
BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS
AND APPEALS

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

Volume 100, Nos. 33-35

August 26, 2015

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DOCKETS

New Case Filed Up to August 18, 2015

169-15-BZ

93 Worth Street, northwest corner of Broadway and Worth Street, Block 00173, Lot(s) 7504, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow a physical culture establishment ("PCE") to be operated within an existing building. district.

170-15-BZ

59 Thompson Street, westerly side of Thompson Street 137' 6" notherly of Broome Street, Block 00489, Lot(s) 0036, Borough of **Manhattan, Community Board: 2M**. Special Permit (§73-36) to allow a physical culture establishment ("PCE") to be operated within an existing building. M1-5B zoning district. M1-5B district.

171-15-BZ

281 Broadway, Broadway between Reade Street and Chambers Street, Block 00149, Lot(s) 7502, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to allow a physical culture establishment ("PCE") to be operated within an existing building. C6-4A zoning district. C6-4A district.

172-15-BZ

146-45 22nd Avenue, northwest corner of 22nd Avenue and 147th Street, Block 04637, Lot(s) 0047, Borough of **Queens, Community Board: 7**. Variance (§72-21) to permit the development of a 1,796 square foot two-story with cellar two (2) family dwelling contrary to underlying bulk regulations. R3A zoning district. R3A district.

173-15-BZ

157 Kent Avenue, The premises is an irregular shaped through lot on the south side of North 4th Street with frontage on Kent Avenue, Wythe Avenue and North 4th Street, Block 02349, Lot(s) 0015, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to allow a physical culture establishment ("PCE") to be operated within an existing building. M1-2/R6A, MX-8 zoning district. M1-2/R6A, MX-8 district.

174-15-A

27 Johnson Street, northeast side of Johnson Street, northwest of Arthur Kill Road., Block 07207, Lot(s) 0305, Borough of **Staten Island, Community Board: 3**. Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. M3-1 (SRD) zoning district. M3-1 (SRD) district.

175-15-A

100 Mila Way, northeast side of Johnson Street, northwest of Arthur Kill Road., Block 07207, Lot(s) 0034, Borough of **Staten Island, Community Board: 3**. Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. M3-1 (SRD) zoning district. M3-1 (SRD) district.

176-15-A

101 Mila Way, northeast side of Johnson Street, northwest of Arthur Kill Road., Block 07207, Lot(s) 0035, Borough of **Staten Island, Community Board: 3**. Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. M3-1 (SRD) zoning district. M3-1 (SRD) district.

177-15-BZ

432 Albourne Avenue, Albourne Avenue, s/s distance 0' from the intersection of Lenevar Avenue, Block 06942, Lot(s) 0015, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit the development of a new two family dwelling contrary to required side yards and permit a 3rd parking space to be located between the building wall and the street wall. R3-X, SRD, GMD zoning district. R3-X, SRD, GMD district.

178-15-BZ

99-47 Davenport Court, 730 ft. west of intersection with 104th Street, Block 14243, Lot(s) 1110, Borough of **Queens, Community Board: 10**. Variance (§72-21) to permit the legalization of a two-family dwelling that exceeds permitted FAR and does not provide required front, side and rear yards. R3-1 zoning district. R3-1 district.

179-15-BZ

129 Taaffe Place, E/s of Taaffe Place distant 192' - 3 1/2" northerly from the intersection of Taaffe Place & Myrtle Avenue, Block 1897, Lot(s) 6, Borough of **Brooklyn, Community Board: 3**. Construct a new 4 story residential building (UG 2) on a historically residential lot in an M 1-1 district. M1-1 district.

DOCKETS

180-15-A

605-615 East 9th Street, Property is bounded by E 9th St. and E 10th St., 93 feet east of Avenue B, Block 392, Lot(s) 3, Borough of **Manhattan, Community Board: 10**. Challenge to DOB issuance of a permit that allows the conversion of an existing building to a UG 3 "College Student Dormitory" that fails to meet the requirements under 1 RCNY Section 51-01 in establishing a sufficient institutional nexus. R7 & R8B district.

181-15-A

7 Carriage Court, , Block 866, Lot(s) 389, Borough of **Staten Island, Community Board: 2**. Proposed construction of single family residences not fronting on a legally mapped street, contrary to General City Law Section 36. R1-1 district.

182-15-A

11 Carriage Court, , Block 866, Lot(s) 388, Borough of **Staten Island, Community Board: 2**. Proposed construction of single family residences not fronting on a legally mapped street, contrary to General City Law Section 36. R1-1 district.

183-15-A

15 Carriage Court, , Block 866, Lot(s) 387, Borough of **Staten Island, Community Board: 2**. Proposed construction of single family residences not fronting on a legally mapped street, contrary to General City Law Section 36. R1-1 district.

184-15-A

19 Carriage Court, , Block 866, Lot(s) 386, Borough of **Staten Island, Community Board: 2**. Proposed construction of single family residences not fronting on a legally mapped street, contrary to General City Law Section 36. R1-1 district.

185-15-A

23 Carriage Court, , Block 866, Lot(s) 385, Borough of **Staten Island, Community Board: 2**. Proposed construction of single family residences not fronting on a legally mapped street, contrary to General City Law Section 36. R1-1 district.

186-15-A

27 Carriage Court, , Block 866, Lot(s) 384, Borough of **Staten Island, Community Board: 2**. Proposed construction of single family residences not fronting on a legally mapped street, contrary to General City Law Section 36. R1-1 district.

187-15-BZ

500-514 Lexington Ave., City block bounded by Lexington Ave, E 47th St., Park Ave, and E 48th St., Block 1302, Lot(s) 7501, Borough of **Manhattan, Community Board: 5**. Proposed operation of a physical culture establishment on a portion of the ground floor of the premises. C5-3/C6-6, MID, district.

188-15-BZ

100 West 72nd Street, Southwest Corner of West 72nd Street and Columbus Avenue, Block 1143, Lot(s) 7503, Borough of **Manhattan, Community Board: 7**. This application seeks a special permit pursuant to ZR section 73-36 to permit a Physical Culture Establishment in the cellar level of the Premises. C4-6A district.

189-15-BZ

7311 3rd Avenue, Located along 3rd Avenue, between 73rd and 74th Streets, Block 5918, Lot(s) 5, Borough of **Brooklyn, Community Board: 10**. This application seeks to permit the enlargement of the existing mixed use building at the Premises pursuant to ZR section 73-621. R6B/C1-3 district.

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

CALENDAR

SEPTEMBER 1, 2015, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 1, 2015, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

69-95-BZ

APPLICANT – Fox Rothschild, LLP., for Hudson River Park Trust, owner; Chelsea Piers Management, Incorporated, lessee.

SUBJECT – Application May 18, 2015 – Extension of Term of a previously approved Special Permit (73-36) permitting the operation of a physical culture establishment (*The Sports Center at Chelsea Piers*) which expires on August 6, 2015. M2-3 zoning district.

PREMISES AFFECTED – 111B Eleventh Avenue, west side of West Street between West 19th and West 20th Streets, Block 00662, Lot 0016, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEALS CALENDAR

35-15-A

APPLICANT – Herrick Feinstein, LLP, for Baychester Retail III, LLC, owner.

SUBJECT – Application February 25, 2015 – An administrative appeal challenging the Department of Buildings' final determination dated January 26, 2015, to permit the installation of 54 individual signs at the subject property. C7 zoning district.

PREMISES AFFECTED – 2001 Bartow Avenue, Block 05141, Lot 0101, Borough of Bronx.

COMMUNITY BOARD #10BX

65-15-BZ and 66-15-A

APPLICANT – Akerman, LLP, for 361 Central Park West, LLC., owner.

SUBJECT – Application March 25, 2015 – Variance (§72-21) to permit the conversion of an existing vacant church building into a 39 unit residential building. Companion case: 66-15-A for an Appeal pursuant to MDL 310 of MDL 30.2. R10A zoning district.

PREMISES AFFECTED – 361 Central Park West, northwest corner of Central Park West and West 96th Street, Block 01832, Lot 0029, Borough of Manhattan.

COMMUNITY BOARD #7M

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

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

ZONING CALENDAR

213-14-BZ

APPLICANT – Law Office of Steven Simicich, for Wayne Bilotti, owner.

SUBJECT – Application August 29, 2014 – Variance (§72-21) for the construction of a single family detached home contrary to ZR 23-32 for minimum lot area. R2 zoning district.

PREMISES AFFECTED – 165 Wooley Avenue, Woolley Avenue between Lathrop and Garrison Avenues, Block 00419, Lot 13, Borough of Staten Island.

COMMUNITY BOARD #1SI

32-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 2857 West 8th Street Associates, LLC., owner; Blink West 8th Street, Inc., lessee.

