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# BULLETIN

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

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

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Volume 100, No. 45

November 25, 2015

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### DIRECTORY

MARGERY PERLMUTTER, *Chair*

SUSAN M. HINKSON, *Vice-Chair*

DARA OTTLEY-BROWN

EILEEN MONTANEZ

SHAMPA CHANDA

*Commissioners*

Ryan Singer, *Executive Director*

David Schnakenberg, *Counsel*

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<b>OFFICE -</b>	<b>250 Broadway, 29th Floor, New York, N.Y. 10007</b>
<b>HEARINGS HELD -</b>	<b>22 Reade Street, Spector Hall, New York, N.Y. 10007</b>
<b>BSA WEBPAGE @</b>	<b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b>

<b>TELEPHONE - (212) 386-0009</b>
<b>FAX - (646) 500-6271</b>

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340-05-BZ	270 West 17 <sup>th</sup> Street, aka 124-128 Eighth Avenue, Manhattan
472-37-BZ	2765 Cropsey Avenue, Brooklyn
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35-14-BZ	40-06 Astoria Boulevard, Queens
240-14-BZ	1620 Shore Boulevard, Brooklyn

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# DOCKETS

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New Case Filed Up to November 17, 2015  
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**250-15-A**

7 Wavecrest Street, Beginning at the point on the North side of Wavecrest St., from the corner form by the intersection of Wavecrest St. and Dustan St., Block 4081, Lot(s) 035, Borough of **Staten Island, Community Board: 2**. GCL36 propose to build a single family residence not fronting on a un-mapped street, contrary to Article 36 of the New York General City Law. R3X district.  
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**251-15-BZ**

127 West 26th Street, Northerly side of West 26th Street between Avenue of the Americas and Seventh Avenue, Block 0802, Lot(s) 22, Borough of **Manhattan, Community Board: 4**. Special Permit ( 73-36) to allow the operation of a Physical Culutre Establishment (PCE) spa in a portion of the first floor at the subject premises, located within an M1-6 zoning district. M1-6 district.  
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**252-15-BZ**

1120 East 24th Street, West side of East 24th Street between Avenue K and Avenue L, Block 7623, Lot(s) 053, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit an enlargement of an existing two-family home to be converted to a single family home contrary to floor area and open space (ZR 23-141(b)); side yard (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zonin R2 district.  
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**253-15-BZ**

99 East 122nd Street, Block 07586, Lot(s) 36, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); and less than the minimum rear yard (ZR 23-47). R2 zoning district. R2 district.  
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**254-15-BZ**

98 Avenue A, East side of Avenue A, 36.87 feet south of intersection with East 7th Street, Block 0402, Lot(s) 0003, Borough of **Manhattan, Community Board: 3**. Special Permit (§73-36) to allow for a physical culture establishment (PCE) to be operated as Blink Fitness within a new cellar and eight-story mixed-use building. C2-5/R7A zoning district. C2-5(R7A) district.  
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**255-15-A**

106 Ebbitts Street, South side Ebbitts Street 0 feet East of Manila Place, Block 4056, Lot(s) 086, Borough of **Staten Island, Community Board: 2**. GCL35, proposed enlargement located partly within the bed of a mapped street, an original one story house, located within an R3-1 zoning district, contrary to Section 35, Article 3 of the General City Law. R3-1 district.  
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**256-15-BZ**

56-02 Roosevelt Avenue, Southeast corner of intersection of Roosevelt Avenue and 56th Street, Block 1327, Lot(s) 035, Borough of **Queens, Community Board: 2**. Special Permit (§73-36) to allow for a physical culture establishment (PCE) to operate as a Blink Fitness within an existing commercial building. C2-3/R6 zoning district. C2-3(R6) 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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## REGULAR MEETING DECEMBER 8, 2015, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 8, 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

#### 70-15-BZ/14-10-BZII

APPLICANT – Friedman & Gotbaum LLP by Shelly S. Friedman, Esq., for Cooper Square Assoc. Limited Partnership, owner; Grace Church School, lessee.

SUBJECT – Application March 30, 2015 – Variance (§72-21) with an SOC companion(14-10-BZII) 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. Extension of Time to Complete Construction (§73-01) for a previously granted Special Permit (§73-19). M1-5B zoning district.

PREMISES AFFECTED – 38-50 Cooper Square, Block 0544, Lot 7503/aka 38, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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### APPEALS CALENDAR

#### 83-15-A thru 86-15-A

APPLICANT – Jesse Masyr, Esq. Fox Rothschild, LLP, for 1-10 Bush Terminal, LP, owner.

SUBJECT – Application April 16, 2015 – Proposed construction to build in the bed of a privately owned mapped street and to build an elevated pedestrian walkway and loading docks to improve pedestrian and vehicle safety and the flow of traffic. M3-1 zoning district.

PREMISES AFFECTED –

220 and 219 36<sup>th</sup> Street, Block 0695, Lot 20; Block 0691, Lot 1, 33, 67, 87, 35 35<sup>th</sup> Street, Block 0687, Lot 1, 67, 87, 34<sup>th</sup> Street, Block 0683, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

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#### 181-15-A thru 186-15-A

APPLICANT – Eric Palatnik, P.C., for Joseph McGinn, owner.

SUBJECT – Application August 13, 2015 – Proposed construction of single family residences not fronting on a legally mapped street, contrary to General City Law Section 36. R1-1 zoning district.

