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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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

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Volume 100, Nos. 28-30

July 22, 2015

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### DIRECTORY

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## 139-15-BZ

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## 140-15-BZ

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## 141-15-A

219 Cheevers Lane, Bordered by Page Avenue, Block 07792, Lot(s) 0307, Borough of **Staten Island, Community Board: 3**. Proposed construction for fifteen single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law, located within an R1-2 zoning district. R1-2 district.  
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## 142-15-A

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## 143-15-A

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## 144-15-A

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## 145-15-A

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## 146-15-A

208 Cheevers Lane, Bordered by Page Avenue, Block 07792, Lot(s) 0314, Borough of **Staten Island, Community Board: 3**. Proposed construction for fifteen single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law, located within an R1-2 zoning district. R2-1 district.  
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## 147-15-A

212 Cheevers Lane, Bordered by Page Avenue, Block 07792, Lot(s) 0315, Borough of **Staten Island, Community Board: 3**. Proposed construction for fifteen single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law, located within an R1-2 zoning district. R2-1 district.  
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## 148-15-A

214 Cheevers Lane, Boarder by Page Avenue, Block 07792, Lot(s) 0316, Borough of **Staten Island, Community Board: 3**. Proposed construction for fifteen single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law, located within an R1-2 zoning district. R1-2 district.  
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## 149-15-A

218 Cheevers Lane, Boarder by Page Avenue, Block 07792, Lot(s) 0317, Borough of **Staten Island, Community Board: 3**. Proposed construction for fifteen single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law, located within an R1-2 zoning district. R1-2 district.  
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## 150-15-A

200 Cheevers Lane, Boarders by Page Avenue, Block 07792, Lot(s) 0436, Borough of **Staten Island, Community Board: 3**. Proposed construction for fifteen single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General city Law, Located within an R1-2 zoning district. R1-2 district.

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# DOCKETS

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**151-15-A**

204 Cheevers Lane, Boarder by Page Avenue, Block 07792, Lot(s) 0437, Borough of **Staten Island, Community Board: 3**. Proposed construction for fifteen single family residential homes not fronting on a legally mapped street, pursuant to Article 3 of Section 36 of the General City Law, located within an R1-2 zoning district. R1-2 district.

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**152-15-A**

77 Giegerich Avenue, Boarder by Page Avenue, Block 07792, Lot(s) 0438, Borough of **Staten Island, Community Board: 3**. Proposed construction for fifteen single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law, located within an R1-2 district. R1-2 district.

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**153-15-A**

73 Giegerich Avenue, Boarder by Page Avenue, Block 07792, Lot(s) 0439, Borough of **Staten Island, Community Board: 3**. Proposed construction for fifteen single family residential homes not fronting on a legally mapped street, pursuant to Article 3 of Section 36 of the General City Law, located within an R1-2 zoning district. R1-2 district.

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**154-15-A**

69 Giegerich Avenue, Boarder by Page Avenue, Block 07792, Lot(s) 0440, Borough of **Staten Island, Community Board: 3**. GCL 36 Waiver: proposed construction of fifteen single family residential homes not fronting on a legally mapped street, pursuant to Article 3 of Section 36 of the General City Law located within an R1-2 zoning district. R1-2 district.

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**155-15-A**

65 Giegerich Avenue, Boarder by Page Avenue, Block 07792, Lot(s) 0441, Borough of **Staten Island, Community Board: 3**. Proposed construction for fifteen single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the general City Law, located within an R1-2 zoning district. R1-2 district.

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**156-15-BZ**

18/20 East 50th Street, South side of East 50th Street, 70 feet west of Madison Avenue, Block 01285, Lot(s) 059, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to reestablish a special permit to allow an existing physical culture establishment("PCE") within a portion of an existing eleven story commercial building located in a C5-2(MID) and C5-2(MID) zoning district. C5-3MID)C5-2.5 district.

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**157-15-BZ**

3925 Bedford Avenue, East side of Bedford Avenue between Avenue R and Avenue S, Block 06831, Lot(s) 076, Borough of **Brooklyn, Community Board: 15**. Special Permit 73-622) to allow the enlargement of an existing single family residence located in a residential (R3-2) zoning district. R3-2 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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**JULY 28, 2015, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 28, 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**

**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 22nd Street, east side of East 22nd Street between Avenue J and Avenue K, Block 07604, Lot 31, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**APPEALS CALENDAR**

**90-15-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP.,

SUBJECT – Application April 23, 2015 – Proposed construction of a building located partially within the bed of mapped unbuilt street, pursuant Article 3 Section 35 of the General City Law. M3-1 (SRD) zoning district.

PREMISES AFFECTED – 54 Industrial Loop, east side of Industrial Loop, approx. 483 ft. north of intersection with Arthur Kill Road, Block 07206, Lot 01191, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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**JULY 28, 2015, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 28, 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**

**102-14-BZ**

APPLICANT – Moshe M Friedman, P.E., for Cong. Tiferes Avraham D'Zidichov, owner.

SUBJECT – Application May 8, 2014 – Variance (§72-21) to permit the extension of house of worship (UG4) (*Congregation Tifrerer Avahom D'Zidichov*) in an existing building on the lot of a three story brick building located within an R3-2zoning district.