SUBJECT – Application February 19, 2015 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) within portions of an existing building. C8-2 (OP) zoning district

PREMISES AFFECTED – 2847 West 8th Street, east side of West 8th Street, 125.67' south of the intersection of West 8th Street and Sheepshead Bay Road, Block 07279, Lot 0162, Borough of Brooklyn.

COMMUNITY BOARD #13BK

33-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Equity One (Northeast Portfolio) Inc., owner; Blink 5510-5530 Broadway, Inc., lessee.

SUBJECT – Application February 19, 2015 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Blink Fitness*) within a new commercial building. C8-2 (OP) zoning district.

PREMISES AFFECTED – 5510 Broadway, north east corner of Broadway and West 230th Street, Block 03266, Lot(s) 21 & 23, Borough of Bronx.

COMMUNITY BOARD #8BX

CALENDAR

40-15-BZ

APPLICANT – Francis R. Angelino, Esq., for 465 Lexington Avenue, LLC., owner; 8 Fit Strategies, LLC, lessee.

SUBJECT – Application March 3, 2015 – Special Permit (§73-36) to permit the operation of a physical culture establishment within portions of an existing building. C5-3 zoning district. Companion case 41-15-BZ

PREMISES AFFECTED – 465 Lexington Avenue, east side between East 46th and 47th Streets, Block 01300, Lot 0020, Borough of Manhattan.

COMMUNITY BOARD #6M

41-15-BZ

APPLICANT – Francis R. Angelino, Esq., for 140 East 46th Street, LLC., owner; 8 Fit Strategies, LLC, lessee.

SUBJECT – Application March 3, 2015 – Special Permit (§73-36) to permit the operation of a physical culture establishment within portions of an existing building. C5-3 & C5-2.5 zoning district. Companion case 40-15-BZ

PREMISES AFFECTED – 140 East 46th Street, south east corner of East 47th Street and Lexington Avenue, Block 01300, Lot 0050, Borough of Manhattan.

COMMUNITY BOARD #6M

71-15-BZ

APPLICANT – 548 W 22 Holding LLC., for 548 W 22nd Holding LLC., owner.

SUBJECT – Application March 31, 2015 – Variance (§72-21) the conversion and enlargement of the existing 4-story building, build around 1920 on a fragile foundation system for manufacturing use and later converted to an art Museum to a 20-story mixed-use building with commercial uses on the ground floor and residential use. M1-5/SWCD zoning district.

PREMISES AFFECTED – 548 West 22nd Street, south side of West 22nd Street between Tenth Avenue and Eleventh Avenue, Block 0693, Lo 59, Borough of Manhattan.

COMMUNITY BOARD #4M

Ryan Singer, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, AUGUST 18, 2015
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for David Nikchemny, owner.

SUBJECT – Application July 22, 2014 – Extension of Time to Complete Construction of a previously granted Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home which expired on January 27, 2013; Waiver of the Rules. R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, between Oriental Boulevard and Hampton Street, Block 8749, Lot 25, 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 September 18, 2015, at 10 A.M., for decision, hearing closed.

826-86-BZ

APPLICANT – Eric Palatnik, P.C., for North Shore Tower Apartments, Inc., owner; Continental Communications, lessee.

SUBJECT – Application December 22, 2014 – Extension of Term of Special Permit (§73-11) permitting non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story building which expired on January 26, 2015. R3-2 zoning district.

PREMISES AFFECTED – 269-10 Grand Central Parkway, northeast corner of 267th Street, Block 08489, Lot 0001, Borough of Queens.

COMMUNITY BOARD #13Q

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

827-86-BZ

APPLICANT – Eric Palatnik, P.C., for North Shore Tower Apartments, Inc., owner; Continental Communications, lessee.

SUBJECT – Application December 22, 2014 – Extension of Term of Special Permit (§73-11) permitting non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story building which expired on January 26, 2015. R3-2 zoning district.

PREMISES AFFECTED – 270-10 Grand Central Parkway,

northeast corner of 267th Street, Block 08489, Lot 0001, Borough of Queens.

COMMUNITY BOARD #13Q

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

828-86-BZ

APPLICANT – Eric Palatnik, P.C., for North Shore Tower Apartment, Inc., owner; Continental Communications, lessee.

SUBJECT – Application December 22, 2014 – Extension of Term of Special Permit (§73-11) permitting non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story building which expired on January 26, 2015. R3-2 zoning district.

PREMISES AFFECTED – 269-10 Grand Central Parkway, northeast corner of 267th Street, Block 08489, Lot 0001, Borough of Queens.

COMMUNITY BOARD #13Q

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

APPEALS CALENDAR

89-14-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 215 East 64th St. Co. LLC c/o Deniham Hospitality, owner.

SUBJECT – Application April 30, 2014 – Extension of Time to obtain a Class B Certificate of Occupancy to legalize a Gardens Hotel under MDL Section 120(b) (3), as provided under recent amendments under Chapters 225 and 566 of the Laws of New York 2010. R8B zoning district.

PREMISES AFFECTED – 215 East 64th Street, north side of East 64th Street between Second Avenue and Third Avenue, Block 01419, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez.....3
Negative:.....0
Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to obtain a certificate of occupancy for use of certain dwelling units within Class A multiple dwelling for other than permanent residence purposes pursuant to Multiple Dwelling Law § 120; and

WHEREAS, a public hearing was held on this appeal on July 29, 2014, after due notice by publication in *The City Record*, with continued hearings on October 28, 2014, and then to decision on August 18, 2015; and

WHEREAS, Vice-Chair Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown performed site

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and neighborhood inspections of the premises and surrounding area; and

WHEREAS, the subject site is located on the north side of East 64th Street between Third Avenue and Second Avenue, within an R8B zoning district; and

WHEREAS, the site has 125 feet of frontage along East 64th Street and approximately 12,552 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 11-story multiple dwelling; the building is known as the Affinia Gardens and, according to the last-issued temporary certificate of occupancy (the “TCO”) for the building (CO No. 121588969T001, expired July 30, 2014), the building contains 132 Class A dwelling units; and

WHEREAS, on May 1, 2011, MDL § 120 was amended to permit the owners of certain Class A multiple dwellings to maintain existing dwelling units used for other than permanent residence purposes (i.e., hotel rooms) provided that, among other things, the building is made to comply with the MDL § 67 provisions relating to transient use and an amended CO is obtained to reflect such transient use; and

WHEREAS, pursuant to MDL § 120, such amended CO was to be obtained prior to May 1, 2013 and the Department of Buildings (“DOB”) was authorized to extend the time to obtain the CO until May 1, 2014, provided certain findings were satisfied; if a CO has not been obtained by May 1, 2014, under MDL § 120(3), the Board

may grant further extensions of time to obtain a [CO] in a case where there are circumstances beyond the applicant’s control or hardship in the way of obtaining such [CO] within the time allowed by [DOB] but no more than two such extensions of one year each shall be granted for a building and no such extension shall be granted unless the Board finds that there are no outstanding building or fire code violations of record at the property; and

WHEREAS, the applicant represents that the subject building is eligible to seek an amended CO for transient use pursuant to MDL § 120 and that it has taken certain steps towards obtaining such CO, including: (1) registering the building with DOB as Class A multiple dwelling with transient units; (2) filing an application with DOB for the amended CO; and (3) obtaining permits and installing an emergency generator on the roof of the building, a fuel storage tank and gas fill/drain lines in the cellar, stair pressurization fans on the roof and in the cellar of the building, a corridor smoke purge system and corridor fresh air supply system, a new fire-alarm system to include central monitoring of all guest rooms and public spaces, 6-inch sprinkler standpipe and drain, 4,000 gallon domestic water tank on the roof of the building, 10,000 gallon fire reserve tank and associated pump and jockey pump on the roof, domestic water service backflow preventers in the cellar; and

WHEREAS, the applicant states that it timely filed its MDL § 120 registration of the building with DOB on October 26, 2011, and, also in accordance with MDL § 120, business records showing that, on January 1, 2009 and May 1, 2011, a majority of the dwelling units in the building were used for short-term stays of less than 30 days; and

WHEREAS, the applicant states further that, by letter dated November 16, 2012, DOB determined that the applicant had satisfied the MDL § 120 registration requirements applicable to the building, and that by letter dated April 17, 2014, DOB extended the time period to obtain the amended CO until May 1, 2014; and

WHEREAS, the applicant represents that there are no outstanding Building Code or Fire Code violations at the building; and

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

WHEREAS, as noted above, the Board may grant an extension of time to obtain a CO pursuant to MDL § 120(3), provided it finds that: (1) there are circumstances beyond the applicant’s control or hardship in the way of obtaining the amended CO; and (2) the building has no outstanding Building Code or Fire Code violations; and

WHEREAS, the applicant states that the significant and complex work required to bring the building into compliance with all applicable statutory requirements for a transient hotel, coupled with DOB’s delay in approving its October, 2011 submission, both of which were beyond the applicant’s control, warrant the requested extension; and

WHEREAS, the Board agrees with the applicant that there have been circumstances beyond its control in obtaining the amended CO; and

WHEREAS, as to whether there are open Building Code or Fire Code violations, by letter dated July 27, 2015 the Fire Department accepted the applicant’s fire safety plan for the building, removing the single Fire Code violation that had been pending for the building; and

WHEREAS, the Board has reviewed the evidence in the record and determined that the requested extension of time is warranted; and

Therefore it is Resolved, that this application to extend the time to obtain a certificate of occupancy for use of 132 dwelling units within the subject Class A multiple dwelling for other than permanent residence purposes pursuant to Multiple Dwelling Law § 120, is granted and will expire on August 1, 2015.

