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# BULLETIN

OF THE  
NEW YORK CITY BOARD OF STANDARDS  
AND APPEALS

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April 8, 2015

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## DIRECTORY

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**65-15-BZ**

361 Central Park West, northwest corner of Central Park West and West 96th Street, Block 01832, Lot(s) 0029, Borough of **Manhattan, Community Board: 7**. 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. R10A district.  
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**66-15-A**

361 Central Park West, northwest corner of Central Park West and West 96th Street, Block 01832, Lot(s) 0029, Borough of **Manhattan, Community Board: 7**. 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. R10A district.  
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**67-15-BZ**

338 West 23rd Street, south side of West 23rd Street between 8th and 9th Avenues, Block 00746, Lot(s) 0053, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-201) to permit the legalization of a theater (Cell Theatre) with a capacity of not more than 500 persons in an existing building. C1-6A zoning district C1-6A district.  
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**68-15-A**

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**69-15-BZ**

245 Page Avenue, Page Avenue between Richmond Valley Road and Amboy Road, Block 08008, Lot(s) 74, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) a proposed eating and drinking establishment with accessory drive through facility, located within an R3X/C1-1/SRD zoning district. R3X/C1-1/SRD district.  
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**70-15-BZ**

38-50 Cooper Square, Situated on the West Side of Cooper Square, 326.79 feet south of the corner formed by the intersection of Cooper Square and Astor Place, Block 0544, Lot(s) 7503/aka38, Borough of **Manhattan, Community**

**Board: 2**. Variance (§72-21) with an SOC companion(14-10-BZ) to construct a multifunctional Gymnasium with appropriate floor-to-ceiling heights on the fourth floor of an existing school building presently housing Grace Church School high school division, located wit M1-5B district.  
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**71-15-BZ**

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**73-15-A**

170 Arbutus Avenue, east side of arbutus Avenue, 513.26 ft. north of intersection of Arbutus Avenue and Louise Street, Block 06552, Lot(s) 0058, 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. R3X (SRD) district.  
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**74-15-A**

176 Arbutus Avenue, east side of arbutus Avenue, 513.26 ft. north of intersection of Arbutus Avenue and Louise Street, Block 06552, Lot(s) 0060, 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. R3X (SRD) district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**APRIL 21, 2015, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 21, 2015, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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**SPECIAL ORDER CALENDAR**

**1207-66-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Apple Art Supplies of New York, LLC., owner.  
SUBJECT – Application December 10, 2014 – Extension of Term of a previously granted variance for the continued operation of a UG6 art supply and bookstore which expired July 5, 2012; Waiver of the Rules. R6 zoning district.  
PREMISES AFFECTED – 305 Washington Avenue aka 321 DeKalb Avenue, northeast corner of Washington Avenue & DeKalb Avenue, Block 1918, Lot 7501, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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**APRIL 21, 2015, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, April 21, 2015, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

**ZONING CALENDAR**

**30-14-BZ**

APPLICANT – Eli Katz of Binyan Expediting, for Cong. Machine Chaim, owner; Yeshiva Bais Sorah, lessee.  
SUBJECT – Application February 11, 2014 – Variance (§72-21) proposed enlargement to an existing school (Use Group 3) is contrary to §§42-00 & 43-43. M1-1 zoning district.  
PREMISES AFFECTED – 6101 16th Avenue aka 1602 61st Street aka 1601 62nd Street, north east corner of 62nd Street and south east side of 16th Avenue, Block 5524, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

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**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 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**

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**231-14-BZ**

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

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**248-14-BZ**

APPLICANT – Slater & Beckerman, P.C., for KIOP Forest Avenue L.P., owner; Fitness International LIC aka LA Fitness, lessee.  
SUBJECT – Application October 24, 2014 – Special Permit (§73-36) to allow the operation of a new physical culture establishment (*LA Fitness*) in the existing building. C4-1 zoning district.  
PREMISES AFFECTED – 1565 Forest Avenue, Forest Avenue, Between Barrett and Decker Avenues, Block 1053, Lot (s) 130, 133, 138, 189, 166, Borough of Staten Island.  
**COMMUNITY BOARD #1SI**

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**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**

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*Ryan Singer, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, MARCH 31, 2015  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**76-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Alexander and Inessa Ostrovsky, owners.

SUBJECT – Application April 25, 2014 – Amendment to modify the previously granted special permit (§73-622) for the enlargement of an existing single-family detached residence. R3-1 zoning district.

PREMISES AFFECTED – 148 Norfolk Street, west side of Norfolk Street between Oriental Boulevard and Shore Boulevard, Block 8756, Lot 18, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, this is an application for a re-opening and an amendment to allow certain modifications, including an increase in floor area, to a special permit authorizing the enlargement of a single-family home within a flood zone; and

WHEREAS, a public hearing was held on this application on August 19, 2014, after due notice by publication in *The City Record*, with continued hearings on September 16, 2014, October 28, 2014, November 25, 2014, January 6, 2015, January 30, 2015, and March 10, 2015, and then to decision on March 31, 2015; and

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

WHEREAS, the subject site is located on the west side of Norfolk Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the site has 25 feet of frontage along Norfolk Street and approximately 3,108 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story, single-family detached home with approximately 1,385 sq. ft. of floor area (0.45 FAR); the applicant notes that the site is within Flood Zone 1 and that the existing home was damaged during Superstorm Sandy in late October, 2012; and

WHEREAS, on November 20, 2012, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-622, authorizing the enlargement of the home contrary to floor area ratio (“FAR”), open space ratio, lot coverage, and side yard regulations; and

WHEREAS, specifically, the 2012 grant authorized a two-story building with 2,806 sq. ft. of floor area (0.90 FAR), a minimum open space ratio of 54 percent, a maximum lot coverage of 46 percent, and side yards with widths of 0.7 feet and 4.4 feet; and

WHEREAS, subsequent to the grant, on January 31, 2013, Mayor Michael R. Bloomberg issued Executive Order 230 (“EO 230”), which allows buildings in certain flood-prone areas to be reconstructed and elevated contrary to the Zoning Resolution in order to enhance their flood resilience; and

WHEREAS, the applicant states that, pursuant to EO 230, the Department of Buildings (“DOB”) requires elevation of the proposed home and removal of its cellar level; accordingly, the applicant seeks to amend the grant to permit these modifications to the proposal, as well as an increase in floor area from 2,806 sq. ft. (0.90 FAR) to 3,304 sq. ft. (1.06 FAR) to accommodate an attic (the original proposal reflected only a crawl space above the second story); and

WHEREAS, the applicant states that in order to comply with this requirement, it must backfill the existing cellar, remove the existing slabs on grade, and create an open-to-air space, six feet in height, enclosed with vinyl lattice between the existing foundation walls and the floor of the first story; and

WHEREAS, the applicant notes that the proposal includes maintaining existing floor joists and existing exterior framing along the northern and southern walls of the home; and