PREMISES AFFECTED – 4017 Avenue P, northerly side of Avenue P 40' westerly from the corner of the Northerly side of Avenue and the Westerly side of Coleman Street, Block 07859, Lot 3, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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**202-14-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Rochelle Beyda and Jack Yadid, owners.

SUBJECT – Application August 22, 2014 – Special Permit (§73-622) for the enlargement and existing two family home to be converted to a single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R4 (OP) zoning district.

PREMISES AFFECTED – 2268 West 1st Street, west side of West 1st Street between Village Road South and Avenue West, Block 07151, Lot 13, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**55-15-BZ**

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**

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*Ryan Singer, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, JULY 14, 2015 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 268-03-BZ

APPLICANT – Eric Palatnik, P.C., for Park Circle Realty Associates, owner.

SUBJECT – Application October 9, 2014 – Extension of Term (§11-411) for the continued operation of an automotive service station which expired on January 27, 2014; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 145-55 Guy Brewer Boulevard, south corner of Farmers Boulevard and Guy Brewer Boulevard, Block 13313, Lot 40 Borough of Queens.

#### COMMUNITY BOARD #13Q

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez....4  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of term for a variance permitting the operation of an automotive service station, which expired on January 27, 2014, and to allow certain changes to the site plan; and

WHEREAS, a public hearing was held on this application on June 2, 2015 after due notice by publication in *The City Record*, and then to decision on July 14, 2015; and

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

WHEREAS, the Board has exercised jurisdiction over the site since March 23, 1954, when, under BSA Cal. No. 704-53-BZ, it issued a resolution authorizing the use of the premises as an automotive service station; and

WHEREAS, the original grant expired on April 19, 1998 and was not renewed; and

WHEREAS, on January 27, 2004, under BSA Cal. No. 268-03-BZ, the Board granted an application to re-establish the variance to permit the automotive service station use, to legalize the then-existing air station, vacuum and beverage machines at the site, and to modify the then-existing signage at the site; and

WHEREAS, the term of the January 27, 2004 variance expired on January 27, 2014; and

WHEREAS, accordingly, the applicant now seeks a ten-year extension of the term; and

WHEREAS, at hearing, the Board directed the applicant to: (1) remove excess signage at the site; (2) provide a map

showing the distance between the subject carwash and neighboring residential uses; (3) provide photographs demonstrating that the site is well maintained; and (4) provide proof that open FDNY violations have been cured; and

WHEREAS, in response, the applicant removed the excess signage from the site; provided a map showing that the nearest residential uses to the site were located between 80 feet and 118 feet of the existing service station; provided photographs showing that the site is well maintained; and stated that the FDNY notice of violation dated March 14, 2014 was cured upon a system test on October 10, 2014; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made for an extension of term with certain changes to the site plan.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated January 27, 2004, so that as amended the resolution reads: “to permit an extension of the term of the variance for an additional ten years from the prior expiration, to expire on January 27, 2024 and to allow certain changes to the site plan; *on condition on condition* that all work will substantially conform to drawings, filed with this application marked ‘Received April 13, 2015’ – Three (3) sheets; and on further condition:

THAT the term of the variance shall expire on January 27, 2024;

THAT the signage shall comply with C1 zoning district regulations;

THAT the above conditions and the conditions from the prior approval shall be noted on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by July 14, 2016;

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

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

Adopted by the Board of Standards and Appeals, July 14, 2015.

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#### 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 August 25, 2015, at 10 A.M., for adjourned hearing.

# MINUTES

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**173-92-BZ**

APPLICANT – Simons & Wright LLC, for Bremen House, Inc., owner.

SUBJECT – Application January 17, 2014 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of martial arts studio which expires on January 24, 2014; Amendment to permit the relocation of the facility from the 2nd floor to the cellar. C2-8A zoning district.

PREMISES AFFECTED – 220 East 86th Street, 86<sup>th</sup> Street between 2<sup>nd</sup> and 3<sup>rd</sup> Avenues, Block 01531, Lot 38, Borough of Manhattan

**COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Laid over to September 22, 2015, at 10 A.M., for continued hearing.  
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**17-93-BZ**

APPLICANT – Fox Rothschild, LLC., for Lincoln Square commercial Holding, owner; Equinox SC Upper West Side, Inc., lessee.

SUBJECT – Application January 15, 2015 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment which expired June 7, 2014; Amendment to reflect a change in ownership; Waiver of the Rules. C4-7 zoning district.

PREMISES AFFECTED – 160 Columbus Avenue aka 1992 Broadway, block bounded by Broadway, Columbus Avenue, West 67th Street and West 68th Street, Block 01139, Lot(s) 24, 7503, Borough of Manhattan.

**COMMUNITY BOARD #7M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4  
Negative:.....0

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

**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**

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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 25, 2015, at 10 A.M., for decision, hearing closed.  
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**146-96-BZ**

APPLICANT – Stroock & Stroock & Lavan, LLP., for Scholastic 557 Broadway, LLC., owner.

SUBJECT – Application February 19, 2015 – Amendment of a previously approved Variance (§72-21) to permit the relocation of the building lobby from Broadway to Mercer Street and the conversion of an existing office lobby to retail space. M1-5B zoning district.