PREMISES AFFECTED – 7, 11, 15, 23, 27 Carriage Court, Block 866, Lot(s) 389, 388, 387, 386, 385, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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## REGULAR MEETING DECEMBER 8, 2015, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 8, 2015, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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### ZONING CALENDAR

#### 57-15-BZ

APPLICANT – Eric Palatnik, P.C., for Yossi Toleando, owner.

SUBJECT – Application March 13, 2015 – Variance (§72-21) to permit the development of a three-story, three family residential and to waive the side yard open space of the existing premises. R5/C1-3 zoning district.

PREMISES AFFECTED – 482 Logan Street, between Pitkin Avenue and Belmont Avenue Block 04227, Lot 30, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

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*Ryan Singer, Executive Director*

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## REGULAR MEETING TUESDAY MORNING, NOVEMBER 17, 2015 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 241-47-BZ

APPLICANT – Sheldon Lobel, P.C., for Naohisa Matsumoto/Yasuko Matsumoto, owners.

SUBJECT – Application April 3, 2015 – Amendment (§11-413) of a previously approved variance which permitted the operation of Contractor’s Establishment (Use Group 16A). The Amendment seeks to change the use to permit Custom Woodworking and furniture shop (Use Group 16A) and Art Studio (Use Group 9A); Extension of Term of the variance which expired on January 29, 2014 for an additional 10 years; Waiver of the Rules of Practice and Procedure. R5B zoning district.

PREMISES AFFECTED – 16-23/25 Hancock Street, approximately 24-5' northeast of the intersection formed by Wyckoff Street and Hancock Street, Block 03548, Lot 0097, Borough of Queens.

#### COMMUNITY BOARD #5Q

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

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, this is an application to waive the Rules of Practice and Procedure, legalization of a change in use of the ground floor to an art studio (Use Group 9) and custom woodworking shop (Use Group 16), and an extension of the term of a variance previously granted by the Board under the subject calendar number, which expired on January 29, 2014; and

WHEREAS, a public hearing was held on this application on November 17, 2015, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, Community Board 5, Queens, recommends approval of this application provided that the extension be for a ten (10) year term; and

WHEREAS, the subject site is located on the northwest side of Hancock Street, between Wyckoff Avenue and Cypress Avenue, in an R5B zoning district, in Queens; and

WHEREAS, the site has approximately 50 feet of

frontage along Hancock Street, 5,004 sq. ft. lot area, and is occupied by a two (2) story plus cellar mixed-used building with an art studio and custom woodworking shop located on the ground floor and one 1,250 sq. ft. residential unit located on the second floor; and

WHEREAS, the applicant represents that the art studio and custom woodworking shop are operated by the applicants and property owners who also reside in the second floor residential unit on the subject premises; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 4, 1948 when, under the subject calendar number, the Board granted a variance permitting the extension of an existing structure housing a knitting mill for a term of fifteen (15) years, expiring May 4, 1963; and

WHEREAS, subsequently, the grant has been amended and the term extended, under the subject calendar number, by the Board at various times; and

WHEREAS, the grant was most recently extended on March 24, 2009, under the subject calendar number, when the Board, upon waiving its Rules of Practice and Procedure, reopened and issued a Type II determination to permit the change of use at the subject premises from a knitting mill (Use Group 17) to a contractor’s establishment (Use Group 16) and granted an extension of the term of the variance for an additional ten (10) years, expiring January 29, 2014; and

WHEREAS, the applicant now seeks, upon a waiver of the Board’s Rule of Practice and Procedure § 1-07.3(b)(2), (1) a legalization of a change in use of the ground floor from a contractor’s establishment (Use Group 16) to an art studio (Use Group 9) and custom woodworking shop (Use Group 16) and (2) an extension of the term of a variance for an additional ten (10) years; and

WHEREAS, as required under Rule § 1-07(b)(2), the applicant has demonstrated that the use of the ground floor as a non-conforming use has been continuous since the expiration of the term of the grant and that substantial prejudice would result without such a waiver; and

WHEREAS, pursuant to ZR § 11-413, the Board may permit a use to be changed to another non-conforming use permitted under the provisions applicable to non-conforming uses, provided that the Board finds that such change will not impair the essential character or the future use or development of the surrounding area; pursuant to ZR § 52-322(a), a non-conforming use listed in Use Group 16 not subject to the provisions of ZR §§ 52-32 (Land with Minor Improvements) or 52-331 (Buildings Designed for Residential Use) may be changed to any use listed in Use Group 9; and pursuant to ZR § 52-322(b), a non-conforming use listed in Use Group 16 may be changed to any other use listed in Group 16 provided that such changed use conforms to all regulations on performance standards applicable in M1 Districts and, whenever located within a completely enclosed building, no activity related to such changed use, including the storage of materials or products, is located outside of such building; and

WHEREAS, the subject lot does not qualify as “land with minor improvements” and the two (2) story plus cellar building located thereon was not “designed for residential use” as those terms are defined in ZR § 12-10, therefore, the prior

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contractor's establishment (Use Group 16) use was not subject to the provisions of ZR §§ 52-32 and 52-331 and may be changed to any use listed in Use Group 9; and

WHEREAS, an architect confirms, by letter dated September 15, 2014, that the custom woodworking shop complies with the performance standards applicable in M1 Districts and the applicant represents that no activity related to the custom woodworking shop, including the storage of materials or products, will be located outside of the building on the subject premises, therefore, the non-conforming contractor's establishment (Use Group 16) use may be changed to non-conforming custom woodworking shop (Use Group 16) use; and

