</sup> Street, with a lot area of approximately 14,060 sq. ft.; and

WHEREAS, the subject building was constructed pursuant to a BSA variance issued on July 9, 2002, under BSA Cal. No. 92-02-BZ, which waived certain zoning regulations for height and setback and lot coverage applicable in the Preservation Area of the Special Clinton District; and

WHEREAS, the July 9, 2002 variance authorized the construction of a building containing 59,123 sq. ft. of floor area, with 14 dance studios, offices and support space; the existing building contains 50,786 sq. ft. of floor area (3.83 FAR), and does not include two of the Board-approved studios or the support space; and

WHEREAS, the subject building is comprised of a corner portion, which occupies 62’-6” feet of frontage on Ninth Avenue and 95’-6” of frontage along West 55<sup>th</sup> Street, and a midblock portion, which occupies 54’-4” of frontage along West 55<sup>th</sup> Street; and

WHEREAS, the corner portion of the subject building is six stories high (93’-2”) and the midblock portion of the subject building is two stories high (47’-9”) 1; and

WHEREAS, Alvin Ailey proposes to enlarge the subject building to provide four additional studios, two new classrooms and additional office space; and

WHEREAS, specifically, Alvin Ailey proposes to extend the fourth, fifth and sixth floors of the midblock portion of the subject building eastward, to meet the corner portion of the subject building, thereby locating the new office space adjacent to the existing office space on the fourth floor of the building and locating the new studios adjacent to the existing studios on the fifth and sixth floors of the building; and

WHEREAS, the applicant states that the proposed enlargement will, *inter alia*, create horizontal adjacencies for the office and studio spaces allowing for programmatic benefits including the ability to schedule studio classes for individual divisions of Alvin Ailey, providing a more focused learning environment, improving rehearsal space and encouraging collaboration and mentoring between experienced and less experienced dancers and performers; and

WHEREAS, the applicant notes that the proposed location of the new studios is dictated by the floor to ceiling height of the existing fifth and sixth floors of the building, which, at 14’-0” is higher than the office floors located in the corner portion of the subject building; and

WHEREAS, the proposed enlargement will result in an

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1 The July 9, 2002 variance authorized a partial seventh floor atop the corner portion of the subject building, as well an additional floor at the midblock portion of the subject building to accommodate two studios. The applicant states that these portions of the building were not constructed due to budget constraints.

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# MINUTES

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increase in the floor area of the building from 50,786 sq. ft. (3.83 FAR) to 61,013 sq. ft. (4.34 FAR); as per ZR § 96-101, the maximum permitted floor area is 59,052 sq. ft. (4.2 FAR); and

WHEREAS, the proposed enlargement will increase the degree of the building's non-compliance with applicable lot coverage as the building already exceeds the permitted lot coverage within 100 feet of a wide street (the building has a lot coverage of 84 percent, 70 percent is allowed in the R8 (C1-5) zoning district, as per ZR § 96-102) and more than 100 feet from a wide street (the building has a lot coverage of 67 percent, 60 percent is allowed in the C6-2 zoning district, as per ZR § 96-102); and

WHEREAS, the proposed enlargement exceeds the maximum height permitted under ZR § 96-104 in that proposed height of 97'-9" would exceed the 66'-0" maximum height limit for the portion of the building located within the C6-2 zoning district, and the proposed height of 93'-2" would exceed the 85'-0" maximum height limit, as well as the required setback of 15'-0" at a height of 66'-0", for the portion of the building located within the R8 (C1-5) zoning district; and

WHEREAS, the proposed enlargement will result in a total of 13,511 sq. ft. of office space for use by approximately 100 central office employees (the number of persons involved in central office functions in a Use Group 4 not-for-profit without sleeping accommodations cannot exceed 50, and the amount of floor area used for central office purposes may not exceed the greater of 25 percent of the total floor area of the building, or 25,000 sq. ft., as per ZR § 22-14); and

WHEREAS, because the enlargement does not comply with the applicable regulations in the subject zoning districts, the applicant seeks the requested variance; and