PREMISES AFFECTED – 557 Broadway aka 128-130 Mercer Street, west side of Broadway, 101’ south of the corner formed by the intersection of Prince Street and Broadway, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Laid over to September 1, 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**

**ACTION OF THE BOARD** – Laid over to August 25, 2015, at 10 A.M., for continued hearing.  
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# MINUTES

## 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

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

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## APPEALS CALENDAR

### 3-15-A

APPLICANT – Edward Lauria, for Jeff Schaffer, owner.

SUBJECT – Application January 7, 2015 – Proposed construction does not front on a legally mapped street contrary Section 36, of the General City Law, and 502.1 2008, building Code. M1-1SRD zoning district.

PREMISES AFFECTED – 47 Trioka Way, west side of Trioka Way, 124.11’ north of Winant Avenue, Block 7400, Lot 85, Borough of Staten Island.

## COMMUNITY BOARD #3SI

**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 December 15, 2014 acting on DOB Application No. 520211002, reads in pertinent part:

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

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2008 Building Code; and

WHEREAS, this is an application to allow the construction of a single-story commercial building which does not front on a mapped street, contrary to General City Law (“GCL”) § 36; and

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

July 14, 2015; and

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

WHEREAS, Community Board 3, Staten Island, recommended approval of this application; and

WHEREAS, the subject site is located south of Sharrots Road, north of Winant Place and east of Arthur Kill Road, within an M1-1 zoning district, within the Special South Richmond Development District; and

WHEREAS, the applicant proposes to construct a single-story concrete block with metal wall and roof commercial building with 15,120 sq. ft. of floor area, consisting of ten storage units / contractor’s establishments each of which will contain 1,512 sq. ft. of floor area; and

WHEREAS, by letter dated May 6, 2015, the Fire Department states that it has no objection to the proposal under the following conditions: (1) that all ten storage unit / contractor’s establishments are to be fully sprinklered in conformity with the sprinkler provisions found in the New York City Fire Code and the New York City Building Code; (2) that no parking shall be allowed at the entrance of each storage unit / contractor’s establishments indicated by yellow reflective paint diagonally stripped at a distance of 8’-0”; (3) that a 30’-0” wide fire apparatus access lane with no standing allowed shall be provided at both curb cut entrance ways travelling the distance of the parking area indicated by yellow reflective paint; (4) that a Siamese location shall be as indicated per F.D.N.Y. Site Plan A-001.00; and (5) that a fire hydrant shall be installed as per F.D.N.Y. Site Plan A-001.00 *Notes* in compliance with DEP regulations; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant approval of the application subject to certain conditions set forth herein.

*Therefore it is Resolved*, that the decision of the DOB, dated December 15, 2014, acting on DOB Application No. 520211002, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received June 9, 2015”-(1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

THAT all ten storage unit / contractor’s establishments are to be fully sprinklered in conformity with the sprinkler provisions found in the New York City Fire Code and the New York City Building Code;

THAT no parking shall be allowed at the entrance of each storage unit / contractor’s establishments indicated by yellow reflective paint diagonally stripped at a distance of 8’-0”;

THAT a 30’-0” wide fire apparatus access lane with no standing allowed shall be provided at both curb cut entrance

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# MINUTES

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ways travelling the distance of the parking area indicated by yellow reflective paint;

THAT a Siamese location shall be as indicated per F.D.N.Y. Site Plan A-001.00;

THAT a fire hydrant shall be installed as per DEP requirements and as per F.D.N.Y. Site Plan A-001.00;

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

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

Adopted by the Board of Standards and Appeals July 14, 2015.

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## 199-14-A

APPLICANT – Alfonso Duarte, for Hector Florimon, owner.

SUBJECT – Application August 20, 2014 – Proposed legalization of accessory parking in open portion of site that lies within a bed of mapped street pursuant to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED – 102-11 Roosevelt Avenue, North side 175.59’ west of 103rd Street, Block 01770, Lot 47, Borough of Queens.

### COMMUNITY BOARD #4Q

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

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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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4  
Negative:.....0

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

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## 325-14-A

APPLICANT – Eric Palatnik, P.C., for Michael Esposito, owner.

SUBJECT – Application December 15, 2014 – Proposed construction of a mixed use building located partly within the bed of a mapped street contrary to article 3, Section 35 of the General City Law. C4-2/R6 zoning district.

PREMISES AFFECTED –631 Bay Street, between Canal Street and Thompson Street, Block 00494, Lot 10, Borough of Staten Island.

### COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4  
Negative:.....0

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

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## ZONING CALENDAR

## 171-14-A

APPLICANT – Law Office of Steven Simicich, for Dxngrnt2, LLC, owner.

SUBJECT – Application July 22, 2014 – Proposed construction of a single family detached home on the site which a portion is located within the bed of a mapped street, pursuant to the General City Law 35 and requires a waiver under ZR Section 72-01(g).

PREMISES AFFECTED – 235 Dixon Avenue, corner of Dixon and Granite Avenue, Block 1172, Lot 244, Borough of Staten Island.

### COMMUNITY BOARD #1SI

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

Adopted by the Board of Standards and Appeals, July 14, 2015.