WHEREAS, the applicant further represents that the art studio (Use Group 9) is a significantly less intensive use than the previously approved contractor's establishment (Use Group 16); that the art work produced onsite consists of fine art abstract paintings using only water-based mediums and paints and the custom furniture is completed on a commissioned basis with no walk-in retail or storefront elements to the site; that the hours of operation for the ground floor uses are Monday through Friday 7:00 a.m. to 5:00 p.m., consistent with limitation set forth in the Board's March 24, 2009 decision permitting the change of use at the premises from knitting mill (Use Group 17) to contractor's establishment (Use Group 16); that refuse is stored in a dumpster located within the subject premises; and that no hazardous or flammable liquids are stored on site; and

WHEREAS, in response to the Board's questions at hearing regarding fire safety measures, the applicant states that the subject building has smoke detectors, a sprinkler system that is maintained regularly and inspected on a monthly basis, mounted fire extinguishers throughout the building that are serviced and checked on an annual basis, and illuminated exit signs installed at the front and rear of the building; and

WHEREAS, in response to the Board's questions at hearing regarding an exhaust system, the applicant represents that there is a central exhaust system connected to all woodworking machinery that collects dusts and debris; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, based on the foregoing, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 11-413 and 11-411, and the request legalization of change in use and extension of term are 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, *reopens* and *amends* the resolution, dated May 4, 1948, to permit the change in use from contractor's establishment (Use Group 16) so that as amended this portion of the resolution reads: "to permit the change in use at the premises from contractor's establishment (Use Group 16) to art studio (Use Group 9) and custom woodworking shop (Use Group 16), and to grant an extension of term for a period of ten (10) years to expire on January 29, 2024"; *on condition* that all work will substantially conform to drawings, filed with this application marked "Received September 25, 2015"-Six (6) sheets; and *on further*

*condition*:

THAT this grant shall be limited to a term of ten (10) years, to expire January 29, 2024;

THAT the above conditions will be noted in the Certificate of Occupancy;

THAT a Certificate of Occupancy will be obtained by November 17, 2017;

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);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; 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. 420604082)

Adopted by the Board of Standards and Appeals, November 17, 2015.

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## 248-03-BZ

APPLICANT – Troutman Sanders LLP, for Ross & Ross, owner; Bally Total Fitness of Greater NY, Inc., lessee.

SUBJECT – Application February 5, 2015 – Extension of time to obtain a Certificate of Occupancy of a previously approved Variance (72-21) which permitted the operation of a Physical Cultural Establishment (*Bally's Total Fitness*) which expired on January 22, 2015; Amendment to reflect a change in ownership. C1-5/R8A & R7A zoning district.

PREMISES AFFECTED – 1915 Third Avenue, southeast corner of East 106th Street and Third Avenue, Block 01655, Lot 45, 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, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and amendment to reflect a change in ownership, as well as an extension of time to obtain a Certificate of Occupancy for a physical culture establishment ("PCE"), which expired on January 22, 2015; and

WHEREAS, a public hearing was held on this application on November 17, 2015, after due notice by publication in *The City Record*, and then to decision on the same day; and

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

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

WHEREAS, the subject site is located on the southeast corner of Third Avenue and East 106th Street, partially within an R8A (C1-5) zoning district and partially within an R7A zoning district, in Manhattan; and

WHEREAS, the site has approximately 101 feet of frontage along Third Avenue, 160 feet of frontage along East 106th Street, 16,139 sq. ft. of lot area, and is occupied by a two (2) story commercial building; and

WHEREAS, the PCE occupies 10,137 sq. ft. on the cellar level, 5,261 sq. ft. on the ground floor, and 11,189 sq. ft. on the second floor (for a total of 26,587 sq. ft.) in the existing building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 27, 2004, when, under the subject calendar number, the Board granted an application pursuant ZR § 72-21 permitting the operation of a PCE in the existing commercial building on the subject premises, subject to a term of ten (10) years and requesting that any change in ownership or operating control of the PCE required prior application to and approval from the Board; and

WHEREAS, the applicant represents that the premises were previously owned by Bally Total Fitness of Greater New York and is now owned by B3ACQ, LLC; and

WHEREAS, on December 10, 2013, under the subject calendar number, the Board extended the term of the variance, subject to expiration on December 10, 2023, and requiring that a Certificate of Occupancy be obtained by May 10, 2014; and

WHEREAS, on July 12, 2014, under the subject calendar number, the Board extended the time to obtain a Certificate of Occupancy to January 22, 2015; and

WHEREAS, the applicant now seeks: (1) an extension of an additional one (1) year from the date of the approval to obtain the Certificate of Occupancy; and

WHEREAS, the applicant represents that the issuance of the Certificate of Occupancy has been delayed because of existing building violations, that the Department of Buildings (“DOB”) inspected the site on or around January 13, 2015 and issued five objections, and that all building violations have now been cured; and

WHEREAS, based upon its review of the record, the Board finds that recognition of the change in ownership and the requested extension of time to obtain a Certificate of Occupancy 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 January 27, 2004, so that as amended this portion of the resolution reads: “to reflect the change of ownership to B3ACQ, LLC and grant an extension of time to obtain a Certificate of Occupancy to November 17, 2016; and *on further condition*:

THAT a Certificate of Occupancy for the premises shall be obtained by November 17, 2016;

THAT the premises are owned by B3ACQ, LLC;

THAT there shall be no further change in ownership or

operating control of the physical culture establishment without prior application to and approval from the Board;

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

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, November 17, 2015.