WHEREAS, the applicant states that the variance is necessary to meet Alvin Ailey's programmatic need to expand and improve existing studio space and create new adjacencies, studios, classrooms, and office space, all of which will enable Alvin Ailey to accommodate the significant growth and increased enrollment it has achieved since the issuance of the July 9, 2002, variance; and

WHEREAS, the applicant notes that the proposal is to accommodate the school's existing needs and is not intended to facilitate an increase in enrollment; and

WHEREAS, the applicant asserts that a complying development does not fully satisfy Alvin Ailey's programmatic needs; and

WHEREAS, specifically, the applicant notes that under the July 9, 2002, variance, Alvin Ailey is permitted to construct 8,266 sq. ft. of floor area, including two additional studios and support space but argues that locating the support space on a partial seventh floor of the corner portion of the subject building is not useful in that it is too isolated from the studios and office spaces, and that because the corner portion of the subject building was built with an 18'-0" height for the sixth floor, rather than the approved 24'-0" height, it is not feasible to insert a partial seventh floor within that portion of the building, such that a complying development is only achievable in the midblock portion of the subject building and

would only provide for two additional studios, which is insufficient to alleviate the overcrowding and scheduling conflicts which preclude the school from meeting its programmatic needs; and

WHEREAS, the applicant also notes that the complying development would not provide any traditional classroom space, such that the school would have to continue holding its nine academic classes in studios, which is an inefficient use of studio space and is unsuitable for traditional classroom learning; and

WHEREAS, Alvin Ailey contends that the requested waivers are both modest and essential to the school's ability to utilize the existing building to meet its programmatic needs; and

WHEREAS, the Board acknowledges that the school, as an educational institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in *Cornell Univ. v Bagnardi*, 68 NY2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

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

WHEREAS, since Alvin Ailey is a non-profit institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that, pursuant to ZR § 72-21(c), the variance, if granted, 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 argues that the waiver of height and setback would have little discernible impact on the surrounding neighborhood, noting that the proposed height of 97'-9" would match the height of the existing midblock portion of the site with the corner portion of the site and is consistent with the heights of many of the existing buildings on the surrounding blocks; and

WHEREAS, the applicant states that on the midblock between West 53<sup>rd</sup> Street and West 56<sup>th</sup> Street and Eighth and Tenth Avenues, 28 percent of the buildings exceed a height of 66'-0", and range in height from 70'-0" to 158'-0"; and

WHEREAS, the applicant also argues that the requested waivers for lot coverage and FAR would have a minimal impact on the surrounding neighborhood because the proposed enlargement, while increasing the height of the midblock portion of the building, would not increase the size of the building's footprint, thus the lot coverage would not reduce the

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# MINUTES

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amount of open area on the subject zoning lot; and

WHEREAS, the applicant also argues that the proposed waiver to exceed 50 central office employees would not impact the surrounding neighborhood; specifically, the applicant argues that the intent of ZR § 22-14 was to ensure that community facility uses would not result in a high concentration of office employees in a residential neighborhood, a concern which is not implicated in the subject neighborhood; the applicant also notes that the existing building is located in a commercial district, thus obviating the need to guard against disruption of a residential district; and

WHEREAS, accordingly, the applicant asserts that the proposal will have no negative impacts on the surrounding neighborhood; and

WHEREAS, the Board agrees with the applicant that the proposal 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, Alvin Ailey states that the subject hardship was not self-created and that the school could not meet its programmatic needs through a complying development; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that, consistent with ZR § 72-21(e), the requested waivers are the minimum necessary to accommodate the school's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the school to fulfill its programmatic needs; and

WHEREAS, therefore, 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 the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final EAS CEQR No. 15-BSA-173M, dated June 15, 2015; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site within an R8 (C1-5) zoning district, and also within a C6-2 zoning district, within the Preservation Area of the Special

Clinton District, the enlargement of an existing building to accommodate the programmatic needs of the Alvin Ailey Dance Foundation, which does not comply with zoning regulations for floor area, lot coverage, building height, and number of office workers, contrary to ZR §§ 96-101, 96-102, 96-104(c), and 22-14, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received, August 12, 2015"– fourteen (14) sheets; and *on further condition*:

THAT following shall be the bulk parameters of the building: a maximum floor area of 61,013 sq. ft. (4.34 FAR); a maximum lot coverage of 84 percent in the R8 (C1-5) zoning district, and 67 percent in the C6-2 zoning district; a maximum building height of 97'-9" in the C6-2 zoning district and a building height of 93'-2", without setback, in the R8 (C1-5) zoning district, all as illustrated on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the school shall require the Board's approval;

THAT the applicant shall request the establishment of a no-parking zone during weekend hours along West 55<sup>th</sup> Street;

THAT the glass curtain wall of the building shall meet a minimum sound attenuation rating of STC-35;

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 August 25, 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;

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

Adopted by the Board of Standards and Appeals, August 25, 2015.

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## **148-14-BZ**

APPLICANT – Sheldon Lobel, P.C., for 11 Avenue A Realty LLC, owner.

SUBJECT – Application June 24, 2014 – Variance (§72-21) to permit multi-family residential use at the premises. R8A/C2-5 zoning districts.

PREMISES AFFECTED – 11 Avenue A, west side of Avenue A between East 1st Street and East 2nd Street, Block 429, Lot 39, Borough of Manhattan.

## **COMMUNITY BOARD #3M**

**ACTION OF THE BOARD** – Laid over to October 20, 2015, at 10 A.M., for adjourned hearing.

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# MINUTES

## 204-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Wythe Berry LLC, owner.

SUBJECT – Application August 25, 2014 – Special Permit (§73-44) for reduction of required off-street parking spaces for proposed ambulatory diagnostic or treatment health care facilities (UG 4A) and commercial office use (UG 6B listed in Use Group 4 and PRC-B1. M1-2 Zoning District.

PREMISES AFFECTED – 55 Wythe Avenue, between North 12th Street and North 13th Street, Block 2283, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Laid over to October 29, 2015, at 10 A.M., for adjourned hearing.

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## 270-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Carnegie Park land Holding LLC c/o Related Cos., owner; Equinox-East 92nd LLC, lessee.

SUBJECT – Application November 3, 2014 – Special Permit 73-36 to allow the physical culture establishment (*Equinox*) within portions of a new mixed use building, located within an C4-6 zoning district.

PREMISES AFFECTED – 203 East 92nd Street, north side of East 92nd Street, 80 ft. east of intersection with 3rd Avenue, Block 01538, Lot 10, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Laid over to September 18, 2015, at 10 A.M., for adjourned hearing.

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## 61-15-BZ

APPLICANT – Deirdre A. Carson, Esq., for 540 W. 26th St. Property Investors IIA, 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

**ACTION OF THE BOARD** – Laid over to September 18, 2015, at 10 A.M., for deferred decision.

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## REGULAR MEETING

TUESDAY AFTERNOON, AUGUST 25, 2015

1:00 P.M.

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

## ZONING CALENDAR

### 19-15-BZ

APPLICANT – Herrick, Feinstein LLP, for Andon Investment LP, owner; Retro Fitness of NY LLC, lessee.

SUBJECT – Application January 29, 2015 – Special Permit (73-36) to permit a physical culture establishment (*Retro Fitness*) to be located at second-story level (plus entrance at ground-floor level) of a new two-story building. R7-1/C2-2 zoning district.

PREMISES AFFECTED – 92-77 Queens Boulevard, Through-block site with frontage on Queens Boulevard and 93 Street, between 62 Avenue and Harding Expressway, Block 02075, Lot 39, Borough of Queens.

### COMMUNITY BOARD #6Q

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 18, 2015, at 10 A.M., for decision, hearing closed.

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### 29-15-BZ

APPLICANT – Law Office of Stuart Klein, for 3rd and 60th Associates, LP, owner; Flywheel Sport, Inc., lessee.

SUBJECT – Application February 18, 2015 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Flywheel Sports*) at the cellar level of an existing building. C6-4 zoning district.

PREMISES AFFECTED – 200-204 East 61st Street aka 1011-102 3<sup>rd</sup> Avenue, east side of 3rd Avenue between East 60th and East 61st Street, Block 01415, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #8M

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 18, 2015, at 10 A.M., for decision, hearing closed.

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Ryan Singer, Executive Director