WHEREAS, the applicant contends that the removal of the cellar eliminates 1,140 sq. ft. of floor space, which would have been used for recreation, mechanical space, and storage; as such, the applicant seeks to introduce 535 sq. ft. of floor area to the attic level of the home, to recover some of the lost space; and

WHEREAS, initially, the proposal reflected an additional 618 sq. ft. of floor area, for a total proposed floor area of 3,424 sq. ft. (1.1 FAR); and

WHEREAS, however, in response to the Board’s concerns regarding the incompatibility of the proposal with the neighborhood, the attic was reduced in height, pulled away from the street, and reduced in size; and

WHEREAS, the applicant notes and the Board agrees that the flood zone design requirements of the Building Code and Zoning Resolution will inevitably result in the construction of buildings with more apparent height than currently exist in many flood zone neighborhoods; and

WHEREAS, based on its review of the record, the Board finds that the requested amendment is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated November 20, 2012, so that as amended the resolution reads: “to permit the noted modifications, including the proposed increase in floor area; *on condition* that all work will substantially conform to drawings, filed with this application marked ‘Received March 18, 2015’ – eight (8) sheets; and *on further condition*:

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THAT the following shall be the bulk parameters of the proposed building: a maximum of 3,304 sq. ft. (1.06 FAR); a minimum open space ratio of 54 percent; a maximum lot coverage of 46 percent; and side yards with minimum widths of 0.7 feet and 4.4 feet, as illustrated on the BSA-approved drawings;

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 March 31, 2019;

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 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, March 31, 2015.

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## 545-56-BZ

APPLICANT – Eric Palatnik, P.C., for Williamsbridge Road Realty corporation, owner.

SUBJECT – Application June 12, 2014 – Extension of Term (§11-411) to seek the term of a previously granted variance for a gasoline service station and maintenance which expired October 19, 2012; Waiver of the Rules. C2-4/R5D zoning district.

PREMISES AFFECTED – 2001-2007 Williamsbridge Road aka 1131 Neil Avenue, southeast corner of Williamsbridge Road and Neil Avenue, Block 4306, Lot 20, Borough of Bronx.

### COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Laid over to April 14, 2015, at 10 A.M., for adjourned hearing.

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## 25-57-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 221-016 Merrick Blvd. Associates, LLC, owner.

SUBJECT – Application July 31, 2014 – Amendment (§11-413) to permit a change in use (UG 6 retail use) of an existing commercial building in conjunction with alteration of an existing commercial building, demolition of three existing commercial buildings and construction of a new commercial building located within a C2-3 and R3A zoning district.

PREMISES AFFECTED – 221-18 Merrick Blvd, southwest corner of intersection of Merrick Blvd. and 221st Street, Block 13100, Lot(s) 22 & 26, Borough of Queens.

### COMMUNITY BOARD #13Q

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 April 14, 2015, at 10 A.M., for decision, hearing closed.

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## 1203-65-BZ

APPLICANT – Warshaw Burstein, LLP, for NY Dealers Stations, LLC, owner.

SUBJECT – Application August 20, 2014 – Amendment of a previously approved Special Permit (§73-211) which permitted the operation of an Automotive Service Station (UG 16B) with accessory used. The amendment seeks to permit the conversion of existing services bays to an accessory convenient store. C2-2/R5 zoning district.

PREMISES AFFECTED – 1929 Bruckner Boulevard, northwest corner of the intersection formed by Virginia Avenue and Bruckner Boulevard, Block 3787, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #9BX

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 April 28, 2015, at 10 A.M., for decision, hearing closed.

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## 35-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Torath Haim Ohel Sara, owner.

SUBJECT – Application September 24, 2014 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) which permitted the legalization of an existing synagogue (Congregation Torath Haim Ohel Sara), contrary to front yard (§24-34), side yard (§24-35) and rear yard (§24-36), which expired on March 8, 2012; Amendment to permit minor changes to the construction; Waiver of the rules. R4 zoning district.

PREMISES AFFECTED – 144-11 77th Avenue, between Main Street and 147th Street, Block 6667, Lot 45, Borough of Queens.

### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over to April 21, 2015, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 126-14-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for McAllister Maritime Holdings, LLC, owner.

SUBJECT – Application June 5, 2014 – Proposed construction of a warehouse building located partially within the bed of mapped unbuilt street, pursuant Article 3 Section 35 of the General City Law. M3-1 zoning district.

PREMISES AFFECTED – 3153 Richmond Terrace, north side of Richmond Terrace at intersection of Richmond

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Terrace and Grandview Avenue, Block 1208, Lot 15, Borough of Staten Island.

## COMMUNITY BOARD #1SI

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

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 3, 2014, acting on DOB Application No. 520180508, reads in pertinent part:

1. Proposed construction of warehouse building and 1 accessory off street parking space located partially within the bed of a mapped street is contrary to section 35 of the General City Law. Obtain Board of Standards and Appeals for approval.
2. Proposed new building has Bulk non-compliances resulting from the location of such mapped street. Obtain Board of Standards and Appeals waiver pursuant to 72-01(g); and

WHEREAS, a public hearing was held on this application on March 3, 2015, after due notice by publication in *The City Record*, and then to decision on March 31, 2015; and

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

WHEREAS, this is an application to allow the construction of a one-story warehouse building that will be located partially within the bed of a mapped but unbuilt portion of Richmond Terrace, in Staten Island;

WHEREAS, Community Board 1, Staten Island, recommends approval of the instant application; and

WHEREAS, the subject site is located on the north side of Richmond Terrace at the intersection of Richmond Terrace and Grandview Avenue, in an M3-1 zoning district; and

WHEREAS, the site, which is irregularly shaped, has approximately 462 feet of frontage along Richmond Terrace and a depth of approximately 700 feet, with a lot area of approximately 368,468 sq. ft.; and

WHEREAS, the proposed development will conform and comply with all zoning regulations applicable in an M3-1 zoning district and will contain 9,975 sq. ft. of floor area, including a mezzanine (.02 FAR), which will bring the total floor area of the zoning lot, including existing and already approved structures, to 36,662.6 sq. ft. (.09 FAR) (the maximum permitted FAR for the zoning lot is 2.0); and

WHEREAS, by letter dated February 25, 2014, the New York City Fire Department (“FDNY”) states that it has no objections to the proposed application; and

WHEREAS, by letter dated March 2, 2015, the New York City Department of Environmental Protection (“DEP”) states that it has no objections to the proposed application; and

WHEREAS, by letter dated January 15, 2015, the New

York City Department of Transportation (“DOT”) states that the improvement of Richmond Terrace at the site is not presently included in DOT’s Capital Improvement Program; and

WHEREAS, by letter dated January 15, 2015, DOT requests that:

The applicant must make a provision for the largest design commercial vehicle expected to access the proposed building and parking lot to enter and exit the site safely; and

WHEREAS, the Board notes that pursuant to GCL § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements; and