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## 183-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Dynasty 23 Street Realty, Incorporated, owner; Horizon 881 LLC, lessee.

SUBJECT – Application February 25, 2015 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of physical culture establishment on the second floor of a five story commercial building, which expired on October 26, 2014; Amendment to permit the change in operation as well as minor deviations from the previously approved plans; Waiver of the Rules. C6-3X zoning district.

PREMISES AFFECTED – 206 West 23rd Street, southside of West 23rd Street between 7th Avenue and 8th Avenue, Block 00772, Lot 52, Borough of Manhattan.

## COMMUNITY BOARD #4M

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an extension of the term of a special permit previously granted by the Board under the subject calendar number, which expired on October 26, 2014, an amendment of the special permit to legalize a change in operation of the physical culture establishment (PCE) and modify the days of operation of the PCE from five days a week to seven days a week, and an approval of modifications to the previously approved BSA plans; and

WHEREAS, a public hearing was held on this application on October 27, 2015 after due notice by publication in *The City Record*, and then to decision on November 17, 2015 and

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

WHEREAS, the subject site is located on the south side of West 23<sup>rd</sup> Street between Seventh and Eighth Avenues, within a C6-3X zoning district, in Manhattan; and

WHEREAS, the site has approximately 25 feet of

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frontage along West 23<sup>rd</sup> Street and 2,469 sq. ft. of lot area; and

WHEREAS, the site is occupied by a five-story commercial building with a total floor area of 9,881 square feet; and

WHEREAS, the subject PCE occupies approximately 1,880 square feet on the second floor of the building; and

WHEREAS, on October 26, 2004, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36 to permit the subject PCE, subject to a ten (10) year term; and

WHEREAS, the term of the grant expired on October 26, 2014 and was not timely renewed; and

WHEREAS, accordingly, the applicant now seeks a waiver of BSA Rules of Practice and Procedure §1-07.3(b)(2); and

WHEREAS, as required under that Rule, applicant has demonstrated that the use has been continuous since the expiration of the term of the grant and that substantial prejudice would result without such a waiver; and

WHEREAS, in addition, the applicant seeks: and amendment of the special permit to legalize a change in operation of the PCE and extend the days of operation from five days a week to seven days a week, and also the approval of certain modifications to the previously-approved BSA plans; and

WHEREAS, the applicant represents that an alteration application and architectural plans were filed at the New York City Department of Building (DOB), which, on January 23, 2015, issued an objection which reads:

“A physical culture establishment is not a permitted use, as of right, in a C6-3A zoning district. An extension of term for a physical culture establishment and a change in operator, requires BSA review and approval.”; and

WHEREAS, the instant application for an amendment was timely filed as per BSA Rules of Practice and Procedure § 1-07.3(a); and

WHEREAS, the applicant represents that the PCE was previously operating as “KAI 23” and is currently operating as “H<sub>2</sub>O Spa”; and

WHEREAS, the applicant has made minor interior layout changes to the previously-approved BSA plans; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals waives the Rules of Practice and Procedure, and reopens and amends the resolution, dated October 26, 2004, so that as amended this portion of the resolution shall read: “to permit an extension of the term of the variance for a term of ten (10) years and to authorize the change in operation of the PCE from KAI 23 to H<sub>2</sub>O Spa, as well as the change in days and hours of the PCE to be 10:00 A.M. to 10:00 P.M., seven days per week; *on condition* that the expansion shall substantially conform to drawings as filed with this application, marked ‘Received August 14, 2015’-(3) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years from October 26, 2014, expiring October 26, 2024;

THAT the hours of operation shall be 10:00 A.M. to 10:00 P.M., seven days per week;

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

THAT a new Certificate of Occupancy for the premises shall be obtained by November 17, 2016;

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

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

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

Adopted by the Board of Standards and Appeals, November 17, 2015.

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## 266-04-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Gwynne Five LLC, owner; TSI Cobble Hill, LLC dba NY Sports Club, lessee.

SUBJECT – Application February 17, 2015 – Extension of the Term and Amendment (73-11) to request an extension of the term of a previously granted special permit to allow the operation of a physical culture establishment at the premises and also request an Amendment to change the hours of operation. C2-3 zoning district.

PREMISES AFFECTED – 96 Boreum Place, southwesterly corner of Boerum Place and Pacific Street, Block 00279, Lot 37, Borough of Brooklyn.

## COMMUNITY BOARD #2M

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to extend the term of the special permit for a physical cultural establishment (PCE) previously granted by the Board under the subject calendar number, which expired on March 1, 2015, and amend the hours of operation; and

WHEREAS, a public hearing was held on this application on October 27, 2015, after due notice by publication in *The City Record*, and then to decision on November 17, 2015 and

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

WHEREAS, the subject site is located on the southwestern corner of Boerum Place and Pacific Street, within a C2-4/R6B zoning district, in Brooklyn; and

WHEREAS, the site has approximately 64 feet of

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frontage along Boerum Place, 50 feet of frontage along Pacific Street, 3,200 sq. ft. of lot area, and is occupied by a two-story commercial building; and

WHEREAS, the subject PCE occupies the entire building; and

WHEREAS, the use of the subject premises as a PCE is in conjunction with the use of a portion of the adjacent building located at 110 Boerum Place as a PCE; and