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## 1-15-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Manhattan Country School (contract vendee).

SUBJECT – Application January 2, 2015 – Variance (§72-21) proposed enlargement of an existing school structure to be used by the Manhattan Country School which will exceed permitted floor area and exceeds the maximum height. R8B zoning district.

PREMISES AFFECTED – 150 West 85th Street, southerly side of West 85th Street between Columbus Avenue and Amsterdam Avenue, Block 1215, Lot 53, Borough of Manhattan.

### COMMUNITY BOARD #7M

**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

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## THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 26, 2015, acting on Department of Buildings Application No. 122142216, reads in pertinent part:

1. Proposed enlargement is not permitted – it creates new or increase existing degree of non-compliances . . . contrary to requirements of ZR 54-31:
  - a. Increase of existing degree of zoning non-compliance for zoning floor area is proposed from 5.8 to 6.3 (contrary to ZR 24-11 – the maximum floor area ratio for a community facility use shall not exceed 4.0)
  - b. Creating of new zoning non-compliance for the maximum building height is proposed (contrary to ZR 24-522(b) and ZR 23-633 – the maximum building height shall not exceed 75 feet)
  - c. The exterior stair is not permitted obstruction in the required rear yard (ZR 24-33); and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located within an R8B zoning district, the proposed enlargement of an existing building which does not comply with zoning regulations for floor area, height and setback and rear yard, contrary to ZR §§ 24-11, 24-522, 23-633, and 24-33; and

WHEREAS, a public hearing was held on this application on April 28, 2015, after due notice by publication in the *City Record*, with continued hearings on June 2, 2015, and then to decision on July 14, 2015; and

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

WHEREAS, Community Board 7, Manhattan, recommended disapproval of the application; and

WHEREAS, certain members of the community, including members of the West 85<sup>th</sup> Street Block Association, testified at the hearing and provided testimony in opposition to the application (collectively, the “Opposition”), citing the following primary concerns: (1) the proposed increase in the height of the building; (2) the impact of the bulk of the proposed building on light and air; (3) the noise and traffic associated with the applicant’s use of the subject site; (4) the persistence of refuse and its attendant nuisances (odor, rodents, etc.) on the public sidewalks along West 85<sup>th</sup> Street and neighbors’ anticipation of increased refuse; and (5) the impact of the construction associated with the proposed enlargement; and

WHEREAS, this application is brought on behalf of the West 85<sup>th</sup> Street Owner LLC (the “Applicant”), and the subject building will be occupied by the Manhattan Country School (the “School”), a non-profit educational institution founded in 1966; and

WHEREAS, the Applicant represents that the School offers classes from pre-Kindergarten through 8<sup>th</sup> grade and is

recognized as a model of both progressive education and socioeconomic and racial diversity;

WHEREAS, the Applicant states that the School currently operates in a five-story townhouse located at 7 East 96<sup>th</sup> Street, in Manhattan, an individually designated New York City landmark which, as such, is under the jurisdiction of the New York City Landmarks Preservation Commission; and

WHEREAS, the Applicant notes that the School’s existing facility contains approximately 18,000 sq. ft. of floor area and cannot accommodate more than two classrooms per grade or support specialized classrooms for art and science and, as such, it is inadequate to meet the School’s programmatic needs; and

WHEREAS, the subject site is located within an R8B zoning district, with approximately 75 feet of frontage along the south side of West 85<sup>th</sup> Street, between Columbus Avenue and Amsterdam Avenue, and has approximately 6,564 sq. ft. of lot area; and

WHEREAS, the site is currently occupied by a four-story, three mezzanine building with a height equivalent to a seven-story building; it was initially constructed as a club house with four floors, three of which were double-height, and was enlarged in the 1980s to accommodate the Mannes College of Music; and

WHEREAS, the Applicant states that previous enlargement of the building included the splitting of two of the double-height floors, resulting in floor heights which are insufficient for a school; and

WHEREAS, the Applicant proposes to renovate the subject building to accommodate the School’s programmatic needs; and

WHEREAS, specifically, the Applicant proposes to divide the double-height interior spaces into single-height spaces; create a 20’-6” by 23’ cut out for an interior courtyard starting at the fourth floor of the building with skylights to the third floor; expand the sixth floor of the building and construct a penthouse; and extend the egress stair in the rear yard of the building; and

WHEREAS, the proposed enlargement will consist of 4,452 sq. ft. (5,394 sq. ft. will be added to the building but 942 sq. ft. of floor area will be removed); and

WHEREAS, the proposed building will have a total floor area of 39,539 sq. ft. (6.03 FAR) (the maximum permitted FAR is 4.0); a height of 85’-3 ½” (a maximum building height of 75’-0” is permitted) and no setback (a 15’-0” setback is required at 60 feet thus the degree of noncompliance with this requirement will be increased); and an exterior stair which is not a permitted obstruction into the rear yard of the building; and

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

WHEREAS, the Applicant states that the variance is necessary to meet the School’s programmatic need to provide classroom space sufficient to fulfill the School’s curriculum; provide adequate light and air to classrooms; create a communal space necessary to advance the School’s mission; and provide for specialized spaces for the School’s Science,