(DOB Application No. 120871618)

Adopted by the Board of Standards and Appeals, August 18, 2015.

320-14-A

APPLICANT – Dean Heitner, Esq., for PWV owner LLC c/o The Chevrolet Group, owner.

SUBJECT – Application December 8, 2014 – Interpretative Appeals for an open space requirements on a zoning lot for a proposed nursing facility to be constructed by Jewish Home Life Care on West 97th Street. R7-2/C1-8 zoning district.

PREMISES AFFECTED – 125 West 97th Street, between Amsterdam Avenue and Columbus Avenue, Block 1852, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

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Affirmative:.....0

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

THE RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a Final Determination letter dated November 10, 2014 by the First Deputy Commissioner of the New York City Department of Buildings (“DOB”) (the “Final Determination”) with respect to DOB Application No. 120797888; and

WHEREAS, the Final Determination states, in pertinent part:

The proposed 20-story building, located within the R7-2 District, will be occupied as a nursing home, a community facility use in zoning Use Group 3. As shown in the submitted ZD-1 form, the proposed building is located within the zoning lot, surrounded by three streets, measuring 450.0 ft. by 685.5 ft., containing four existing detached buildings: three (3) 16-story residential buildings, located at 784, 788 and 792 Columbus Avenue, and the 30-story mixed building, located at 808 Columbus Avenue, per Temporary CO No. 104464438T026 with an expiration date of February 1, 2015 (the 30-story building is located within the portion of the zoning lot zoned in the C1-5 in R7-2 District).

A letter from ‘The Stakeholders of the Park West Village Neighborhood,’ dated August 22, 2014, consisting of the Park West Village Tenants’ Association, et. al., etc., was submitted to the Department of Buildings addressing several issues pertaining to the building, as follows:

[1] The writer claims that the applicant for the New Building application has not demonstrated that the ‘open space’ requirement, as set forth in Section 12-10 of the Zoning Resolution, has been satisfied. From our review of the zoning plans, dated April 9, 2014, submitted to the Department for the foundation approval of the new building, the open space required for the zoning lot is 230,108 sq. ft. The zoning lot area is 308,475 sq. ft. The lot coverage for the 20-story community facility building is 20,036 sq. ft. of which 10,431 sq. ft. of open space covered by the roof of the building, provided at the first story, is counted as open space for the zoning lot. The total proposed lot coverage for the zoning lot, including the community facility building, is 77,749 sq. ft. and the total open space provided for the zoning lot is 230,726 sq. ft. The proposed open space (230,726 sq. ft.) exceeds the minimum open space required for the zoning lot (230,108 sq. ft.); the proposed open space complies with the required open space provisions, per ZR 23-142;

[2] The writer claims that the safety of the occupants within the nursing home will be threatened in the event of a fire or natural disaster which may force the evacuation of over 400 nursing home residents, some or all of which may be incapable of

evacuating the building without assistance. The item which involves provisions of the NYC Building Code is not an appropriate issue for discussion in this Zoning Challenge. In addition, the application has been approved for foundation work only and has not been approved for construction work above the foundation. The architectural plans submitted for approval have not been finalized to date showing compliance with the provisions of the Building Code (such as, fire protection systems, fire-resistance rated construction, egress, etc.);

[3] The writer claims that ‘the proposed facility will obstruct access to an adjacent residential building, 784 Columbus Avenue, by continuously utilizing a driveway for access to the rear of the proposed facility that has the same driveway that is used for access for fire apparatus’ . . . However, the Department of Buildings does not enforce any regulation applicable to your complaint against vehicular traffic...;

[4] The writer complains that the proposed building conflicts with Zoning Resolution Section 11-13 (Public Parks). Per zoning map no. 5d and the map from the NYCityMap website, no portion of the zoning lot is located within a ‘public park,’ as defined in ZR 12-10, and the zoning lot is in a designated zoning district: one portion of the zoning lot is located within the R7-2 District and the remaining portion is located within the C1-5 in R7-2 District. Since the zoning lot is in a designated zoning district, the zoning lot is not subject to the provision of ZR 11-13. Therefore, for the aforementioned reasons, your zoning challenge is hereby denied; and

WHEREAS, a public hearing was held on this appeal on April 14, 2015, after due notice by publication in *The City Record*, with a continued hearing on June 23, 2015 and then to decision on August 18, 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 appeal was brought on behalf of neighbors of the area surrounding the site who were represented by counsel (the “Appellant”) and who provided their own written and oral testimony in support of the appeal; and

WHEREAS, Trinity Evangelical Lutheran Church, Manhattan Community Board 7, and certain community members submitted testimony in opposition to the relocation of the proposed facility from its current location; and

WHEREAS, New York City Comptroller Scott M. Stringer, New York State Congressman Jerrold Nadler, New York State Assembly Member Daniel O’Donnell, and City Council Member Mark Levine provided testimony in support of the appeal, citing similar concerns as the Appellant; and

WHEREAS, the Friends of P.S. 163 provided testimony

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in support of the appeal; and

WHEREAS, DOB provided written and oral testimony in opposition to the appeal; and

WHEREAS, representatives of Jewish Home Lifecare (the "JHL"), the contract vendee that proposes to construct a nursing home facility (the "Nursing Facility") on the site and the owner PWV Acquisition (the "Owner") provided written and oral testimony in opposition to the appeal; and

WHEREAS, the subject site – 125 West 97th Street - is located on a superblock (Block 1852) bounded by West 97th Street on the south, Columbus Avenue on the west, West 100th Street on the north, and Central Park West on the east; and

WHEREAS, the zoning lot is within an R7-2 zoning district with a C1-5 zoning district overlay on the Columbus Avenue frontage extending a depth of 100 feet; and

WHEREAS, the zoning lot is occupied by four detached residential buildings: three 16-story residential buildings, located at 784, 788 and 792 Columbus Avenue (Park West Village), and the 30-story mixed building, located at 808 Columbus Avenue; and

WHEREAS, JHL proposes to construct the Nursing Facility's 20-story building along the West 97th Street frontage; and

PROCEDURAL HISTORY

WHEREAS, in 2006, DOB approved a proposal to construct the 808 Columbus Avenue building; the site plan for that approval included a proposal for a community facility building along West 97th Street, which is now planned to be occupied by JHL; and

WHEREAS, in 2008, several residents of Park West Village and public officials appealed the approval due to concern that a portion of the required open space at 808 Columbus Avenue would be on the roof of a one-story commercial use and could not be accessed by residents of the other three buildings; and

WHEREAS, in a decision under BSA Cal. No. 149-08-A, dated February 3, 2009 (the "2009 Appeal"), the Board denied the appeal, finding that the open space arrangement proposed for the zoning lot complied with the requirements of ZR §§ 23-14 and 12-10; and

WHEREAS, on February 2, 2011 the City Planning Commission (the "CPC") adopted the Key Terms Clarification text amendment, including an amendment to ZR § 23-14; and

WHEREAS, the 2011 text reads in pertinent part: ZR § 23-14 (Minimum Required Open Space, Open Space Ratio, Maximum Lot Coverage and Maximum Floor Area Ratio)

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

In all districts, as indicated, except as otherwise provided in Section 23-17 (Special Provisions for Zoning Lots Divided by District Boundaries), for any #zoning lot#, the minimum required #open space# or #open space ratio# shall not be less than set forth in this Section, and the maximum #lot coverage# shall not exceed the #lot coverage# as set forth in this Section. Any given #lot area# or area of #open space# shall be counted only once

in determining the #floor area ratio#, the amount of #open space# or the #open space ratio#. . . ; and

WHEREAS, on December 4, 2013, DOB approved a ZD1 Zoning Diagram for the Nursing Facility and posted it on its website; and