WHEREAS, there is one share entrance for the entire facility located between the subject premises and 110 Boerum Place;

WHEREAS, on March 1, 2015, under the subject calendar number, the Board granted a special permit pursuant to ZR §§ 73-36 and 73-03 to permit the PCE, subject to a ten (10) year term; and

WHEREAS, the instant application was timely filed per BSA Rules of Practice and Procedure §§ 1-07.3(a) and (b)(1); and

WHEREAS, the applicant seeks to: (1) extend the term of the special permit for an additional ten (10) years and (2) amend the special permit to change the PCE's hours of operation; and

WHEREAS, the applicant represents that the modifications to the hours of operation are minor and currently typical for health clubs; and

WHEREAS, in response to questions raised in hearing, the applicant represents that a fire alarm is installed at the subject premises; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, dated March 1, 2015, so that as amended this portion of the resolution shall read: "to permit an extension of the term of the special permit for a term of ten (10) years; *on condition* that the expansion shall substantially conform to drawings as filed with this application, marked 'Received September 9, 2015'-(7) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years from March 1, 2015, expiring March 1, 2025;

THAT the hours of operation shall be Monday – Thursday 5:30 A.M. to 11:00 P.M., Friday 5:30 A.M. to 10:00 P.M. and Saturday – Sunday 8:00 A.M. to 8:00 P.M.;

THAT an application to amend the hours of operation of the PCE located at 110 Boerum Place (BSA Cal. No. 813-87-BZ) to match these new hours will be filed;

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

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

THAT a new Certificate of Occupancy for the premises shall be obtained by November 17, 2016;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant

laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, November 17, 2015.

## 340-05-BZ

APPLICANT – The Law Office Fredrick A. Becker, for Chelsea Eighth Realty LLC, owner; TSI West 16, LLC dba NY Sports Club, lessee.

SUBJECT – Application November 19, 2014 – Extension of Term of a previously approved Variance (§72-21) which permitted the legalization of a physical culture establishment (PCE), located in the portions of the cellar and first floor of an existing 22-story mixed-use building, which expired on October 25, 2014. C1-6A, C6-2A, R8B zoning districts.

PREMISES AFFECTED – 270 West 17th Street aka 124-128 Eight Avenue, east side of 8th Avenue, with additional frontage, between West 16th Street and West 17th Street, Block 00766, Lot(s) 1101, 1102, Borough of Manhattan.

## COMMUNITY BOARD #4M

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to extend the term of the variance for a physical cultural establishment (PCE) previously granted by the Board under the subject calendar number, which expired on October 25, 2014; and

WHEREAS, a public hearing was held on this application on October 27, 2015, after due notice by publication in *The City Record*, and then to decision on November 17, 2015; and

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

WHEREAS, the subject site is located on the east side of Eighth Avenue between West 16th Street and West 17th Street, partially within a C1-6A, partially within C6-2A and partially R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 184 feet of frontage along Eighth Avenue, 123 feet of frontage along West 16th Street, 118 feet of frontage along West 17th Street, 22,172 sq. ft. of lot area, and is occupied by a twenty-two (22) story mixed use building with cellar; and

WHEREAS, the subject PCE occupies 16,430 sq. ft. on the first floor and cellar of the building; and

WHEREAS, the subject PCE is located within that portion of the building that is within the C1-6A and C6-2A zoning districts; and

WHEREAS, on October 25, 1994, under BSA Cal. No. 162-93-BZ, the Board granted a special permit pursuant to ZR § 73-36 to permit the PCE, subject to a ten (10) year term; and

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WHEREAS, the zoning of the site changed as a result of the Chelsea Rezoning in 1999 and no extension of the previously approved special permit's term was available when it lapsed on October 25, 2004; and

WHEREAS, the building applicant represents that the Board approved a change in the operators of the subject PCE to the New York Sports Club in 2001; and

WHEREAS, on May 2, 2006, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21 to permit the legalization of the subject PCE, subject to a ten (10) year term; and

WHEREAS, the instant application was timely filed per BSA Rules of Practice and Procedure § 1-07.3(b)(1); and

WHEREAS, the applicant seeks to: (1) extend the term of the variance for an additional ten (10) years; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, dated May 2, 2006, so that as amended this portion of the resolution shall read: "to permit an extension of the term of the variance for a term of ten (10) years; *on condition* that the site shall substantially conform to drawings as filed with this application, marked 'Received October 3, 2015'-(2) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years from October 25, 2014, expiring October 25, 2024;

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

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

THAT a new Certificate of Occupancy for the premises shall be obtained by November 17, 2016;

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

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

Adopted by the Board of Standards and Appeals, November 17, 2015.

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## **472-37-BZ**

APPLICANT – Eric Palatnik, P.C., for 246 Sears Road Realty Corp., owner.

SUBJECT – Application October 14, 2014 – Extension of Term (§11-411) for the continued operation of an automotive service station which expired on January 27, 2014; Amendment (§11-412) to permit the conversion of repair bays into convenient store, the addition of a new canopy and relocation of fuel storage tanks. R5 zoning district.

PREMISES AFFECTED – 2765 Cropsey Avenue, southeast corner of 28th Avenue and Cropsey Avenue, Block 06915, Lot 44, Borough of Brooklyn.