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Technology, Engineering, Art and Math program (the “STEAM program”), which will enable the School to remain with similar institutions; and

WHEREAS, the Applicant asserts that an as-of-right alteration of the building would not satisfy the School’s programmatic needs; and

WHEREAS, specifically, the applicant states that the as-of-right configuration results in a building with 35,346 sq. ft. of floor area with inadequate classroom space, insufficient light and air and no pre-kindergarten or kindergarten classrooms; and

WHEREAS, the Applicant considered a lesser variance in which the floor area of the building was increased without enlarging the envelope of the building (the “Lesser Variance”) and notes that the Lesser Variance does not meet the School’s programmatic needs to have adequate light and air in the classrooms or a communal space in which students can participate in group activities; and

WHEREAS, thus, the Applicant contends that the requested waivers are both modest and essential to the School’s ability 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 programmatic needs of the School along with the existing constraints of the site create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School 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 states that the use of the proposed building is permitted as-of-right in the subject zoning district and that the site has been used for community facility and school use since 1928;

WHEREAS, the Applicant notes that the proposed rooftop addition is set back from the street and has a sloping roof and states that, in response to opposition from neighbors, has been reduced to a height of 13’-6”;

WHEREAS, the Applicant states that the rooftop

enclosure for the play area at the rear of the proposed building’s roof will be constructed of a wire mesh that will impede neither light nor air, and that such enclosure shall not be lighted at night; 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, the Applicant states that, per ZR § 72-21(d), the hardship was not self-created; and

WHEREAS, the Board finds that the hardship herein was not created by the School or the Applicant; 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 notes that the Lesser Variance, in which the floor area of the existing building is increased without enlarging the envelope of the existing building, would not provide adequate light and air to the School’s classrooms and would not meet the School’s programmatic need for a courtyard space in which students can gather and work in groups; 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 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 noted in the CEQR Checklist dated January 2, 2015; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues 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 § 72-21 and grants a variance to permit, on a site within an R8B zoning district, the proposed enlargement of an existing building which does not comply with zoning regulations for floor area, height and setback and rear yard contrary to ZR §§ 24-11, 24-522, 23-633, and 24-33, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received July 9, 2015”—nineteen (19) sheets; and *on further condition*:

THAT the site shall be limited to a maximum floor area of 39,539 sq. ft. (6.03 FAR) and the total height of the building shall be limited to 85’-3 ½”, exclusive of bulkheads, parapets and play area enclosure, as illustrated on the BSA-approved

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plans;

THAT the penthouse shall be set back 11'-1" from the street wall; and

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by July 14, 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 other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 14, 2015.

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## 222-13-BZ

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

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

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

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4  
Negative:.....0

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

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## 322-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Gloria B. Silver, owner.

SUBJECT – Application December 18, 2013 – Reinstatement (§11-411) of a previously approved variance which permitted accessory parking on the zoning lot for the use Group 6 commercial building, which expired on September 23, 1990; Waiver of the Rules. R6/C1-2 and R6 zoning district.

PREMISES AFFECTED – 42-01 Main Street, southeast corner of the intersection of Main Street and Maple Avenue, Block 5135, Lot 1, Borough of Queens.

### COMMUNITY BOARD #7Q

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

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## 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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez ...4  
Negative:.....0

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

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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 August 25, 2015, at 10 A.M., for continued hearing.

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## 172-14-BZ

APPLICANT – Law Office of Steven Simicich, for Dxngrnt2, LLC, owner.

SUBJECT – Application July 22, 2014 – Variance (§72-21) to allow for the reduction in the required front yard fronting from 10' to 4'. R3A zoning district.

PREMISES AFFECTED – 235 Dixon Avenue, corner of Dixon and Granite Avenue, Block 1172, Lot 244, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to July 28, 2015, at 10 A.M., for deferred decision.

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## 260-14-BZ

APPLICANT – Goldman Harris LLC, for The Chapin School, Ltd., owner.

SUBJECT – Application October 17, 2014 – Variance (§72-21) to permit the construction of a three-story enlargement to the existing school, contrary to floor area, rear yard, height and setback requirements. (R8B/R10A) zoning districts.

PREMISES AFFECTED – 100 East End Avenue aka 106 East End Avenue, Block 1581, Lot 23, Borough of

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Manhattan.

## COMMUNITY BOARD #8M

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

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez... 4  
Negative:.....0

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

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## REGULAR MEETING TUESDAY AFTERNOON, JULY 14, 2015 1:00 P.M.

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

## ZONING CALENDAR

### 14-15-BZ

APPLICANT – Warshaw Burstein, LLP., for 1566 Westchester Avenue Associates, LLC., owner; 1560 Westchester Avenue Fitness Group, LLC.; lessee.

SUBJECT – Application January 22, 2015 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within an existing building to be enlarged. C4-2 zoning district.

PREMISES AFFECTED – 1560 Westchester Avenue, southeast corner of Ward Avenue and Westchester Avenue, Block 03742, Lot 40, Borough of Bronx.

## COMMUNITY BOARD #9BX

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

Adopted by the Board of Standards and Appeals, July 14, 2015.

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### 15-15-BZ

APPLICANT – Warshaw Burstein, LLP., for 1160 Ward Avenue, LLC, owner; 1560 Westchester Avenue Fitness Group, LLC.; lessee.