WHEREAS, the Board notes that pursuant to ZR § 72-01(g), the Board may waive bulk regulations where construction is proposed in part within the bed of a mapped street; such bulk waivers will be only as necessary to address non compliances resulting from the location of construction within and outside of the mapped street, and the zoning lot will comply to the maximum extent feasible with all applicable zoning regulations as if the street were not mapped; and

WHEREAS, therefore, consistent with GCL § 35 and ZR § 72-01(g), the Board finds that applying the bulk regulations across the portion of the subject lot within the mapped street and the portion of the subject lot outside the mapped street as if the lot were unencumbered by a mapped street is both reasonable and necessary to allow the proposed construction; and

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

*Therefore it is Resolved*, that the Board modifies the decision of the DOB, dated June 3, 2014, acting on DOB Application No. 520180508, by the power vested in it by Section 35 of the General City Law, and also waives the bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Section 72-01(g) of the Zoning Resolution to grant this appeal, limited to the decision noted above *on condition* that construction will substantially conform to the drawing filed with the application marked “March 18, 2015”- one (1) sheet; and *on further condition*:

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

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

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

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

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its

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jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals on March 31, 2015.

## 140-14-A

APPLICANT – Eric Palatnik, P.C., for 1016 East 13th Realty, LLC, owner.

SUBJECT – Application June 16, 2014 – Appeal seeking a determination that the owner has acquires a common law vested rights to complete construction under the prior C4-3A/R6 zoning district. R5 zoning district.

PREMISES AFFECTED – 1016 East 16th 13th Street, Block 6714, Lot 11, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

### THE VOTE TO GRANT –

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

### THE RESOLUTION –

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

WHEREAS, a public hearing was held on this application on February 10, 2015, after due notice by publication in *The City Record*, with a continued hearing March 10, 2015, and then to decision on March 31, 2015; and

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

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the west side of East 13th Street, between Avenue J and Avenue K, within an R5 zoning district; and

WHEREAS, the site has 40 feet of frontage along East 13th Street, and 4,000 sq. ft. of lot area; and

WHEREAS, under construction at the site is a five-story, mixed residential and commercial building with 10,778 sq. ft. of floor area (2.69 FAR) (8,600 sq. ft. of residential floor area (2.15 FAR) and 2,178 sq. ft. of community facility floor area (0.54 FAR)), eight dwelling units, and no accessory parking spaces (the “Building”); and

WHEREAS, the applicant represents that the Building complies with the parameters of the former C4-3 zoning district, which is an R6 equivalent, per ZR § 35-23(a); and

WHEREAS, on December 29, 2005, the Department of Buildings (“DOB”) issued New Building Permit No. 302056343-01-NB (hereinafter, the “New Building Permit”) authorizing construction of the Building; and

WHEREAS, on April 5, 2006, (hereinafter, the

“Enactment Date”), the City Council voted to adopt the Midwood Rezoning, which rezoned the site from C4-3 to R5; and

WHEREAS, as a result of the Midwood Rezoning, the Building no longer complies with following zoning regulations: (1) total FAR (a maximum total FAR of 2.0 is permitted, 2.69 FAR is proposed); (2) residential FAR (a maximum residential FAR of 1.25 is permitted, 2.15 FAR is proposed); (3) maximum street wall height (a maximum street wall height of 30’-0” is permitted, a street wall height of 45’-0” is proposed); (4) maximum building height (a maximum building height of 40’-0” is permitted, a building height of 55’-0” is proposed); (5) lot coverage (a maximum lot coverage of 92 percent is permitted, 100 percent lot coverage is proposed); and (6) side yards (two side yards with minimum widths of 8’-0” are required, no side yards are proposed); and

WHEREAS, the applicant represents that, as of the Enactment Date, the applicant had obtained permits and completed, among other things, 100 percent of the foundations; as such, pursuant to ZR § 11-331, the owner had two years—until April 5, 2008—in which to complete construction pursuant to the New Building Permit and obtain a certificate of occupancy; and

WHEREAS, the applicant notes that subsequent to the Enactment Date, the owner encountered significant financial difficulties; work on the Building ceased and the site was backfilled to grade to preserve public safety and to prevent degradation of the foundation; and

WHEREAS, the applicant states that as of April 5, 2008, construction had not been completed and a certificate of occupancy had not been obtained; accordingly, on May 8, 2008, the owner filed an application under BSA Cal. No. 140-08-BZ and pursuant to ZR § 11-332, seeking reinstatement of the New Building Permit and a two-year extension of time to complete construction; and

WHEREAS, the applicant represents that BSA Cal. No. 140-08-BZ was not prosecuted and the application was withdrawn; and

WHEREAS, accordingly, the applicant now seeks recognition of its vested right to complete construction pursuant to the common law doctrine of vested rights; and

WHEREAS, as set forth below, to establish the owner’s entitlement to a vested right, the applicant relies on the work performed and the expenditures made prior to the Enactment Date, as well as the serious loss that would result from having to comply with the R5 regulations; and

WHEREAS, a threshold matter for the vested rights analysis is that a permit be issued lawfully prior to the Enactment Date and that the work was performed pursuant to such lawful permit; and

WHEREAS, by letter dated November 8, 2014, DOB confirmed that the New Building Permit was lawfully issued, authorizing construction of the Building prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a lawfully-issued permit, a common law vested right to continue construction after a change in zoning generally exists



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if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

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

WHEREAS, however, notwithstanding this general framework, as discussed by the court in *Kadin v. Bennett*, 163 AD 2d 308 (2d Dept 1990) "there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess 'a vested right'. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action"; and

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

WHEREAS, specifically, the applicant states that the work it performed constitutes substantial construction, in that, prior to the Enactment Date, it constructed 100 percent of the foundation, completed all footings and foundation walls, and constructed the elevator pit in the proposed cellar; and

WHEREAS, in support of this statement, the applicant has submitted the following: a breakdown of the construction costs by line item; copies of cancelled checks; construction permits; and photographs of the site; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before and after the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

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

WHEREAS, the applicant represents that the total expenditure paid toward the construction of the Building prior to the Enactment Date is \$296,408 (\$236,612 in hard costs and \$59,796 in soft costs), or approximately 15 percent, out of the \$1,920,000 cost to complete; and

WHEREAS, the applicant also notes that subsequent to the Enactment Date, an additional \$51,356 has been expended, including \$49,131 in soft costs; and

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

WHEREAS, the Board's consideration is guided by the percentages of expenditure cited by New York courts

considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to serious loss, the Board examines not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that the R5 floor area and yard regulations are significantly more restrictive than the C4-3 regulations; to demonstrate the serious loss inherent in complying with the current zoning regulations, the applicant explored the feasibility of the following four complying developments: (1) a community facility building with 8,000 sq. ft. of floor area (2.0 FAR) and two side yards with widths of 8'-0"; (2) a mixed residential and community facility building 8,000 sq. ft. of floor area (2.0 FAR) and side yards with widths of 8'-0"; (3) a detached single-family home with 5,000 sq. ft. of floor area (1.25 FAR) and side yards with widths of 5'-0" and 8'-0"; and (4) a semi-detached multiple dwelling with 5,000 sq. ft. of floor area (1.25 FAR), seven dwelling units, and one side yard with a width of 8'-0"; and