WHEREAS, on August 28, 2014, the Appellant submitted a challenge to the approval, which, pursuant to the Rules of the City of New York § 101-15, DOB determined to be time-barred as of the expiration of the 45-day public zoning challenge period on January 18, 2014; and

WHEREAS, nonetheless, on November 10, 2014, DOB issued the Final determination with its reasoning for its approval, and the Appellant appealed; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant asserts that DOB erred in granting JHL's application because, under the current zoning regulations, the zoning lot lacks sufficient open space as configured, and therefore cannot support the construction of a new building without increasing the already non-complying open space; and

WHEREAS, the Appellant's central argument is that the Key Terms text amendment changed how open space is to be calculated on the zoning lot; and

WHEREAS, the remainder of the Appellant's primary arguments are reiterations of the arguments made during the 2009 Appeal and include that: (1) the rooftop gardens of 808 Columbus Avenue do not qualify as open space and are an amenity that is usable and accessible only by the residents of that building; (2) subtracting the area of the 808 Columbus rooftop gardens from the total area of the zoning lot would leave too little remaining open space on the zoning lot under the current Zoning Resolution to construct the Nursing Facility; and (3) there is no theory that permits allocation of open space among multiple buildings on a zoning lot; and

WHEREAS, the Appellant makes the following supplemental arguments: (1) 808 Columbus Avenue is insulated from any non-compliance because it is grandfathered, but a non-compliant condition cannot be expanded and JHL may not rely on a "legally vested condition" to claim that the 808 Columbus rooftop is open space; (2) the subject appeal is distinguished from the 2009 Appeal because it involves materially different zoning text; and (3) the proposed roofed area is not open space; and

WHEREAS, the Appellant identifies certain changes to the Zoning Resolution's definition of "open space ratio" and ZR §§ 23-14 and 23-142 that were effectuated by the Key Terms amendment, where the word "building" was eliminated and, in one or more instances, replaced with the word "zoning lot;" and

WHEREAS, the Appellant asserts that now, there is nothing ambiguous about the language in the relevant Zoning Resolution sections and the deletion and replacement of words changed the meaning; and

WHEREAS, the Appellant asserts that the text that applies now – the post-2011 Key Terms text amendment – prohibits exactly that which the Appellant argued was prohibited by the pre-2011 text; and

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WHEREAS, the Appellant asserts that any ambiguity in the text of the 2009 Appeal has been resolved by the plain language of the Zoning Resolution requiring that the open space calculation be based on the entire zoning lot and not on allocating open space among individual buildings and that the 808 Columbus Avenue rooftop be excluded from the total open space because it is not usable and accessible to all residents of the zoning lot; and

WHEREAS, the Appellant asserts that if CPC had intended DOB's result it would have provided for it in the Key Terms amendment; and

WHEREAS, the Appellant also asserts that the Board must be guided by relevant case law which requires the Board to apply the plain meaning of the statute and to apply the law as it currently exists, not the law that existed in 2009; and

WHEREAS, the Appellant asserts that the 2009 Appeal is not dispositive to this appeal because it applied a materially different zoning text that has been superseded; and

WHEREAS, the Appellant states that, in that analysis, the owner and the Board relied on the words "building" and "any building" in the relevant sections of the Zoning Resolution; and

WHEREAS, the Appellant asserts that the text now supports its argument that under no theory may DOB permit the allocation of open space among multiple buildings on a zoning lot because there is no exception to the rule that open space must be accessible to and usable by all residents on a zoning lot; and

WHEREAS, rather, the Appellant argues that, because a purported 56,850 sq. ft. of open space at 808 Columbus Avenue are reserved for the residents of that building, it does not comply with the definition of "open space" set forth in ZR § 12-10, which states that open space shall be "accessible to and usable by all persons occupying a dwelling unit or a rooming unit on the zoning lot;" and

WHEREAS, the Appellant asserts that DOB erroneously relies on JHL's 2011 open space analysis as an extension of the 2006 analysis, and the basis for the 2009 Appeal, because there should now be a different result; and

WHEREAS, the Appellant asserts that by subtracting the 808 Columbus Avenue rooftop gardens from the total area of the zoning lot, there would be insufficient remaining open space on the zoning lot under the current Zoning Resolution to construct the proposed building; and

WHEREAS, the Appellant subsequently states that under the amended text, the available open space on the zoning lot is insufficient by over 46,500 sq. ft. and the JHL building, or any other new building on the zoning lot, would increase the degree of non-compliance¹; and

1 The Appellant initially argued that DOB's analysis of the open space included "approximately 56,850 square feet attributable to the rooftop gardens of 808 Columbus Avenue" and later argued that "under the current Zoning Resolution, the available open space on the zoning lot is today over 46,500 square feet below what is the Open Space Requirement for the existing buildings on the lot." The Board finds that there are 42,500 sq. ft. of rooftop open space

WHEREAS, the Appellant asserts that the 808 Columbus Avenue building and its insufficient open space is insulated from any non-compliance because it is grandfathered but new non-compliance, through the JHL building, cannot be allowed; and

WHEREAS, the Appellant contends that the 2009 Appeal also does not have any bearing on the current one since JHL cannot rely on the open space allocation that existed in 2009, before it committed to build at the site; and

WHEREAS, the Appellant does not accept the fact that a community facility was identified on the plans that were contemporaneous with the prior appeal, since the JHL was not specifically associated with the site as it is now; and

WHEREAS, accordingly, the Appellant asserts that JHL may not make a claim that it has a vested right to the benefits that the 808 Columbus Avenue owner obtained through its approvals and the 2009 Appeal; and

WHEREAS, the Appellant requests the reversal of DOB's determination for failure to satisfy the open space requirements; and

DOB'S POSITION

WHEREAS, DOB requests that the Board uphold its determination because (1) the Key Terms text amendment, enacted by the City Council on February 2, 2011, did not change the meaning of "open space;" (2) the Appellant has not presented any new information that would require a different result than the Board's prior determination regarding open space on this zoning lot; and (3) the roofed areas proposed for the subject premises adhere to the Zoning Resolution's open space requirements; and

WHEREAS, as to the Key Terms text amendment, DOB asserts that it did not change the meaning of "open space;" and

WHEREAS, specifically, DOB states that before and after the Key Terms text amendment, Zoning Resolution § 12-10 defined "open space," as "that part of a zoning lot ... which ... is accessible to and usable by all persons occupying a dwelling unit or a rooming unit on the zoning lot;" and

WHEREAS, DOB cites to City Planning Commission Report No. N 110090(A) ZRY (January 5, 2011) which states that the text amendment "pertain[s] to the clarification of key terms including 'development' and 'building' and the clarification of other regulations throughout the Zoning Resolution;" and

WHEREAS, DOB asserts that there is nothing in the CPC report that evinces an intention to clarify the meaning of open space; and

WHEREAS, DOB refutes the Appellant's assertion that the Key Terms text amendment changed the definition of "open space," and, specifically, the Appellant's reliance on ZR § 12-10's "open space ratio;" and

WHEREAS, DOB states that, instead, the text change corrects an error in the former text in order to clarify that the total amount of open space required on a zoning lot is calculated per zoning lot, not per building; and

attributable to 808 Columbus Avenue.

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WHEREAS, DOB states that this calculation is irrelevant to which areas count as open space and, thus, the contention that the Key Terms text amendment changed the meaning of open space is without merit; and

WHEREAS, secondly, DOB asserts that the Appellant has not presented any new information that would require a different result than the Board's prior determination that 808 Columbus Avenue's rooftop areas are open space under ZR § 12-10 (open space); and

WHEREAS, specifically, DOB notes that in the 2009 Appeal, the Board found that "it cannot be seen how those residents [of 784, 788, and 792 Columbus Avenue] would be deprived of an equitable share of open space by the proposed building;" and

WHEREAS, DOB asserts that the Appellant has not presented any new information that would require a different result, and, accordingly, the Board's determination in the 2009 Appeal should not be disturbed; and

WHEREAS, lastly, DOB asserts that the roofed area proposed for the subject premises meets the Zoning Resolution's requirements for open space; and

WHEREAS, DOB states that ZR § 12-10 (2011) (open space) requires open space to be "open and unobstructed from its lowest level to the sky. ... Open space may, however, include areas covered by roofs, the total area of which is less than 10 percent of the unroofed or uncovered area of the zoning lot, provided that such roofed area is not enclosed on more than one side, or on more than 10 percent of the perimeter of the roofed area, whichever is greater;" and

WHEREAS, DOB refers to its November 2014 determination that 10,431 sq. ft. of the proposed community-facility building's lot coverage will meet the Zoning Resolution's requirements for roofed open space; and