SUBJECT – Application January 22, 2015 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) within an existing building to be enlarged. C4-2 zoning district.

PREMISES AFFECTED – 1160 Ward Avenue, southeast corner of Ward Avenue and Westchester Avenue, Block 03742, Lot 38, Borough of Bronx.

## COMMUNITY BOARD #9BX

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

Adopted by the Board of Standards and Appeals, July 14, 2015.

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### 108-14-BZ

APPLICANT – Sheldon Lobel, P.C., for UD 736 Broadway LLC, owner.

SUBJECT – Application May 22, 2014 – Variance (§72-21) to permit Use Group 6 commercial uses on the first floor and cellar of the existing building. M1-5B zoning district.

PREMISES AFFECTED – 736 Broadway, east side of Broadway approximately 117' southwest of the intersection formed by Astor Pace and Broadway, Block 00545, Lot 22, Borough of Manhattan.

## COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter; Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez...4  
Negative:.....0

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

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*Ryan Singer, Executive Director*

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## \*CORRECTION

This resolution adopted on May 19, 2015, under Calendar No. 186-14-BZ and printed in Volume 100, Bulletin No. 22, is hereby corrected to read as follows:

### 186-14-BZ

#### CEQR #15-BSA-043K

APPLICANT – Law Office of Lyra J. Altman, for Bond Street Owner, LLC, owners.

SUBJECT – Application August 15, 2014 – Variance (§72-21) to permit the construction of a new hotel building with ground floor retail contrary to allowable commercial floor area (ZR 33-122) located within C6-1/R6B District in the Special Downtown Brooklyn District.

PREMISES AFFECTED – 51-63 Bond Street, aka 252-270 Schermerhorn Street, southeast corner of Bond Street and Schermerhorn Street, Block 172, Lot(s) 5, 7, 10, 13, 14, 15, 109, Borough of Brooklyn.

#### COMMUNITY BOARD #2BK

**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 August 7, 2014, acting on DOB Application No. 320914221, reads in pertinent part:

Commercial Floor Area in proposed building exceeds the maximum permitted 6.0 contrary to ZR 33-122; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C6-1 zoning district, and partially within an R6B zoning district, within the Special Downtown Brooklyn District, the construction of a 13-story hotel (Use Group 5) with ground floor retail (Use Group 6) that does not comply with the zoning requirements for floor area ratio (“FAR”), contrary to ZR § 33-122; and

WHEREAS, a public hearing was held on this application on February 10, 2015, after due notice by publication in the *City Record*, with continued hearings on March 24, 2015 and April 28, 2015, and then to decision on May 19, 2015; and

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

WHEREAS, Community Board 2, Brooklyn, recommends disapproval of this application, citing concerns regarding the extent of the floor area waiver, the number of hotel rooms, and the impact of the proposal on vehicular traffic; and

WHEREAS, certain members of the surrounding community testified in opposition to the application (the “Opposition”), citing the following concerns: (1) an increase in

pedestrian and vehicular traffic, refuse, and noise; (2) the proposed hotel entrance on Bond Street; (3) the proposed outdoor space on the south side of the building adjacent to the residential buildings; (4) the additional floor area for the hotel and number of hotel rooms, which are inconsistent with the low-rise, residential character of many surrounding streets; (5) the uniqueness of the subway tunnel below the site, which is common in the neighborhood; and (6) the depth of excavation adjacent to the residential buildings south of the site; and

WHEREAS, certain members of the surrounding community, including the Brooklyn Academy of Music, the Brooklyn Ballet, Urban Glass, and the Downtown Brooklyn Partnership, testified in support of the application; and

WHEREAS, the subject site is an irregular lot located on the southeast corner of the intersection of Bond Street and Schermerhorn Street, partially within a C6-1 zoning district, and partially within an R6B zoning district, within the Special Downtown Brooklyn District; the irregular shape of the site is due to its varying depths, which step down at right angles (corresponding in some cases to historic tax lot lines) and range from 51 feet (measured from the northeast corner of the site) to 105 feet (measured from the northwest corner of the site); and

WHEREAS, the site comprises Tax Lots 5, 7, 10, 13, 14, 15, and 109, has 105 feet of frontage along Bond Street and 210 feet of frontage along Schermerhorn Street, and has 17,960 sq. ft. of lot area; and

WHEREAS, the applicant notes that, per ZR § 77-11, the use and bulk regulations applicable in the C6-1 portion of the site are applicable within the R6B portion of the site, because: (1) the site existed as a zoning lot prior to the amendment that created the split-lot condition; and (2) the R6B portion of the site is both less than 50 percent of area of the entire site and less than 25 feet from the district boundary; thus, Use Group 5 and Use Group 6 uses are permitted as-of-right throughout the site; and

WHEREAS, the site is vacant; the applicant represents that it has been used for parking since at least 1968; and

WHEREAS, the applicant proposes to construct a 13-story hotel (Use Group 5) with ground floor retail (Use Group 6), with 154,947 sq. ft. of floor area (8.63 FAR), a building height of 139’- 4” (excluding bulkheads and parapets), 287 hotel rooms, a large event space (“Ballroom”), a restaurant and bar, and an accessory fitness center; and