WHEREAS, the applicant states that scenarios (1), (2), and (3) would require removal of 100 percent of the foundation and that scenario (4) would require removal of 85 percent of the foundation; the cost of removing the entire foundation would be \$65,000 and the cost of removing 85 percent of the foundation would be \$55,250; and

WHEREAS, in addition to the costs of removing work already performed, the applicant states that the value of each of the complying buildings would be significantly less (at least \$2,500,000 less) than the value of the Building authorized; and

WHEREAS, thus, the applicant states that it would suffer a serious loss if the site was required to comply with the R5 district regulations; and

WHEREAS, the Board agrees that complying with the R5 district regulations would result in a serious economic loss for the applicant; and

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

*Therefore it is Resolved*, that this application made pursuant to the common law doctrine of vested rights requesting a reinstatement of Permit No. 302056343-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, is granted for four years from the date of this grant.

Adopted by the Board of Standards and Appeals,

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March 31, 2015.

**ACTION OF THE BOARD** – Laid over to April 14, 2015, at 10 A.M., for continued hearing.

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**166-12-A**

APPLICANT – NYC Department of Buildings.  
OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.  
SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.  
PREMISES AFFECTED – 638 East 11th Street, south side of East 11<sup>th</sup> Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.  
**COMMUNITY BOARD #3M**  
**ACTION OF THE BOARD** – Off-Calendar.

**ZONING CALENDAR**

**225-13-BZ**

APPLICANT – Eric Palatnik, P.C., for Yitta Neiman, owner.  
SUBJECT – Application July 25, 2013 – Variance (§72-21) to permit the development of a three-family, four-story residential building, contrary to use regulations (§42-00). M1-2 zoning district.  
PREMISES AFFECTED – 810 Kent Avenue, east Side of Kent Avenue between Little Nassau Street and Park Avenue, Block 1883, Lot 35, 36, Borough of Brooklyn.  
**COMMUNITY BOARD #3BK**  
**ACTION OF THE BOARD** – Application withdrawn.

Adopted by the Board of Standards and Appeals, March 31, 2015.

**107-13-A**

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.  
SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.  
PREMISES AFFECTED – 638 East 11<sup>th</sup> Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.  
**COMMUNITY BOARD #3M**  
**ACTION OF THE BOARD** – Off-Calendar.

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**254-13-BZ**

**CEQR #14-BSA-032K**  
APPLICANT – Law Office of Marvin B. Mitzner, for Moshe Packman, owner.  
SUBJECT – Application August 30, 2013 – Variance (§72-21) to permit a residential development, contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. R3-2 zoning district.  
PREMISES AFFECTED – 2881 Nostrand Avenue, east side of Nostrand Avenue between Avenue P and Marine Parkway, Block 7691, Lot 91, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**  
**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 –

**315-14-A**

APPLICANT – Mitchel A. Korbey, Esq., for 485 Seventh Avenue Associates LLC, owner.  
SUBJECT – Application November 21, 2014 – MDL (Multiple Dwelling Law (section 310(2)(a) for waivers to permit the conversion of and small addition to the building, located within an M1-6 Special Garment Center District.  
PREMISES AFFECTED – 485 Seventh Avenue, northeast corner of West 36th Street and Seventh Avenue, Block 812, Lot 1 & 2, Borough of Manhattan.  
**COMMUNITY BOARD #5M**  
**ACTION OF THE BOARD** – Laid over to April 28, 2015, at 10 A.M., for continued hearing.

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 14, 2013 acting on DOB Application No. 320590099, reads in pertinent part:

- Proposed floor area exceed[s] maximum permitted for bldg.
- Proposed 26 dwelling units exceed[s] maximum permitted for zoning lot
- Proposed bldg. exceed[s] maximum aggregate street width of 125’
- Proposed bldg. is within required front yard and is prohibited
- Proposed bldg. is built within one of two required side yards and is prohibited

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**16-15-A**

APPLICANT – Sheldon Lobel, P.C., for Alan Bigel, owner; Blue School, lessee.  
SUBJECT – Application January 23, 2015 – BCG304 to permit the redevelopment of the existing building, The Blue School, a new middle school, located within a flood hazard area. C6-2 zoning district.  
PREMISES AFFECTED – 233-235 Water Street, east of the intersection of Water Street and Beekman Street, Block 97, Lot 49, Borough of Manhattan.  
**COMMUNITY BOARD #1M**

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Proposed bldg. exceed[s] maximum height permitted; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of a four-story residential building that does not comply with the zoning regulations for floor area, maximum number of dwelling units, front yards, lot coverage and height, contrary to ZR §§ 23-141, 23-22, 23-45, and 23-631; and

WHEREAS, a public hearing was held on this application on February 11, 2014, after due notice by publication in the *City Record*, with continued hearings on June 10, 2014, July 15, 2014, September 23, 2014, November 18, 2014 and December 16, 2014, and then to decision on March 31, 2015; and

WHEREAS, Vice Chair Hinkson and Commissioners Montanez and Ottley-Brown performed an inspection of the site and premises, as well as the surrounding area and neighborhood; and

WHEREAS, Community Board 18, Brooklyn, recommends disapproval of the application; and

WHEREAS, the subject site is an irregularly shaped through lot with approximately 160 feet of frontage along Nostrand Avenue, and approximately four feet of frontage along Marine Parkway, between Avenue P, to the south, and the convergence of Nostrand Avenue and Marine Parkway, to the north, within an R3-2 zoning district; and

WHEREAS, the site has approximately 12,796 sq. ft. of lot area and is currently improved with a one-story automobile service station; and

WHEREAS, initially, the applicant proposed to construct a new 26-unit residential building containing a total of 31,201.5 sq. ft. of floor area (2.4 FAR), comprised of four stories and a penthouse; and

WHEREAS, in response to the Board's concerns, the proposal was modified such that the applicant withdrew its application for a waiver related to street width pursuant to ZR §23-463 and side yards pursuant to ZR §23-631(b) and reduced the lot coverage of the building by 40 percent in order to accommodate the required parking on the surface of the lot; and

WHEREAS, thus, the applicant now proposes to construct a four-story building with a height of forty feet (the maximum height permitted is 21'-0") consisting of 21,827 sq. ft. of floor area (1.71 FAR) (the maximum permitted FAR is 0.5), lot coverage of 56 percent (a maximum lot coverage of 35 percent is permitted), no front yard (a front yard of 15'-0" is required) containing 19 dwelling units (the maximum number permitted is seven dwelling units); and