WHEREAS, specifically, on drawing Z-002.00 of the plans for New Building Application No. 120797888, there is 11,497 sq. ft. of roofed open space, which accounts for 5.23 percent of the 230,108 sq. ft. of open space required for the zoning lot; and because 5.23 percent is well below the 10 percent of open space permitted to be roofed per ZR § 12-10 (open space), the roofed areas proposed for the subject premises meet the Zoning Resolution's requirements for open space covered by roofs; and

WHEREAS, DOB concludes that because the Key Terms text amendment did not change the meaning of open space, because the Appellant has presented no new information that would require a different result than the Board's prior determination regarding this zoning lot, and because the roofed areas proposed for the subject premises adhere to the Zoning Resolution's open-space requirements, the Board should uphold its determination that there is more than enough open space on the zoning lot for the construction of a new community facility building at the subject premises; and

JHL'S RESPONSE

WHEREAS, JHL agrees with DOB that the permit should not be disturbed and that the proposal was reviewed and approved appropriately; and

WHEREAS, JHL makes the following primary points: (1) DOB's approval of the open space arrangement on the subject zoning lot reflects a lawful and proper application of the applicable zoning regulations; (2) the open space arrangement on the subject zoning lot was previously upheld by the Board; and (3) the open space arrangement on the subject zoning lot is not affected by the Key Terms text amendment; and

WHEREAS, JHL asserts that the Zoning Resolution's open space provisions do not specifically address the situation of zoning lots with multiple residential buildings that are subject to height factor open space requirements; and

WHEREAS, JHL states that this situation arises most frequently in connection with merged zoning lots that are under multiple ownership and contain both preexisting residential buildings and a new residential development that may be using excess floor area from the parcels improved with the existing buildings; and

WHEREAS, JHL states that in such situations, it may not be feasible to make all of the open space on the zoning lot that is required to meet the open space requirements accessible to the residents of all the buildings on the zoning lot; and

WHEREAS, JHL asserts that in response to the Zoning Resolution's silence regarding such situations, DOB has established a fair and appropriate method for applying the open space requirements, which allows required open space to be reserved for the residents of a single building on a multi-building zoning lot so long as (1) the total amount of open space required on the zoning lot is provided and (2) the residents of each building on the zoning lot have access to at least the amount of open space that would be required if that building sat on a separate zoning lot; and

WHEREAS, JHL asserts that both of the noted requirements are satisfied on the subject zoning lot; and

WHEREAS, JHL notes that in 2006, in connection with the development of 808 Columbus Avenue, the project architect submitted a written request to DOB for its confirmation that approximately 42,500 sq. ft. of the open space on a first-story roof could be reserved for building residents; the associated open space analysis demonstrated that (1) the total amount of open space required on the zoning lot would be provided and (2) if 808 Columbus Avenue and each of the three Park West Village buildings were located on a separate zoning lot, each of these parcels would include an amount of open space sufficient to satisfy the requirement of ZR § 23-14; and

WHEREAS, thus, DOB approved roof-top open space to be reserved for building residents within the total open space; and

WHEREAS, in 2011, in connection with development of the Nursing Facility, another project architect provided DOB with an updated open space analysis, which included that the open space on the roof of 808 Columbus Avenue be reserved for its residents but that all of the remaining open space on the zoning lot be accessible to the occupants of all

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four residential buildings; and

WHEREAS, JHL asserts that the 2011 analysis, like the 2006 analysis demonstrated that (1) the total amount of open space required on the zoning lot will be provided and (2) under a hypothetical division of the zoning lot into two separate zoning lots, both zoning lots would contain a sufficient amount of accessible open space to satisfy the requirement of ZR § 23-14; and

WHEREAS, DOB then approved the proposed open space arrangement on the zoning lot; and

WHEREAS, as to the precedent, JHL contends that the Board has already determined that, with respect to the zoning lot, the open space requirement of ZR § 23-14 is not violated by a reservation of the roof-top open space on 808 Columbus Avenue for the residents of that building; and

WHEREAS, JHL cites to the 2009 Appeal in which the Board stated that, "as each of the existing buildings is allocated an amount of open space that is in excess of that which would be required under the Zoning Resolution if they were located on separate zoning lots, it cannot be seen how those residents would be deprived of an equitable share of open space by the proposed building;" and

WHEREAS, JHL asserts that the 2006 plan for the zoning lot included a community facility building and, thus, the open space arrangement that was approved in connection with 808 Columbus Avenue included a reservation of 10,000 sq. ft. of existing open space for the future construction of a community facility building in the area in which the Nursing Facility with a footprint of 9,605 sq. ft. is being constructed; and

WHEREAS, JHL represents that the amount and location of the open space that will be provided on the zoning lot following construction of the Nursing Facility is virtually identical to the open space arrangement that was previously approved by DOB and which was the subject of the Board's review while it considered the 2009 Appeal; and

WHEREAS, accordingly, JHL asserts that the Board's prior determination on the precise issue asserted in the current appeal is dispositive of that issue and requires the denial of this appeal; and

WHEREAS, as to the Key Terms text amendment, JHL disagrees with the Appellant's assertion that the amendments established that, even on a multi-building zoning lot, all of the required open space must be accessible to the residents of all buildings on that zoning lot; and

WHEREAS, JHL contends that based on a review of the CPC report on the text of the Key Terms amendment, there was no intent to alter the previous interpretation of the Zoning Resolution's open space requirements but rather to preserve the original intent of the Zoning Resolution with respect to the terms "development" and "building;" and

WHEREAS, JHL states that the open space arrangement approved for the zoning lot is consistent with the amended provisions of the open space regulations; and

WHEREAS, further, JHL states that in order to satisfy the primary purpose of the amendments, the Key Terms made clarifying changes, similar to the changes made to the open space provisions, to dozens of sections of the Zoning

Resolution and, the associated CPC report is devoid of any discussion of the Zoning Resolution's open space requirements; and

WHEREAS, JHL finds this fact to be evidence that no substantive changes to these provisions were intended; and

WHEREAS, JHL cites to the amended ZR § 23-14, which states, "... for any zoning lot, the minimum required open space or open space ratio shall not be less than set forth in this Section..." to support its contention that the amended ZR § 23-14 merely makes it clear that the applicable open space requirement is to be determined on the basis of an entire zoning lot; and

WHEREAS, JHL asserts that the Final Determination comports with the text as it indicates that the open space requirement for the zoning lot was, in fact, calculated on the basis of the entire zoning lot; and

WHEREAS, JHL states that DOB only allowed a portion of the required open space to be reserved for the residents of 808 Columbus Avenue following a showing that, if the other residential buildings on the zoning lot were situated on one or more separate zoning lots, the residents of each of these buildings would have access to a legally sufficient amount of open space; and

WHEREAS, therefore, JHL asserts that the open space arrangement approved for the zoning lot is not affected by the Key Terms amendment; and

WHEREAS, JHL requests that the appeal be denied because DOB's determination that, following construction of the Nursing Facility, the zoning lot will contain enough open space to satisfy the requirements of Zoning Resolution § 23-14, is proper in that it is consistent with both the Board's prior determination regarding the zoning lot and the Key Terms text amendment; and

CONCLUSION

WHEREAS, first, the Board notes that the 2009 Appeal answered resolved the issue of whether the open space proposed with the 808 Columbus Avenue building construction satisfied the open space requirements set forth at ZR §§ 12-10 and 23-14; and

WHEREAS, in the 2009 Appeal, the Board agreed with DOB that the open space, which includes 42,500 sq. ft. of rooftop space, satisfied all relevant requirements; and

WHEREAS, therefore, the Board considers the question of how to analyze open space as it relates to the three Park West Village buildings and the 808 Columbus Avenue building to be answered; and

WHEREAS, the Board now considers only whether the Key Terms text amendment changed the language of the text such that it now reads as the Appellant argued in the 2009 Appeal, and whether the open space requirements are changed in such a way as to implicate the proposed construction of the Nursing Facility; and

WHEREAS, the Board notes that 808 Columbus Avenue was completed pursuant to DOB's approval and the Board's decision in the 2009 Appeal and the construction relied on a zoning analysis that included 42,500 sq. ft. of open space on a first-floor roof of the new building; and

WHEREAS, the Board notes that no party has suggested

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that the 808 Columbus Avenue building was built contrary to the zoning analysis which was associated with its approval and which formed the basis for the 2009 Appeal; and

WHEREAS, thus, the site including 808 Columbus Avenue reflects an approved amount of open space – 230,726 sq. ft. – at least 230,108 sq. ft. (the minimum required) of which must remain; and

WHEREAS, the Board accepts the Owner’s assertion that nothing material has changed between that which was proposed at that time of the 2009 Appeal, and subsequently completed, and that which is proposed now; and

WHEREAS, the Board notes that the required open space total includes the approved 42,500 sq. ft. on the 808 Columbus Avenue rooftop, but not the 9,605 sq. ft. for the footprint of the Nursing Facility; and