WHEREAS, in order to construct the building as proposed, the applicant seeks a waiver of ZR § 33-122, which limits commercial floor area at the site to 6.0 FAR; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the presence of an MTA subway tunnel and access mezzanine directly below approximately 70 percent of the site is a unique physical condition that creates practical difficulties and unnecessary hardships in developing the site in compliance with the floor area regulations; and

WHEREAS, the applicant states that an MTA subway tunnel and an access mezzanine (“MTA Encumbrances”) are located directly below 70 percent of the site; and

WHEREAS, the applicant submitted a diagram illustrating that the MTA Encumbrances occupy a trapezoidal portion of the site, with the trapezoid’s parallels running

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parallel to Bond Street, forming right angles with the northern lot line (along Schermerhorn Street) and the trapezoid's diagonal beginning approximately 66 feet south of the intersection of Bond and Schermerhorn and terminating approximately 50 feet south of the northeast corner of the site; thus, the MTA Encumbrances occupy the entire regular (rectangular) portion of the irregularly-shaped site; and

WHEREAS, in addition, the applicant states that the MTA Encumbrances occur at various depths; at the northwest corner of the site, the top of the mezzanine is seven feet below grade; the tunnel occupies the balance of the encumbered portion of the site and its top is located between 11 and 14 feet below grade (except for a small triangular portion along Schermerhorn Street, where the top of the tunnel is 16 feet below grade); and

WHEREAS, the applicant asserts that the extent and nature of the MTA Encumbrances is unique; in support of this assertion, the applicant submitted a land use study of nine development sites (along Schermerhorn Street between Jay Street-Smith Street and Flatbush Avenue) that are encumbered by MTA tunnels and related facilities; and

WHEREAS, the study reflects that none of the comparable sites have the site's substantial encumbrance at such shallow depths; and

WHEREAS, the applicant states that the MTA Encumbrances create practical difficulties and unnecessary hardship, because a traditional foundation system with a full cellar for the hotel cannot be constructed; as such, back-of-house hotel functions that would typically occupy the below-grade levels (hotel administration space, kitchen, and fitness center) must be provided above grade, thereby reducing the amount of floor area available for hotel rooms; and

WHEREAS, in addition, preserving and protecting the MTA property results in premium construction costs; and

WHEREAS, the applicant states that, according to its engineering consultants, the diagonal location and depth of the subway tunnel and mezzanine significantly increases the complexity of the subgrade construction, including the type of foundation system, how the loads are distributed, the depth of excavation, the volume of excavation, the pile type, and the quantity of piles, concrete and reinforcing bar; due to the diagonal orientation of the tunnel, major foundation structure can only be placed on one side of the tunnel and separate systems are required to transfer gravity loads and deliver lateral loads to the portion of the foundation adjacent to the tunnel; and

WHEREAS, the applicant's consultant opines that the proposed foundation system is unique to the site and not found in any other building in the city; and

WHEREAS, in addition, the applicant states that the MTA: (1) prohibits driven piles in the vicinity of the tunnel; instead, drilled piles (which are more expensive) must be utilized; (2) requires extensive monitoring for noise and vibration during construction; and (3) requires elastomeric pads beneath all vertical load carrying element that rest on the tunnel (to isolate the lateral loads from the tunnel structure); and

WHEREAS, the applicant estimates its premium construction costs related to the MTA Encumbrances to be

\$20,522,000; and

WHEREAS, to illustrate the effect of the site's unique hardship, the applicant studied the feasibility of: (1) a complying development at the site with the MTA Encumbrances; and (2) a complying development at the site without the MTA Encumbrances; and

WHEREAS, the applicant concluded that developing the site with the MTA Encumbrances and without the floor area waiver resulted in a nine-story building with 107,196 sq. ft. of floor area (6.0 FAR), a building height of 100'-8" (excluding bulkheads and parapets), and 169 hotel rooms; in contrast, developing the site without the MTA Encumbrances and without the floor area waiver resulted in a nine-story building with 107,196 sq. ft. of floor area (6.0), a building height of 100'-8" (excluding bulkheads and parapets), and 178 hotel rooms; thus, the unencumbered site would yield nine more hotel rooms, because back-of-house functions could be placed in the cellar, and the additional space above grade could be devoted to hotel rooms; and

WHEREAS, at hearing, the Board questioned whether locating the Ballroom on the second story contributed significantly to the premium construction costs and directed the applicant to explore a design that located the Ballroom on the 12th story and a design that omitted the Ballroom entirely; in addition, the Board requested additional information regarding the back-of-house operations; and

WHEREAS, in response, the applicant provided plans showing the relocation of the Ballroom; such plans reflect that two additional elevators would be required, resulting in a loss of 28 hotel rooms; as for the no-Ballroom scheme, the applicant contends (and supports with financial analysis) that the hotel rooms would, on average, rent for substantially less without the Ballroom; as such, the applicant asserts and the Board agrees that neither relocating the Ballroom, nor eliminating it completely yields a feasible development;

WHEREAS, the applicant also provided the programming for the back-of-house spaces within the hotel; and