WHEREAS, accordingly, the applicant seeks a variance to permit the proposed FAR for the building, the proposed number of dwelling units within the building, the proposed lot coverage of the building, the proposed height of the building, and the proposed non-complying front yard; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the unique physical condition that creates

practical difficulties and unnecessary hardships in developing the site in compliance with applicable regulations relate to the significant environmental contamination at the site attributable to previous automotive related uses thereof, and the cost of remediating such contamination which result in premium construction costs; and

WHEREAS, the applicant asserts that the site, which was used as a car wash facility for approximately 65 years, was subject to regular discharge of hazardous and toxic materials, and provided a Remedial Corrective Action Report prepared by Tri-State Drilling Technologies Inc., together with the applicant's Environmental Assessment Statement which establish that volatile and semi-volatile organic compounds and heavy metals were present in the soil of the site, as were petroleum products and debris associated with the aforesaid automotive use; and

WHEREAS, the applicant states that the site must be substantially excavated and soil must be removed from the site in both the as-of-right and proposed development scenarios; and

WHEREAS, specifically, the applicant states that an as-of-right multiple dwelling would require excavation and remediation of the soil under the existing building in an area of 5,741.5 sq. ft., to a depth of at least nine feet, as well as remediation under such a building to a depth of at least 12 feet, at an estimated cost of \$1,244,610; and

WHEREAS, the applicant further states that an as-of-right one and two-family home development would require excavation and remediation of the soil under the existing building in an area of 5,741.5 sq. ft., to a depth of at least nine feet, as well as remediation under such buildings to a depth of at least two feet, at an estimated cost of \$669,102; and

WHEREAS, thus, the applicant contends that there are physical conditions that create practical difficulties in constructing a building in compliance with applicable bulk regulations; and

WHEREAS, the applicant also contends that such physical conditions are unique in that they are owing to the historic use of the site for a car wash and automobile repair facility, rather than widespread neighborhood contamination; and

WHEREAS, the applicant notes that the proposed development plan requires excavation and remediation of the soil under the proposed building at a cost of \$1,441,105; and

WHEREAS, based upon the above, the Board finds that the aforementioned unique physical condition creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable bulk regulations; and

WHEREAS, to satisfy ZR § 72-21(b), the applicant assessed the financial feasibility of both an as-of-right development multiple dwelling and also three as-of-right two-story buildings with one one-story building, both with the support of a financial analysis; and

WHEREAS, the applicant states that an as-of-right multiple dwelling would be comprised of a seven unit building consisting of 6,275 sq. ft. of floor area and containing seven dwelling units with an average size of 711 square feet, and that

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such as-of-right development would result in an annualized loss of \$2,005,000, and is therefore not feasible; and

WHEREAS, the applicant states that an as-of-right development consisting of three two-story buildings and one one-story building would consist of 6,265 sq. ft. of floor area and would contain, in total, seven dwelling units with an average size of 864 square feet, and that such as-of-right development would result in an annualized loss of \$226,000, and is therefore not feasible; and

WHEREAS, the applicant states that the proposed development consisting of a single four-story building with 19 units would yield an annualized return of 1.4 percent on the total investment; and

WHEREAS, the Board inquired as to the methodology employed by the applicant in calculating the costs of the remediation necessary at the site; and

WHEREAS, the applicant clarified its methodology in evaluating the remediation costs associated with multiple scenarios, including the proposed development and the as-of-right development scenarios, which methodology includes an examination of costs including transportation and disposal costs, contractor costs, the costs of installing a vapor barrier, and the costs incurred in hiring environmental consultants, all of which are determined by the size of the project and the total volume of soil to be remediated; and

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

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

WHEREAS, the applicant states that the surrounding area consists of a mix of single-story commercial buildings, two- and three-story residential buildings and a number of four-story apartment buildings; and

WHEREAS, the applicant provided the Board with a streetscape identifying the FAR and heights of buildings in the surrounding area, which shows that buildings in the surrounding area range in height from 11 feet to 61 feet, and noted that a number of sites exceed the allowable FAR for the zoning district; and

WHEREAS, at the hearing, the Board directed the applicant to lower the initially proposed height of the building and provide parking on the surface of the site; and

WHEREAS, in response to the Board's directive, the applicant reduced the height of the proposed building, the number of proposed units within the building and provided the required parking on the surface of the lot; and

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

WHEREAS, likewise, the Board finds, per ZR § 72-

21(d), that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site, specifically the site's history of permitted industrial use as an automobile repair shop and car wash; and

WHEREAS, finally, the applicant asserts and the Board agrees that the current proposal is the minimum necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief, in accordance with ZR § 72-21(e); as noted above, the scope and number of waivers initially sought by the applicant were reduced in response to the Board's concerns; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-032K, dated August 1, 2013; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit the construction of a four-story residential building that does not comply with the zoning regulations for floor area, maximum number of dwelling units, front yards, lot coverage, and height, contrary to ZR §§ 23-141, 23-22, 23-45, and 23-631, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "March 23, 2015" – six (6) sheets; and *on further condition*:

THAT the bulk parameters of the building will be as follows: four stories with a height of 40'-0" consisting of 21,827 sq. ft. of floor area (1.71 FAR) and containing 19

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apartments, with no front yard, side yards of 20'-0" and 15'-0", a 30'-0" rear yard, lot coverage of 56 percent and 19 parking spaces;

THAT interior partitions shall be as reviewed and approved by DOB;

THAT the applicant shall comply in all respects with the February 2015 Remedial Action Report (RAP) and Construction Health and Safety Plan (CHASP) prepared in conjunction with the proposed development and shall provide a Professional Engineer-certified Remedial Closure Report to DEP upon the completion of the project, which report shall indicate that all remedial requirements as set forth in the RAP and CHASP have been properly implemented and shall include "CEQR # 14BSA032K" as a reference to DEP; and

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

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

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

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

Adopted by the Board of Standards and Appeals, March 31, 2015.

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## 46-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Boerum Place LLC, owner; for Blink Atlantic Avenue, Inc., lessee.

SUBJECT – Application March 20, 2014 – Special Permit (§73-36) to allow the physical culture establishment (*Blink Fitness*) within portions of a new commercial building. C2-4 (R6A) (DB) zoning districts.