WHEREAS, the Board notes that the Owner states that the footprint of a community facility building at 125 West 97th Street, which was not designed at the time of the 2009 Appeal, was never necessary for the required open space; and

WHEREAS, the Board notes that the open space requirement on the site is triggered by the residential buildings and that the Nursing Facility does not require additional open space, therefore, it is not persuaded by the Appellant’s arguments that somehow the Nursing Facility disturbs the existing open space calculations for the entire site; and

WHEREAS, the Board does not agree with the Appellant that constructing a community facility building that does not require open space affects the open space requirement on a site which also contains residential buildings (which do have an open space requirement) where, as here, the site contains the minimum open space required; and

WHEREAS, the Board disagrees with the Appellant that there is a deficit of open space that requires the Owner to reclaim the 9,605 sq. ft. footprint of the Nursing Facility; the Board does not see any open space deficiency to resupply or otherwise any nexus between the rooftop space, which DOB and the Board have accepted, and the long-planned footprint of a community facility building; and

WHEREAS, additionally, the Board accepts DOB’s analysis of the grade level roofed open space at the Nursing Facility and its contribution to the total open space on the site; and

WHEREAS, the Board is not persuaded that the Key Terms text amendment had the effect of changing the text to mean exactly what the appellants suggested it meant in the 2009 Appeal; and

WHEREAS, the Board notes that there has not been any evidence presented to support the Appellant’s assertion that the Key Terms text amendment changed the text in that way; and

WHEREAS, the Board notes that before and after the Key Terms amendment, the ZR § 12-10 definition states that “open space” is that part of a zoning lot, including courts or yards, which... is accessible to and usable by all persons occupying a dwelling unit or a rooming unit on the zoning lot;” and

WHEREAS, in the course of the 2009 Appeal, the Board and DOB concluded that in the case of a multi-building zoning

lot, the open space definition could be read to allow some open space to be reserved for the residents of a single building as long as the residents of each building on the zoning lot have access to at least the amount of open space that would be required under ZR § 23-142 if each building were on separate zoning lots; and

WHEREAS, the Board concludes that because the definition of open space itself has not changed and because the CPC did not intend to change the open space requirement, subsequent to the 2009 Appeal, the Key Terms amendment do not dictate any change in the Board’s or DOB’s analysis since the prior appeal; and

WHEREAS, the Board notes that the text was amended in 2011, after the 2009 Appeal and CPC had an opportunity to clarify an intent to restrict the open space; and

WHEREAS, the Board agrees with DOB’s determination that, following construction of the Nursing Facility, the zoning lot will contain a sufficient amount of open space to satisfy the requirements of Zoning Resolution § 23-14; and

WHEREAS, the Board finds that the Final Determination is fully consistent with both the Board’s prior determination regarding the zoning lot and the Key Terms text amendment; and

WHEREAS, the Board concludes that the Key Terms text amendment did not change the meaning of open space, that the Appellant has not presented any new information that would require a different result than the 2009 Appeal, and that the roofed open space proposed at the Nursing Facility complies with the Zoning Resolution’s open-space requirements; and

WHEREAS, accordingly, the Board concludes that the plans for construction of the proposed building under DOB Application No. 120797888 meet the requirements for open space under ZR §§ 12-10 and 23-14 and; and

Therefore it is Resolved, that the instant appeal, seeking a reversal of the determination of the Manhattan Borough Commissioner, dated November 10, 2014, to uphold the approval of DOB Application No. 120797888 is hereby denied.

Adopted by the Board of Standards and Appeals, August 18, 2015.

245-12-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 515 East 5th Street, LLC, owner.

SUBJECT – Application August 9, 2012 – Appeal pursuant to Section 310(2) of the Multiple Dwelling Law, requesting that the Board vary several requirements of the MDL. R7B Zoning District

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

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

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

234-14-A

APPLICANT – Law Offices of Marvin B. Mitzner, for Ohmni Properties, owners.

SUBJECT – Application September 29, 2014 – Appeal of the NYC Department of Buildings' determination to not revoke a Certificate of Occupancy issued in 1989 and reinstate the Certificate of Occupancy issued in 1985.

PREMISES AFFECTED – 738 East 6th Street, south side of East 6th Street between Avenue C and Avenue D, Block 00375, Lot 0028, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to November 24, 2015, at 10 A.M., for continued hearing.

ZONING CALENDAR

236-14-BZ

APPLICANT – Law Office of Stuart Klein, for The 5th Street Dorchester, Inc. c/o Brown Harris, owner; BLT Steak, LLC, lessee.

SUBJECT – Application October 1, 2014 – Special Permit (§73-241) to legalize the operation of an eating and drinking establishment (UG 6C) with entertainment, but not dancing, with a capacity of 200 persons or fewer. C5-3 (MID) zoning district.

PREMISES AFFECTED – 106 East 57th Street aka 104-114 East 57th Street, south side of East 57th Street, 90' from Park Avenue, Block 01311, Lot 0065, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application Dismissed.

THE VOTE TO DISMISS –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a special permit pursuant to ZR § 73-241 to legalize an existing Use Group 6C eating and drinking establishment on the second story of the building known as and located at 106 East 57th Street, which is located within a C5-3 zoning district, in Manhattan; and

WHEREAS, the applicant filed the application on October 1, 2014; and

WHEREAS, by letter dated January 12, 2015, the Board advised the applicant that it lacked the authority to issue the subject special permit; and

WHEREAS, specifically, the Board advised the applicant that, because there are eight dwelling units located on the second story of the subject building (as stated on the Certificate of Occupancy for the building), the Board was precluded from granting the subject application by ZR § 32-422, which states, in pertinent part, that “in any building, or a portion of a building occupied by residential uses, commercial uses listed in Use Group ... 6 ... may be located only on a story below the

lowest story occupied in whole or in part by such dwelling units”; and

WHEREAS, the Board’s January 12, 2015 letter also advised the applicant that ZR § 73-01, which allows the Board to modify certain specified use regulations contained in the Zoning Resolution, does not permit the Board to modify ZR § 32-422; and

WHEREAS, on July 21, 2015, the Board held its first public hearing on this application and heard arguments from the applicant as to the Board’s authority to issue the subject special permit in this instance; and

WHEREAS, by letter dated July 23, 2015, the New York City Department of City Planning (“DCP”) submitted support for the Board’s position as stated in its January 12, 2015 letter; and

WHEREAS, specifically, DCP stated that:

...[t]he authority granted under Section 73-241 is clear and limited – it gives the Board the authority to permit eating or drinking establishments ... in any of the listed districts where such use is otherwise not permitted, provided that such use complies with all other use regulations, as required by Section 73-01...”; and

WHEREAS, as noted in DCP’s July 23, 2015 letter, ZR § 73-01(b) allows the Board to permit “specified modifications” of the use or bulk regulations contained in the Zoning Resolution, but provides that “...[i]n addition to meeting the requirements, conditions, and safeguards prescribed by the Board as set forth in [Article VII, Chapter 3 of the Zoning Resolution], each such special permit use shall conform to and comply with all of the applicable district regulation on use, bulk, supplementary use regulations ... and all other applicable provisions of [the Zoning Resolution], except as otherwise specifically provided in this Chapter or as they may be modified in accordance with [ZR § 73-01(b)]”; and

WHEREAS, thus, DCP concurs with the Board’s position that, because the provisions of ZR § 32-422 are not among the specified modification of use or bulk contemplated by ZR § 73-241, the Board has no authority to issue the subject special permit; and

WHEREAS, by letter received July 31, 2015, the applicant submitted its opposition to the position taken by the Board and DCP; and

WHEREAS, having reviewed the applicant’s July 31, 2015 submission, and having found it to be without merit, the Board voted to dismiss the instant application at a hearing on August 18, 2015; and

WHEREAS, accordingly this application is dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 236-14-A is hereby dismissed.

Adopted by the Board of Standards and Appeals, August 18, 2015.

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324-14-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Kulwanty Pittam, owner.

SUBJECT – Application December 15, 2014 – Reinstatement (§11-411) for an automotive repair facility (UG 16B) granted under Cal. No. 909-52-BZ, expiring January 29, 2000; Amendment to permit the sale of used cars; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 198-30 Jamaica Avenue, Southwest corner of Jamaica Avenue. Block 10829, Lot 56. Borough of Queens.