## **COMMUNITY BOARD #13BK**

**ACTION OF THE BOARD** – Laid over to February 23, 2016, at 10 A.M., for continued hearing.

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## **526-76-BZ**

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

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

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

## **COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to February 2, 2016, at 10 A.M., for continued hearing.

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## **1059-84-BZ**

APPLICANT – Troutman Sanders, LLP., for BMS Realty Company LLC, owner;

Bally Total Fitness Corporation, owner.

SUBJECT – Application February 27, 2015 – Extension of term of a Special Permit for the operation of a physical culture establishment (24 Hour Fitness) which expired on May 7, 2015; Amendment to reflect a change in ownership. C4-2 & C8-2 (OP) zoning district.

PREMISES AFFECTED – 943/61 Kings Highway, aka 2032 Coney Island Avenue, northwest corner of intersection Kings Highway and Coney Island Avenue, Block 06666, Lot 0018, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 15, 2015, at 10 A.M., for decision, hearing closed.

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## 364-87-BZ

APPLICANT –Sheldon Lobel P.C., for 1710 Flatbush Realty Corp., owner.

SUBJECT – Application January 23, 2015 – Extension of Term (§11-411) of a previously granted variance permitting an automotive repair facility which expired on March 22, 2013; Waiver of the Rules. C2-2/R5 zoning district.

PREMISES AFFECTED – 1710-1720 Flatbush Avenue, corner of the intersection formed by East 34th Street and Flatbush Avenue, Block 07598, Lot 24, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** –Laid over to December 15, 2015, at 10 A.M., for continued hearing.

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## 186-08-BZ

APPLICANT – Petrus fortune, P.E., for Followers of Jesus Mennonite Church, owners.

SUBJECT – Application November 19, 2014 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-19) permitting the legalization and enlargement of a school (*Followers of Jesus Mennonite Church & School*) in a former manufacturing building, contrary to ZR §42-10, which expired on June 8, 2014; Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 3065 Atlantic Avenue, north west corner of Atlantic Avenue and Shepherd Avenue, Block 03957, Lot 45, Borough of Brooklyn.

### COMMUNITY BOARD #5BK

**ACTION OF THE BOARD** – Laid over to January 12, 2016, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

## 317-12-A

APPLICANT – Eric Palatnik, P.C., for 4040 Plaza Management LLC, owner.

SUBJECT – Application June 16, 2015 – Extension of Time to complete construction in connection with a previously approved common law vested rights application. M1-3D zoning district.

PREMISES AFFECTED – 40-36 27th Street aka 4040 27th Street, west side of 27th Street, between 40th Avenue and 41st Avenue, Queens

### COMMUNITY BOARD #1Q

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a Certificate of

Occupancy pursuant to a determination that the owner of the subject premises had a common law vested right to complete construction; and

WHEREAS, a public hearing was held on this application on October 16, 2015 after due notice by publication in *The City Record*, and then to decision on November 17, 2015; and

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

WHEREAS, the subject site is located on the west side of 27th Street, between 40th Avenue and 41st Avenue, in an M1-2/R5B zoning district, in Queens; and

WHEREAS, the site has approximately 50 feet of frontage along 27th Street, and 5,000 sq. ft. of lot area; and

WHEREAS, the subject premises were formerly located within an M1-3D zoning district; and

WHEREAS, on June 27, 2008, the Department of Buildings (DOB) issued New Building Permit No. 410116422-01-NB (“Permit”) for the construction of a ten-story commercial building with 24,938.84 sq. ft. of floor area (4.98 FAR) on the subject premises; and

WHEREAS, the subject premises were rezoned to M1-2/R5B pursuant to the Dutch Kills Rezoning (“Rezoning”) in October 2008; and

WHEREAS, the building did not comply with the bulk requirements of the new zoning; and

WHEREAS, the applicant represents that prior to the Rezoning, all of the work on the building’s foundation had been completed; and

WHEREAS, the applicant represents that, in recognition of the completed building foundational work, the DOB recognized the owners’ right to continue construction under the Permit until October 7, 2010; and

WHEREAS, the applicant represents that the owners were unable to obtain construction financing after the Rezoning and construction subsequently stalled; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 20, 2013, when, under the subject calendar number, the Board granted an application pursuant to the common law of vest rights and reinstated the Permit, and all related permits either already issued or necessary to complete construction and obtain a Certificate of Occupancy, subject to a term of two (2) years; and

WHEREAS, the applicant represents that the Permit was reissued on May 22, 2014 and that approximately 30% of the building is now complete; and

WHEREAS, the applicant represents that the total cost of the project has increased by approximately 30% due to foundation reinforcements, the addition of a second elevator, financing costs, new Building Code requirements, and an increase in labor and materials costs; and

WHEREAS, the applicant represents that the owners anticipate completing the building by October 2017 and obtaining a Certificate of Occupancy by December 2017; and

WHEREAS, accordingly, the applicant seeks: (1) an extension of an additional three (3) years to complete

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construction and obtain a Certificate of Occupancy; and

WHEREAS, based upon its review of the record, the Board finds that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the Permit, for work required by any applicable law for the use or development of the subject premises pursuant to the Permit and that the requested extension of time to complete construction and obtain a Certificate of Occupancy 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 August 20, 2013, so that as amended this portion of the resolution reads: “to grant an extension of time to complete construction and obtain a Certificate of Occupancy to August 20, 2018; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT construction shall be completed by August 20, 2018;

THAT a Certificate of Occupancy for the premises shall be obtained by August 20, 2018;

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

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, November 17, 2015.

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## 199-14-A

APPLICANT – Alfonso Duarte, for Hector Florimon, owner.