PREMISES AFFECTED – 252/60 Atlantic Avenue, southeast corner of intersection of Atlantic Avenue and Boerum Place, Block 181, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

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

### THE VOTE TO GRANT –

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

Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated March 10, 2014, acting on DOB Application No. 320502210, reads, in pertinent part:

Physical culture establishment needs BSA approval as per ZR73-36 and ZR 12-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an R6A (C2-4) zoning district, partially within the Special Downtown Brooklyn

District, a physical culture establishment (the "PCE") on the cellar and first story of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 10, 2015, after due notice by publication in the *City Record*, and then to decision on March 31, 2015; and

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

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

WHEREAS, the subject site is a corner lot with 100.25 ft. of frontage on Atlantic Avenue, 159.42 ft. of frontage on Boerum Place, and 100 ft. of frontage on Pacific Street, within an R6A (C2-4) zoning district;

WHEREAS, the northerly half of the site, fronting on Atlantic Avenue, is located within the Special Downtown Brooklyn District; and

WHEREAS, the site contains approximately 16,240.21 sq. ft. of lot area and the subject two-story building will contain approximately 32,480 sq. ft. of floor area, with the PCE occupying 1,386 sq. feet of floor area on the first floor and 13,555 sq. ft. of floor space in the cellar of the building; and

WHEREAS, the PCE will operate as Blink Fitness; and

WHEREAS, the hours of operation for the PCE will be Monday through Saturday, from 5:30 a.m. to 11:00 p.m., and on Sunday from 7:00 a.m. to 9:00 p.m.; and

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

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

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

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

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

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

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amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within an R6A (C2-4) zoning district, partially within the Special Downtown Brooklyn District, the operation of a PCE on the first story and cellar of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “March 18, 2015, four (4) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on March 31, 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 all massages at the PCE shall be performed by New York State licensed massage therapists;

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

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by March 31, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, March 31, 2015.

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## 56-14-BZ

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

SUBJECT – Application April 10, 2014 – Re-Instatement (§11-411) of a variance which permitted an auto service station (UG16B), with accessory uses; Waiver of the Rules. C1-3/R3-A zoning district.

PREMISES AFFECTED – 161-51/6 Bailey Boulevard, northwest corner of Guy Brewer Boulevard, Block 12256, Lot 36, 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 a gasoline service station (Use Group 16) contrary to use regulations; and

WHEREAS, a public hearing was held on this application on October 28, 2014, after due notice by publication in *The City Record*, with continued hearings on January 6, 2015 and March 10, 2015, and then to decision on March 31, 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 disapproval of this application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of Guy R. Brewer Boulevard and Baisley Boulevard, within an R3A (C1-3) zoning district; and

WHEREAS, the site has 100 feet of frontage along Guy R. Brewer Boulevard, 87.28 feet of frontage along Baisley Boulevard, and approximately 9,342 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story building with 1,800 sq. ft. of floor area (0.19 FAR); the building is occupied by a gasoline service station (Use Group 16); in addition, the site has parking for six automobiles; and

WHEREAS, the Board has exercised jurisdiction over the site since April 15, 1952, when, under BSA Cal. No. 782-51-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 15 years, to expire on April 15, 1967; this grant was amended at various times; its term last expired on January 31, 1977; and

WHEREAS, on May 16, 1989, under BSA Cal. No. 847-87-BZ, the Board reinstated the grant pursuant to ZR § 11-411 and authorized the continued operation of the gasoline service station for a term of five years, to expire on May 16, 1994; and

WHEREAS, on September 19, 1995, the Board extended the term of the 1989 grant for ten years, to expire on May 16, 2004; 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 2004; in support of this statement, the applicant provided various records from Consolidated Edison, the New York Department of Environmental Protection, the New York State Department of State Division of Corporations, and

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New York City Department of Consumer Affairs; 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 gasoline 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 gasoline service station is compatible with the surrounding neighborhood and does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, the applicant states that the service station is a long-standing business, upon which the neighborhood relies; the applicant notes that uses in the immediate area are commercial in nature, as reflected by the rezoning of the site subsequent to the 1995 grant from R3-2 to R3A (C1-3); the applicant also notes that the only site directly abutting the subject site (Lot 35) is owned and controlled by the owner of the subject site; and

WHEREAS, additionally, the applicant submitted a vehicle circulation plan, which demonstrates that the operation of the site will not negatively impact traffic in the neighborhood, and agreed to direct all lighting at the site downward and away from adjacent residential uses; 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, at hearing, the Board directed the applicant to: (1) provide a security fence around adjacent Lot 35 (which the applicant states the owner of the subject site owns), remove all debris and vegetation from the lot, and install a security camera to monitor the lot; (2) provide additional landscaping along the northern boundary of the site; (3) remove all clothing donation bins from the site; (4) repair all fencing, including slats; and (5) remove all excessive signage from the site; and

WHEREAS, in response, the applicant provided photos depicting the construction of the requested security fence (including repair of the fence slats), the removal of all debris and vegetation from Lot 35, and the removal of the clothing bins and excessive signage from the site; in addition, the applicant submitted amended drawings depicting the additional landscaping, the security camera system, and all required fencing at the site; 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 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* the Rules of Practice and Procedure, and, pursuant to ZR § 11-411, *reinstates* a previously-granted variance to permit, on a site located within an R3A (C1-3) zoning district, the operation of a gasoline service station (Use

Group 16), contrary to use regulations; *on condition* that all work will substantially conform to plans, filed with this application marked ‘Received February 20, 2015’– four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of five years, to expire on March 31, 2020;

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

THAT lighting shall be directed downward and away from residential uses;

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

THAT there shall be no outdoor repairs;

THAT parking shall be limited to six passenger automobiles;

THAT there shall be no truck parking and no parking on the sidewalk;

THAT lighting shall be directed downward and away from adjoining residences;

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

THAT a certificate of occupancy shall be obtained by March 31, 2016;

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. 420932334)

Adopted by the Board of Standards and Appeals, March 31, 2015.

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**63-14-BZ  
CEQR #14-BSA-142X**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 188 W. 230th Street Corporation, owner; Atlas Athletics, Inc., lessee.

SUBJECT – Application April 23, 2014 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment (*Astral Fitness*). M1-1 zoning district. PREMISES AFFECTED – 5500 Broadway, southeast corner of intersection of Broadway and W 230th Street, Block 3264, Lot 109, Borough of Bronx.

**COMMUNITY BOARD #8BX**

**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 –

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WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 3, 2014, acting on DOB Application No. 220358146, reads, in pertinent part:

Proposed physical culture establishment is contrary to ZR 42-31 and BSA 74-00 BZ; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to legalize, on a site within an M1-1 zoning district, a physical culture establishment (the “PCE”) in the cellar of a three-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on December 16, 2014 after due notice by publication in the *City Record*, with a continued hearing on March 3, 2015, and then to decision on March 31, 2015; and

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

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, the subject site is a corner lot with 113.62 feet of frontage on Exterior Street and 110.62 feet of frontage on West 230<sup>th</sup> Street, within an M1-1 zoning district, in the Bronx; and

WHEREAS, the site contains approximately 14,765 sq. ft. of lot area and is occupied by a three-story commercial building with approximately 31,455 sq. ft. of floor area; and

WHEREAS, authorization to operate the PCE was initially granted under BSA Cal. No. 74-00-BZ, which expired on October 17, 2010 and which was not timely renewed by the applicant; and

WHEREAS, the applicant represents that the site and premises have not undergone any material changes since the initial authorization and that the operator of the facility is unchanged; and

WHEREAS, the PCE will operate as Astral Fitness; and

WHEREAS, the hours of operation for the PCE will be Monday through Friday, from 5:30 a.m. to 10:30 p.m., Saturday, from 7:00 a.m. to 8:00 p.m., and on Sunday from 7:00 a.m. to 6:00 p.m.; and

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

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

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

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

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

community; and

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

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No.14-BSA-142X, dated April 23, 2014; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to legalize, on a site within an M1-1 zoning district, the operation of a PCE in the cellar of a three-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “March 23, 2015”- Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on March 31, 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 accessibility compliance shall be as reviewed and approved by DOB;

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

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by March 31, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, March 31, 2015.