COMMUNITY BOARD #12Q

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 and a reinstatement of a prior variance authorizing an automotive repair facility (Use Group 16B) contrary to use regulations, together with an amendment of the aforesaid variance to permit the sale of used automobiles at the site; and

WHEREAS, a public hearing was held on this application on March 3, 2015, after due notice by publication in *The City Record*, with continued hearings on March 24, 2015 and June 23, 2015 and then to decision on August 18, 2015; and

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

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

WHEREAS, the subject site is an irregular lot located at the southwest corner of the intersection of Jamaica Avenue and 199th Street, in Queens; and

WHEREAS, the site has a combined frontage of approximately 127 feet along the south side of Jamaica Avenue and a frontage of approximately 84 feet along the west side of 199th Street, with approximately 10,719 sq. ft. of lot area, within an R5 (C2-2) zoning district, in Queens; and

WHEREAS, the site is occupied by a one-story building with 1,716.71 sq. ft. of floor area; the building is occupied by an automobile repair facility with a lubricatorium, auto washing, storage and sale of accessories, offices, and parking for seven vehicles; and

WHEREAS, the Board has exercised jurisdiction over the site since February 23, 1955, when, under BSA Cal. No. 909-52-BZ, it granted a variance authorizing the operation of a gasoline service station with accessory uses contrary to the use regulations of the 1916 Zoning Resolution, for a term of 10 years, to expire on February 23, 1965; this grant was amended at various times, including an amendment to permit automobile repair; its term last expired on January 29, 2000; and

WHEREAS, because the variance has been expired for more than ten years, the applicant requests a waiver of the

Rules of Practice and Procedure and seeks reinstatement of the variance pursuant to ZR § 11-411; and

WHEREAS, pursuant to 2 RCNY § 1-07.3(b)(4), the Board may reinstate a use variance granted under the 1916 Zoning Resolution, provided that: (i) the use has been continuous since the expiration of term; (ii) substantial prejudice would result without such reinstatement; and (iii) the use permitted by the grant does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, the applicant states that the use has been continuous at the site since the expiration of the term in 2000; in support of this statement, the applicant provided various records from the New York Department of Environmental Protection, the New York State Department of Taxation and Finances, and the New York State Department of Motor Vehicles, as well as United States income tax returns; and

WHEREAS, the applicant asserts that substantial prejudice would result without the requested reinstatement of the variance, in that absent such reinstatement, the owner of the site will not be able to obtain a certificate of occupancy (“CO”) for the automobile service station from the Department of Buildings; if the owner does not obtain a CO, it may be subject to violations from DOB and it may encounter difficulties in financing, leasing, or selling the site; and

WHEREAS, the applicant contends that the subject automobile service station is compatible with the surrounding neighborhood and does not substantially impair the appropriate use and development of adjacent properties, as evidenced by its longstanding use at the site; and

WHEREAS, based on the applicant’s representations, the Board accepts the proposed application as a request for a reinstatement of a pre-1961 use variance; and

WHEREAS, in response to the Board’s concerns, the applicant (1) removed all excessive signage from the site; and (2) cleaned all of the graffiti at the site and repaired the perimeter fence; (3) installed improved landscaping and plantings at the perimeter of the site; (3) provided screening at the refuse area and cleared the site of debris and weeds; (4) repaired the brick wall at the rear of the property; (5) re-stripped the parking lot to distinguish between the area in which automobiles may be parked for service from that in which used automobiles may be parked for sale; and (6) reduced the number of spaces that will be devoted to the sale used of automobiles at the site to five spaces; and

WHEREAS, based upon the above, the Board finds that the evidence in the record supports the findings required to be made under ZR § 11-411, and the requested waiver, amendment and reinstatement of the variance for a term of ten years is appropriate, with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals waives its Rules of Practice and Procedure, and, pursuant to ZR § 11-411, reinstates and amends a previously-granted variance to permit, on a site located within an R5 (C2-2) zoning district, the operation of a an automotive repair

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facility (Use Group 16B), with sale of used automobiles, contrary to use regulations; *on condition* that all work will substantially conform to plans, filed with this application marked 'Received August 4, 2015'-(5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, to expire on August 18, 2025;

THAT signage, fencing, plantings and landscaping will be maintained in accordance with the BSA-approved plans;

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

THAT parking for the sale of used automobiles shall be limited to five passenger automobiles;

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

THAT a certificate of occupancy shall be obtained by August 18, 2015;

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

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

THAT DOB shall 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. 420924398)

Adopted by the Board of Standards and Appeals, August 18, 2015.

9-15-BZ

CEQR #15-BSA-082M

APPLICANT – Francis R. Angelino, Esq., for West 62nd Street LLC, owner; Bod Fitness NYC LLC, lessee.

SUBJECT – Application January 15, 2015 – Special Permit (§73-36) to allow for a physical culture establishment (*Bod Fitness*) at the building on a portion of the ground floor and cellar of a new 54-story mixed use residential building. C4-7 Special Lincoln Square District.

PREMISES AFFECTED – 55 Amsterdam Avenue, southeast corner of Amsterdam Avenue and West 62nd Street, Block 1132, Lot 35, 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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 15, 2014, acting on DOB Application No. 122163504, reads, in pertinent part:

Proposed ‘Physical Culture Establishment’ not permitted as-of-right as per section ZR 32-10 and a special permit by the Board of Standards and

Appeals (BSA) is required to comply with ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-7 zoning district, and also within the Special Lincoln Square District, a physical culture establishment (the “PCE”) on the ground floor and cellar of a 54-story mixed-use building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 23, 2015, after due notice by publication in the *City Record*, with a continued hearing on July 28, 2015, and then to decision on August 18, 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 7, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a corner lot located at the south east intersection of Amsterdam Avenue and West 62nd Street, it has approximately 90 feet of frontage along the east side of Amsterdam Avenue and approximately 110 feet of frontage along the south side of West 62nd Street, within a C4-7 zoning district, within the Special Lincoln Square District, in Manhattan; and

WHEREAS, the site contains approximately 9,450 sq. ft. of lot area and occupied by a 54-story mixed-use building; and

WHEREAS, the proposed PCE shall occupy 1,420 sq. ft. of floor area on the first floor of the building and 1,962 sq. ft. of floor space in the cellar of the building; and

WHEREAS, the PCE shall operate as Bod Fitness NYC LLC; and

WHEREAS, the hours of operation of the PCE shall be Monday through Friday, from 6:00 a.m. - 9:00 p.m., and on Saturday and Sunday, from 8:00 a.m. – 3:00 p.m.; and

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

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

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

WHEREAS, at a hearing, the Board articulated its concerns that the sound attenuation measures upon which the subject application, if approved, would be granted, would not be adequate, without further measures, to safeguard the residential tenants of the building from noise and vibration related nuisance; and

WHEREAS, accordingly, this application is conditioned, *inter alia*, and as set forth below, on the applicant’s submission to the Board of a report detailing any complaints or violations made of or issued to the PCE one year after the issuance of the instant resolution under BSA Cal. No. 9-15-BZ; 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

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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 Type II action discussed in the CEQR Checklist No. 15-BSA-082M, dated January 14, 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 C4-7 zoning district, and also within the Special Lincoln Square District, a physical culture establishment (the "PCE") on the ground floor and cellar of a 54-story mixed-use building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 8, 2015," - Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on August 18, 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 the following sound attenuation measures shall be implemented at the first floor of the building; (1) installation of a concrete floating floor built with 4" concrete supported on springs, supplemented by new shaftwall partitions supported by the floating floor and the installation of a new ceiling installed using sound barrier construction with resilient hangers to create a fully floating room in the PCE's class studio; (2) applicant to exclude all existing piping from the PCE's class studio by building the sound barrier ceiling below all the drain pipes, etc.; (3) applicant to install all mechanical below the sound barrier ceiling;

THAT the applicant shall, upon consultation with the management of the subject Building, submit to the Board, on Friday, September 20, 2016, or upon written confirmation from BSA staff, a date within 30 days of September 20, 2016, a report detailing any complaints made of or violations issued to the PCE of which the applicant or its representative are aware, the foregoing report to made in writing and accompanied by a notarized affidavit or affirmation attesting to the truthfulness of the statements contained therein;

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 18, 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 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 18, 2015.

266-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for 515 East 5th Street LLC, owner.

SUBJECT – Application September 6, 2013 – Variance (§72-21) to legalize the enlargement of a six-story, multi-unit residential building, contrary to maximum floor area (§23-145). R7B zoning district.

PREMISES AFFECTED – 515 East 5th Street, north side of East 5th Street between Avenue A and B, Block 401, Lot 56, Borough of Manhattan.

COMMUNITY BOARD #3M

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

60-14-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for Sephardic Congregation of Kew Gardens Hills, owners.

SUBJECT – Application April 11, 2014 – Variance (§72-21) to enlarge a community facility (*Sephardic Congregation*), contrary to floor lot coverage rear yard, height and setback (24-00). R4-1 zoning district.