WHEREAS, based upon the above, the Board finds that the MTA Encumbrances are a unique physical condition that create unnecessary hardship in developing the site in compliance with the floor area regulations; and

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

WHEREAS, as noted above, the applicant studied the feasibility of: (1) a complying hotel at the site; (2) a complying hotel at the site without the MTA Encumbrances; (3) the proposal with the Ballroom on the 12th story instead of the second story; (4) a 12-story hotel with 149,589.27 sq. ft. of floor area (8.33 FAR) and no Ballroom; and (5) the proposal; and

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

WHEREAS, based upon its review of the applicant's economic analysis, the Board has determined that because of the site's unique physical conditions, there is no reasonable possibility that development in compliance with the floor area

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regulations would provide a reasonable return; and

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

WHEREAS, the applicant states that the surrounding neighborhood is characterized by two general typologies; along Schermerhorn Street and other wide streets, medium- to high-density mixed commercial, residential, and community facility buildings predominate; along Bond Street south of the site and other narrow streets (e.g., State Street) the prevailing character is low-density residential (townhouses) and community facility buildings; and

WHEREAS, as to adjacent uses, the applicant states that directly west of the site (across Bond Street) is a six-story office building, directly north of the site (across Schermerhorn Street) is a five-story parking garage; a playground abuts the site to the east and a series of residential buildings abut the site to the south; and

WHEREAS, the applicant notes that the proposed hotel use is as-of-right in the subject C6-1 district and contends that the building has been designed to be sensitive to adjacent residential uses; and

WHEREAS, specifically, and in response to the Opposition's and the Board's concerns, the hotel entrance was relocated from Bond Street to Schermerhorn Street and the outdoor terrace connected to the Ballroom and adjacent to the residences to the south was removed; and

WHEREAS, turning to bulk, the applicant states that within 400 feet of the site, the buildings range in height from one to 14 stories; beyond 400 feet but within two blocks of the site, Schermerhorn Street includes two buildings with 25 or more stories and 333 Schermerhorn, which, upon completion, will rise to 577 feet (44 stories), making it one of the tallest buildings in the borough; and

WHEREAS, at hearing, the Board directed the applicant to provide additional information demonstrating that the proposed height is contextual; and

WHEREAS, in response, the applicant provided a height study and a photomontage of the streetscape (including buildings under construction and proposed), which, together, demonstrate that the building height is in keeping with the bulk of the surrounding neighborhood; and

WHEREAS, the applicant also notes that, aside from the requested floor area waiver, the proposal complies in all respects with the applicable bulk regulations, including building height, yards, and setbacks; and

WHEREAS, as to the Opposition's concerns regarding vehicular traffic and refuse collection, the applicant has agreed to: (1) limit all deliveries to the Schermerhorn Street loading dock; (2) limit food deliveries to Monday through Friday, from 8:00 a.m. to 4:00 p.m.; (3) coordinate and monitor all other delivery traffic (e.g., laundry) so as to mitigate traffic impacts; and (4) store refuse in a refrigerated room within the building until immediately prior to collection; and

WHEREAS, as to the Opposition's remaining concerns,

the Board observes that: (1) hotel use is as-of-right at the subject site; therefore City Planning has determined that it is an appropriate use at the site, notwithstanding the proximity of residence districts; (2) the requested floor area waiver is necessary for the owner to realize a reasonable return on investment, as extensively analyzed above; and (3) ensuring that safe construction measures are undertaken (including protecting adjacent, occupied residential buildings during excavation) is primarily within the purview of DOB; and

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

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is due to the peculiarities of the site; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the EAS CEQR 15-BSA-043K, dated April 19, 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, the New York City Landmarks Preservation Commission ("LPC") reviewed the project for potential archaeological impacts and requested that an archaeological documentary study be submitted for review and approval; and

WHEREAS, a Restrictive Declaration for an archaeological study was executed and filed for recording on May 12, 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 a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of

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1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site partially within a C6-1 zoning district, and partially within an R6B zoning district, within the Special Downtown Brooklyn District, the construction of a 13-story hotel (Use Group 5) with ground floor retail (Use Group 6) that does not comply with the zoning requirements for floor area ratio, contrary to ZR § 33-122; *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 May 14, 2015”– seventeen (17) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: a maximum of 13 stories, a maximum floor area of 154,947 sq. ft. (8.63 FAR), a maximum building height of 139’- 4” (excluding bulkheads and parapets), and a maximum of 287 hotel rooms, as reflected on the BSA-approved drawings;

THAT the building façade abutting sites with residential buildings shall be consistent with the character and appearance of such buildings;

THAT all service pickups and deliveries to the site shall occur on the Schermerhorn Street frontage;

THAT refuse shall be stored within the building until immediately prior to collection;

THAT the above conditions shall be noted on the certificate of occupancy;

THAT a permit shall not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until, pursuant to the Restrictive Declaration, the LPC has issued to DOB, as applicable, either a Notice of No Objection, Notice to Proceed, Notice of Satisfaction, or Final Notice of Satisfaction;

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 May 19, 2019;

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

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

Adopted by the Board of Standards and Appeals, May 19, 2015.

\*The resolution has been amended. **Corrected in Bulletin Nos. 28-30, Vol. 100, dated July 22, 2015.**