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## 122-14-BZ

APPLICANT – Lewis E Garfinkel, for Ariel Boiangiu, owner.

SUBJECT – Application October 21, 2014 – Special Permit (§73-622) for the enlargement of an existing single family semi-detached home contrary to floor area and open space ZR 23-141; side yards ZR 23-461 and less than the required rear yard ZR 23-47. R2 zoning district.

PREMISES AFFECTED – 1318 East 28th Street, west side of 28th Street 140 feet of Avenue M, Block 7663, Lot 56, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 22, 2014, acting on DOB Application No. 320595129, reads in pertinent part:

1. The proposed enlargement exceeds the 0.50 maximum permitted floor area ratio contrary to ZR 23-141(a);
2. The proposed enlargement exceeds the 150 maximum permitted open space ratio contrary to ZR 23-141(a);
3. Two side yards are required for a total of 13’-0” with any side yard a minimum width of 5’-0””; the proposed side yards are contrary to ZR 23-461(a);
4. The proposed rear yard is less than the 30 feet required contrary to ZR 23-47; and

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

WHEREAS, a public hearing was held on this application on October 21, 2014, after due notice by publication in *The City Record*, with continued hearings on November 25, 2014, January 6, 2015, February 10, 2015, and March 10, 2015, and then to decision on March 31, 2015; and

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

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

WHEREAS, the subject site is located on the east side of East 28th Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the site has 20 feet of frontage along East 28th Street and 2,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a semi-detached, two-story, single-family home with 1,372 sq. ft. of floor area (0.68 FAR); and

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

WHEREAS, the applicant now seeks to enlarge the building, resulting in an increase in the floor area from 1,372 sq. ft. (0.68 FAR) to 2,000 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant seeks to maintain and extend its non-complying side yards, which have widths of 6’-10” and 0’-0” (the home is semi-detached with the home directly south of the site); the requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each; and

WHEREAS, the applicant seeks to decrease its non-complying open space ratio from 91 percent and to 54 percent; a minimum open space ratio of 150 percent is required; and

WHEREAS, the applicant seeks to decrease its rear yard from 32’-10” to 20’-0””; the requirement is a minimum depth of 30’-0””; and

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

WHEREAS, at a hearing, the Board directed the applicant to: (1) modify the attic to reduce the apparent height and mass of the home; and (2) provide analysis of the surrounding rear yard conditions to support the assertion that a rear yard with a depth of 20’-0” is consistent with neighborhood character; and

WHEREAS, in response, the applicant modified the attic at the front and at the rear; the applicant also provided photos and a land use study, which demonstrate that the proposed rear yard depth does not negatively impact the character of the neighborhood; and

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, on a site within an R2 zoning district, the proposed enlargement of a semi-detached, two-story, single-family home, which does not comply with the zoning requirements for FAR, open space ratio, and rear and side yards, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to

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drawings as they apply to the objections above-noted, filed with this application and marked “Received March 19, 2015”– twelve (12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,000 sq. ft. (1.0 FAR), one side yard with a minimum width of 6’-10”, a minimum open space ratio of 54 percent, and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by March 31, 2019; and

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

Adopted by the Board of Standards and Appeals, March 31, 2015.

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## 143-14-BZ

### CEQR #14-BSA-182K

APPLICANT – Eric Palatnik, P.C., for Wanda Y. Ng, owner; 99 Health Club Inc., lessee.

SUBJECT – Application June 20, 2014 – Special Permit (§73-36) to allow for the proposed physical culture establishment (*99 Health Club Inc.*) in the cellar, first and second floor of two story building in an M1-1 zoning district.

PREMISES AFFECTED – 746 61st Street, between 7th and 8th Avenue, Block 5794, Lot 25, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

**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 May 9, 2014, acting on DOB Application No. 320959539, reads, in pertinent part:

Proposed Physical Culture Establishment at zoning M1-1 is not permitted as of right and a special permit by the Board of Standards and Appeals (BSA) is required as per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district, a physical culture establishment (the “PCE”) that will operate

in the cellar, ground floor, and second floor of a two-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on March 10, 2014 after due notice by publication in the *City Record*, and then to decision on March 31, 2015; and

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

WHEREAS, Community Board 7, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site has 40 feet of frontage on the south side of 61<sup>st</sup> Street, between 7<sup>th</sup> Avenue and 8<sup>th</sup> Avenue, within an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site contains approximately 4,934 sq. ft. of lot area and is occupied by a two-story and cellar commercial building with approximately 4,419 sq. ft. of floor area; and

WHEREAS, the proposed PCE will occupy a total of 4,414 sq. ft. of lot area on the first floor of the building and 4,608.33 sq. ft. of floor space in the cellar of the building;

WHEREAS, the second floor of the building will be utilized solely for mechanical equipment and will not be occupied by the proposed PCE;

WHEREAS, the PCE will operate as 99 Health Club, Inc.; and

WHEREAS, the hours of operation for the PCE will be seven days a week, 24 hours per day; and

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

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

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

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

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

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

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 14-BSA-182K, dated June 20, 2014; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination prepared in

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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 an M1-1 zoning district, the operation of a PCE in the cellar and first floor of a two-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "March 17, 2014"- six (6) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on March 31, 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 all massages at the PCE shall be performed by New York State licensed massage therapists;

THAT accessibility compliance shall be as reviewed and approved by DOB;

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

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by March 31, 2019;

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

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

THAT DOB must ensure compliance with all of the applicable provisions of the Zoning Resolution (including those provisions related to parking at the subject site), 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, March 31, 2015.

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**241-14-BZ**  
**CEQR #15-BSA-081M**

APPLICANT – Warshaw Burstein, LLP, for Tiago Holdings, LLC, owner; East River Plaza Fitness Group, LLC, lessee.

SUBJECT – Application October 3, 2014 – Special Permit (§73-36) to allow the operation of physical culture establishment (*Planet Fitness*) on a portion of the third floor of the existing large scale development. C4-4 zoning district. PREMISES AFFECTED – 517 East 117th Street, located within a large scale development located along FDR Drive between East 116th Street and 119th Streets, Block 1715,

Lot(s) 22, 8, Borough of Manhattan.