PREMISES AFFECTED – 141-41 72nd Avenue, 72nd Avenue between Main Street and 141st Street, Block 6620, Lot 41, Borough of Queens.

COMMUNITY BOARD #8Q

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

173-14-BZ

APPLICANT – Sheldon Lobel, P.C., for 244 Madison Realty Corp., owner; Coban's Muay Thai Camp NYC, lessee.

SUBJECT – Application July 22, 2014 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Evolution Muay Thai Camp*) in the cellar of an existing 16-story mixed-used residential and commercial

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building, located within an C5-2 zoning district.
PREMISES AFFECTED – 20 East 38th Street aka 244 Madison Avenue, southwest corner of Madison Avenue and East 38th Street, Block 867, Lot 57, Borough of Manhattan.
COMMUNITY BOARD #5M

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

243-14-BZ

APPLICANT – Eric Palatnik, PC, for Victorystar, LTD, owner.
SUBJECT – Application October 9, 2014 – Special Permit (§73-243) to permit the legalization and continued use of an existing eating and drinking establishment (UG 6) with an accessory drive-through. C1-2/R3X zoning district.
PREMISES AFFECTED – 1660 Richmond Avenue, Richmond Avenue between Victory Boulevard and Merrill Avenue. Block 02236, Lot 133. Borough of Staten Island.
COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –
Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Montanez... 4
Negative:.....0

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

258-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Henry Atlantic Partners LLC, owner.
SUBJECT – Application October 16, 2014 – Variance (§72-21) to permit the construction of a 4-story mixed-use building of an existing with commercial use on the first floor in a (R6) zoning district located in Cobble Hill Historic District.
PREMISES AFFECTED – 112 Atlantic Avenue, southeast corner of the intersection formed by Atlantic Avenue and Henry Street, Block 285, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #6BK

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

314-14-BZ

APPLICANT – Sheldon Lobel, P.C., for Maurice Realty Inc., owner.
SUBJECT – Application November 20, 2014 – Special Permit (§73-125) to allow construction of an UG4 health care facility that exceed the maximum permitted floor area of 1,500 sf. R4A zoning district.
PREMISES AFFECTED – 1604 Williamsbridge Road, northwest corner of the intersection formed by Williamsbridge Road and Pierce Avenue, Block 04111, Lot 43, Borough of Bronx.
COMMUNITY BOARD #11BX

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

2-15-BZ

APPLICANT – Jay Goldstein, Esq., for Panasia Estate Inc., owner; Chelsea Fhitting Room LLC, lessee.
SUBJECT – Application January 7, 2015 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*The Fhitting Room*) in the portions of the cellar and first floor of the premises. C6-4A zoning district.
PREMISES AFFECTED – 31 West 19th Street, 5th Avenue and 6th Avenue on the north side of 19th Street, Block 00821, Lot 21, Borough of Manhattan.
COMMUNITY BOARD #5M

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

REGULAR MEETING TUESDAY AFTERNOON, AUGUST 18, 2015 1:00 P.M.

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

ZONING CALENDAR

31-15-BZ

CEQR #15-BSA-159R
APPLICANT – Snyder & Snyder, LLP, for City University of New York, owner; Sprint Spectrum L.P., lessee.
SUBJECT – Application February 19, 2015 – Special Permit (§73-30) to permit the modification of an existing wireless facility. R3-2 zoning district.
PREMISES AFFECTED – 2800 Victory Boulevard, Canterbury Avenue and Victory Boulevard on Loop Road, Block 02040, Lot 0001, Borough of Staten Island.
COMMUNITY BOARD #2SI

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 Staten Island Borough Commissioner, dated January 21, 2015, acting on Department of Buildings Application No. 520091285, reads in pertinent part:

Proposed work is non-compliant to TPPN# 5/98, and therefore will require a special permit from the Board of Standards and Appeals pursuant to section 73-03 of the New York City Zoning Resolution ... ;and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to legalize, and permit the modification of, a Use Group 6 communication equipment structure consisting of

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antennas and related equipment (the “Non-Accessory Radio Tower”), within an R3-2 zoning district, contrary to ZR § 22-00; and

WHEREAS a public hearing was held on this application on August 18, 2015, after due notice by publication in *The City Record*, and then to decision on August 18, 2015; and

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

WHEREAS, the Non-Accessory Tower is situated in the equipment area on the rooftop of the building known as and located at 2800 Victory Boulevard, Staten Island (the “Building”); and

WHEREAS, the applicant is licensed by the Federal Communications Commission (the “FCC”) to provide wireless communications services throughout New York City, and the proposed modifications to the existing Non-Accessory Radio Tower are required to provide reliable wireless services in the borough of Staten Island; and

WHEREAS, the applicant states that the proposed modifications consist of (1) the replacement of three existing panel antennas with six new panel antennas and attendant equipment; (2) the replacement of one equipment cabinet; (3) the replacement of one battery cabinet; and (4) the installation of a fiber enclosure at the equipment area on the roof of the Building; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed Non-Accessory Radio Tower, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;” and

WHEREAS, the applicant represents that the proposed modifications to the existing Non-Accessory Radio Tower will not increase the height of the Non-Accessory Radio Tower and will not have any visual or environmental impact on the surrounding neighborhood; and

WHEREAS, the applicant further represents that the proposed modifications to the Non-Accessory Radio Tower will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, in support of its argument that the Non-Accessory Radio Tower will not have any detrimental impact on the surrounding neighborhood, and in response to the Board’s comments, the applicant submitted a report from Pinnacle Telecom Group, LLC (“Pinnacle”), as well as an explanatory letter from Pinnacle, which states that the Non-Accessory Radio Tower meets standards promulgated by the FCC for potential radiofrequency exposure; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed Non-Accessory Radio Tower and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject

use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

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 and *grants* a special permit under ZR § 73-03 and § 73-30 to permit, within an R3-2 zoning district, the legalization and proposed modifications of the Non-Accessory Radio Tower, which is contrary to ZR § 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received May 21, 2015”- (6) sheets; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, August 18, 2015.

156-14-BZ

APPLICANT – Lewis E. Garfinkel, for Harold Feder, owner.

SUBJECT – Application July 3, 2014 – Special Permit (§73-621) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141(b)). R4 zoning district.

PREMISES AFFECTED – 1245 East 32nd Street, east side of East 32nd Street 350’, Block 07650, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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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179-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Lillian Romano and Elliot Romano, owners.

SUBJECT – Application July 29, 2014 – Special Permit (§73-622) for the enlargement and conversion of an existing two family residence to single family residence contrary to the rear yard requirement (ZR 23-47). R5 zoning district.

PREMISES AFFECTED – 1937 East 14th Street, east side of East 14th Street between Avenue S and Avenue T, Block 07293, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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

229-14-BZ

APPLICANT –Jeffery A. Chester/GSHLLP, for Marmel Realty Associates Corp., owner; Lucille Roberts Health Club, Queens, LLC, lessee.

SUBJECT – Application September 23, 2015 – Special Permit (§73-36) to seek the legalization of an existing physical culture establishment (*Lucille Roberts*). C4-3A zoning district.

PREMISES AFFECTED – 55-05 Myrtle Avenue, corner of Madison Street and St. Nicholas Avenue, Block 03450, Lot 01, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to November 17, 2015, at 10 A.M., for continued hearing.

239-14-BZ

APPLICANT – Eric Palatnik, P.C., for Peter Haskopoulos, owner.

SUBJECT – Application October 1, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (ZR 23-141) and side yards (ZR 23-461). R-2 Special Bay Ridge zoning district.

PREMISES AFFECTED – 8008 Harber View Terrace, between 80th Street and 82nd Street, Block 05975, Lot 0076, Borough of Brooklyn.

COMMUNITY BOARD #10BK

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

318-14-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Leemilts Petroleum Inc., owner; Capitol Petroleum Group, lessee.

SUBJECT – Application December 5, 2014 – Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on October 27, 1987; Waiver of the Rules. C1-2 in R5 zoning district.

PREMISES AFFECTED – 1672-1680 86th Street aka 1-17 Bay 14th Street, south East Corner of Bay 14th Street, Block 06365, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to November 17, 2015, at 10 A.M., for continued hearing.

75-15-BZ

APPLICANT – Sheldon Lobel, PC, for TEP Charter School Assistance, Inc., owner.

SUBJECT – Application April 3, 2015 – Variance (§72-21) to permit the construction of a school (UG 3) (*TEP Charter School*) contrary to front setback requirements (§24-522). C1-4/R7-2 zoning district.

PREMISES AFFECTED – 153-157 Sherman Avenue, 100' east of the intersection of Academy Street and Sherman Avenue, Block 02221, Lot 0005, Borough of Manhattan.

COMMUNITY BOARD #12M

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.

Ryan Singer, Executive Director