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

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

### COMMUNITY BOARD #4Q

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

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated July 24, 2014 acting on DOB Application No. 420602119, reads in pertinent part:

Required Accessory off-street parking spaces for community facility are not permitted on bed of a mapped street as per GCL 35; and

WHEREAS, this is an application to legalize accessory

parking in open portion of site that lies within the bed of a mapped street, contrary to General City Law (“GCL”) § 35; and

WHEREAS, a public hearing was held on this application on July 14, 2015 after due notice by publication in *The City Record*, with a continued hearing on September 22, 2015, and then to decision on November 17, 2015; and

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

WHEREAS, this is an application to allow the enlargement by the addition of floor area of medical offices within an existing four (4) story building on lot 47 of block 1770, in Queens, no part of which lies within the bed of the mapped street and which, the applicant represents, consists of former lots 25 and 47, which were merged into lot 47 to facilitate the proposed development because lot 47 alone cannot support the additional floor area; and

WHEREAS, the subject site is located in an R6B (partially within a C1-4 overlay) zoning district; and

WHEREAS, the site is a through lot located on the north side of Roosevelt Avenue between 99th Street and 103rd Street, with approximately 61 feet of frontage along Roosevelt Avenue, 25 feet of frontage along 39th Avenue, and 4,835 sq. ft. of lot area; and

WHEREAS, the open area of the subject lot used for accessory parking is the only portion of the zoning lot that lies partly within the bed of 102nd Street, a mapped street; and

WHEREAS, the accessory parking lot is accessed by a curb cut on Roosevelt Avenue, can accommodate two motor vehicles and is for use by the medical staff; and

WHEREAS, by letter dated October 30, 2014, the Department of Environmental Protection (“DEP”) states that (1) there are no existing sewers or water mains in the bed of 102nd Street at the subject location; and (2) the Amended Drainage Plan No. 24 (23), sheet 2, dated December 30, 1919, for the subject location does not show any future sewers in the bed of 102nd Street at the intersection of Roosevelt Avenue; and

WHEREAS, DEP further states in its October 30, 2014 letter that it has no objections to the proposed application; and

WHEREAS, by letter dated February 27, 2015, the Fire Department states that it has no objections to the proposal; and

WHEREAS, by letters dated May 8, 2015 and September 22, 2015, the Department of Transportation (“DOT”) states that (1) according to the Queens Borough President’s Topographical Bureau, 102nd Street from 39th Avenue and Roosevelt Avenue is mapped at a 60-foot width on the City Map; (2) the City does not have title or a Corporation Counsel Opinion of Dedication (CCO) for 102nd Street from 39th Avenue and Roosevelt Avenue; (3) the improvement of 102nd Street at this location is not presently included in DOT’s Capital Improvement Program; and

WHEREAS, DOT further notes that the applicant should provide the proper curb cut alignment with the proposed driveway for safe ingress and egress to avoid safety risks to pedestrians and vehicles; and

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WHEREAS, the applicant represents that it is not possible to align the curb cut with the driveway due to the existence at the curb of a steel column encased in concrete, measuring 24" by 24" and supporting the No. 7 Flushing subway line and that relocating the curb cut to the westerly side of this column would be an encroachment on the adjoining property; and

WHEREAS, the applicant further represents that the driveway and curb cut have been in use for eight years and received no complaints or violations; and

WHEREAS, the Board notes that pursuant to GCL Section 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 July 24, 2014 acting on DOB Application No. 420602119, 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 "Received October 7, 2015"-(2) sheets; 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 to the extent required by DOB and/or DOT, a Builder's Pavement Plan shall be filed and approved prior to the issuance of the C of O;

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

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

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

Adopted by the Board of Standards and Appeals, November 17, 2015.

## 58-15-A

APPLICANT – Goldman Harris LLC, for D.A.B. Group LLC, owner; Arcade Orchard Street LLC., lessee.

SUBJECT – Application March 16, 2015 – Appeal seeking a determination that the owner has obtained a vested right to complete construction commenced under the prior zoning district. C4-4 zoning district.

PREMISES AFFECTED – 139-141 Orchard aka 77,79,81 Rivington Street, through-block lot with frontage on Orchard Street, Rivington Street and Allen Street, Block 0415, Lot(s) 61,62,63,66,67, Borough of Manhattan.

## COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Laid over to January 12, 2016, at 10 A.M., for continued hearing.

## ZONING CALENDAR

## 29-14-BZ

APPLICANT – Lewis Garfinkel for Leon Goldenberg, owner.

SUBJECT – Application February 11, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-14a); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1255 East 27<sup>th</sup> Street, East side of East 27<sup>th</sup> Street, 325 feet from the North corner of Avenue M. Block 7645, Lot 25. 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, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings ("DOB"), dated February 5, 2014, acting on DOB Application No. 320862045, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50%;
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150%;
3. Proposed plans are contrary to ZR 23-461(a) in that the existing minimum side yards is less than the required minimum 5'-0";
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than [sic] 30'-0";

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and

WHEREAS, this is an application under ZR § 73-622, to legalize a prior enlargement and permit, in an R2 zoning district, further enlargement of a single-family residence which does not comply with the zoning requirements for floor area ratio ("FAR"), open space ratio, side yards and rear yards contrary to ZR §§ 23-141(a), 23-461(a) and 23-47; and