**COMMUNITY BOARD #11M**

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated September 30, 2014, acting on DOB Application No. 104161835, reads, in pertinent part:

Physical Culture Establishment is not permitted as-of-right in C4-4 district (ZR 32-10); and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to legalize, on a site within a C4-4 zoning district, the operation of a physical culture establishment (the "PCE") in a portion of the third story of a six-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 10, 2015 after due notice by publication in the *City Record*, and then to decision on March 31, 2015; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Vice-Chair Hinkson; and

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

WHEREAS, the subject site spans Blocks 1715 and 1716, with frontages along Franklin Delano Roosevelt Drive, East 117th Street, East 118th Street, and East 119th Street and 176,074 sq. ft. of lot area; it is known as the East River Plaza; and

WHEREAS, the site was developed pursuant to a 2007 City Planning Commission Special Permit (Lead ULURP Appl. No. C990098 ZMM) that rezoned the site from M2-2 and R7-2 to C4-4; and

WHEREAS, the site is occupied by two six-story commercial buildings (a retail and wholesale shopping center and a public parking garage) connected by a footbridge; the site has a total of 507,265 sq. ft. of floor area and 1,248 parking spaces; and

WHEREAS, the PCE occupies 14,477 sq. ft. on the third story of the retail and wholesale building; and

WHEREAS, the PCE operates as Planet Fitness; and

WHEREAS, the hours of operation for the PCE will be seven days a week, 24 hours per day; 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 hearing, the Board directed the

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applicant to: (1) confirm that a fire alarm and sprinkler systems have been installed within the PCE and are operational; and (2) amend the proposed drawings to reflect the proposed sound attenuation measures; and

WHEREAS, in response, the applicant confirmed that the fire alarm and sprinkler systems have been installed and are operational; in addition, the applicant submitted amended drawings that reflect the proposed sound attenuation measures; and

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

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

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

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

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 15-BSA-081M, dated October 3, 2014; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to legalize, on a site within a C4-4 zoning district, the operation of a physical culture establishment (the "PCE") in a portion of the third story of a six-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "March 26, 2015"- Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on January 1, 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 accessibility compliance shall be as reviewed and approved by DOB;

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

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

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be

signed off by DOB and all other relevant agencies by March 31, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, March 31, 2015.

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## **350-12-BZ**

APPLICANT – Sheldon Lobel, P.C., for Overcoming Love Ministries, owner.

SUBJECT – Application December 31, 2012 – Variance (§72-21) to permit the construction of an 11-story community facility/residential building, contrary to use regulations (§42-00). M3-1 zoning district.

PREMISES AFFECTED – 5 32nd Street, southeast corner of 2nd Avenue and 32nd Street, Block 675, Lot 1, Borough of Brooklyn.

## **COMMUNITY BOARD #7BK**

**ACTION OF THE BOARD** – Laid over to May 19, 2015, at 10 A.M., for continued hearing.

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## **264-13-BZ**

APPLICANT – Francis R. Angelino, Esq., for David Lowenfeld, owner; BB Fitness dba Brick Crossfit NYC, lessee.

SUBJECT – Application September 6, 2013 – Special Permit (§73-36) to legalize a physical culture establishment (*Brick CrossFit*) on the ground floor and cellar of an existing 10-story building. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, north side, West 17th Street, between 7th & 8th Avenues, Block 767, Lot 6, Borough of Manhattan.

## **COMMUNITY BOARD #4M**

**ACTION OF THE BOARD** – Laid over to May 12, 2015, at 10 A.M., for continued hearing.

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## **59-14-BZ**

APPLICANT – Caroline G. Harris, for School Settlement Association Ink., owner.

SUBJECT – Application April 10, 2014 – Variance (§72-21) to permit the construction of a four-story plus penthouse community facility (UG 4), contrary to (24-11). R6B zoning district.

PREMISES AFFECTED – 114-122 Jackson Street, located on the SW corner of the Intersection of Jackson Street and

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# MINUTES

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Manhattan Avenue. Block 2748, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to April 28, 2015, at 10 A.M., for continued hearing.  
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**124-14-BZ**

APPLICANT – Sheldon Lobel, P.C., for Yuriy Teyf, owner.  
SUBJECT – Application June 2, 2014 – Special Permit (§73-622) for the enlargement of a single-family detached residence to be converted into a two-family home contrary to floor area, lot coverage and open space (ZR §23-141); side yards (ZR §23-461) and less than the required rear yard (ZR §23-47). R4 zoning district.

PREMISES AFFECTED – 1112 Gilmore Court, southern side of Gilmore Court between East 11th Street and East 12th Street, Block 7455, Lot 74, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to May 12, 2015, at 10 A.M., for continued hearing.  
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**238-14-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for DDG 100 Franklin, LLC., owner.

SUBJECT – Application October 1, 2014 – Variance (§72-21) to permit the construction of two mixed residential and commercial buildings on a single zoning lot contrary to §§35-21 & 23-145 (Lot Coverage), 35-24c (Height and setback), 35-52 and 33-23 (minimum width of open area along a side lot line and permitted obstruction regulations), 35-24b (Street wall location). C6-2A Zoning District, Historic District.

PREMISES AFFECTED – 98-100 Franklin Street, Bounded by Avenue of the Americas, Franklin and White Streets, West Broadway, Block 00178, Lot 0029, Borough of Manhattan.

**COMMUNITY BOARD #1M**

**ACTION OF THE BOARD** – Laid over to April 21, 2015, at 10 A.M., for continued hearing.  
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**REGULAR MEETING**

**TUESDAY AFTERNOON, MARCH 31, 2015**

**1:00 P.M.**

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

**ZONING CALENDAR**

**303-13-BZ**

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

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

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

**COMMUNITY BOARD #1BX**

**ACTION OF THE BOARD** – Laid over to June 2, 2015, at 10 A.M., for continued hearing.  
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**147-14-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Iris E. Shalam, owner.

SUBJECT – Application June 24, 2015 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area ZR 23-141; and less than the required rear yard ZR 23-47. R3-1 zoning district.

PREMISES AFFECTED – 4167 Ocean Avenue, east side of Ocean Avenue between Hampton Avenue and Oriental Boulevard, Block 8748, Lot 227, 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 April 28, 2015, at 10 A.M., for decision, hearing closed.  
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**171-14-A & 172-14-BZ**

APPLICANT – Law Office of Steven Simicich, for Dxngmnt2, LLC, owner.

SUBJECT – Application July 22, 2014 – Proposed construction of a single family detached home on the site which a portion is located within the bed of a mapped street, pursuant to the General City Law 35 and requires a waiver under ZR Section 72-01(g). Variance (§72-21) to allow for the reduction in the required front yard fronting from 10' to 4'. R3A zoning district.

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

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# MINUTES

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## **COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to April 21, 2015, at 10 A.M., for continued hearing.  
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## **204-14-BZ**

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

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

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

## **COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to May 12, 2015, at 10 A.M., for continued hearing.  
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*Ryan Singer, Executive Director*