WHEREAS, a public hearing was held on this application on April 14, 2015, after due notice by publication in *The City Record*, and then to decision on November 17, 2015; and

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

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

WHEREAS, the subject site is located on the east side of East 27th Street, between Avenue L and Avenue M, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 38 feet of frontage along East 27th Street, a depth of 100 feet, and 3,750 sq. ft. of lot area; and

WHEREAS, the site is occupied by a two-story with attic, one-family residence with approximately 2,606 sq. ft. of floor area (0.69 FAR); and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement* of an existing *single- or two family detached or semi-detached residence* within the following areas:

- (a) Community Districts 10, 11 and 15, in the Borough of Brooklyn; and
- (b) R2 Districts within the area bounded by Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of *non-compliance*, with the applicable *bulk* regulations for *lot coverage, open space, floor area, side yard, rear yard* or perimeter wall height regulations, provided that:

- (1) any *enlargement* within a *side yard* shall be limited to an *enlargement* within an existing *non-complying side yard* and such *enlargement* shall not result in a decrease in the existing minimum width of open area between the *building* that is being *enlarged* and the *side lot line*;
- (2) any *enlargement* that is located in a *rear yard* is not located within 20 feet of the *rear lot line*; and
- (3) any *enlargement* resulting in a *non-complying* perimeter wall height shall only be permitted in R2X, R3, R4, R4A and R4-1 Districts, and only where the *enlarged building* is adjacent to a *single- or two family detached or semi-detached residence* with an

existing *non-complying* perimeter wall facing the *street*. The increased height of the perimeter wall of the *enlarged building* shall be equal to or less than the height of the adjacent *building's non-complying* perimeter wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-31, paragraph (b), shall continue to apply.

The Board shall find that the *enlarged building* will not alter the essential character of the neighborhood or district in which the *building* is located, nor impair the future use or development of the surrounding area. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge an existing single family residence, as contemplated in ZR § 73-622; and

WHEREAS, in addition, the applicant seeks to legalize a prior enlargement of 801 sq. ft., which was completed without a DOB permit; and

WHEREAS, the filed DOB-approved plans for the premises provide for a residence with approximately 1,439 sq. ft. of floor area on the first floor, 951 sq. ft. of floor area on the second floor, 216 sq. ft. of floor area in the attic, for a total floor area of 2,606 sq. ft. (0.69 FAR); the applicant represents that the residence actually contains 1,615 sq. ft. of floor area on the first floor, 1,494 of floor area on the second floor, 297 sq. ft. of floor area in the attic, and a total floor area of 3,407 sq. ft. (0.91 FAR); and

WHEREAS, the applicant initially proposed to increase the floor area of the structure from 3,407 sq. ft. (0.91 FAR) to 3,749 sq. ft. (1.00 FAR); decrease the open space from 2,132 sq. ft. (.57 OSR) to 1,961 sq. ft. (.52 OSR); maintain the front yard of 8'-1"; maintain side yards of 8'-5" and 3'-3"; and decrease the rear yard from 21'-11" to 20'-0"; and

WHEREAS, in response to inquiries from the Board, the applicant submitted a survey, dated October 16, 2013, and updated February 5, 2014, which shows that the side yards are 8'-6 1/2" and 3'-3" wide; and

WHEREAS, thus, the applicant now proposes to increase the floor area of the structure from 3,407 sq. ft. (0.91 FAR) to 3,749 sq. ft. (1.00 FAR); decrease the open space from 2,132 sq. ft. (.57 OSR) to 1,961 sq. ft. (.52 OSR); maintain the front yard of 8'-1"; maintain side yards of 8'-6 1/2" and 3'-3"; and decrease the rear yard from 21'-11" to 20'-0"; and

WHEREAS, the applicant represents that the proposal will not alter the essential character of the neighborhood and will not impair the future use or development of the

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surrounding area; and

WHEREAS, based upon its review and the record, the Board finds that legalization of the prior enlargement and currently proposed enlargement in the rear yard on the first floor of the premises 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 legalization of a prior enlargement and the further proposed enlargement in the rear yard on the first floor of a single-family residence which does not comply with the zoning requirements for floor area ratio, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141(a), 23-461(a) and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received October 30, 2015"- twelve (12) sheets; and *on further condition*:

THAT this approval is limited to approval of the 11'-5" by 25'-10" enlargement in the rear yard, including the legalization of a prior 9'-6" by 13'-0" addition to the first floor, and the legalization of the 14'-10" by 10'-2" portion on the rear of the second floor, all as illustrated on the BSA-approved plans;

THAT DOB must otherwise determine the legal conditions of the premises;

THAT the survey submitted with this application, dated October 16, 2013, shows an existing side yard of 8'-6.5" and 3'-3" and this grant does not serve to reduce the side yards to lesser dimensions than these;

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

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

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

Adopted by the Board of Standards and Appeals, November 17, 2015.

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## 59-14-BZ

### CEQR #14-BSA-140K

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

### COMMUNITY BOARD #1BK

**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

Abstain: Commissioner Chanda.....1

#### THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings ("DOB"), dated March 11, 2014, acting on DOB Application No. 320920321 reads, in pertinent part:

The attached PW1: Plan/ Work Application does not comply with the zoning resolution as it related to the following:

1. ZR 23-633 Street Wall Location
2. ZR 23-633 Setback
3. ZR 23-633 Maximum Building Height
4. ZR 23-633 Maximum Base Height
5. ZR 24-11 Zoning Floor Area
6. ZR 24-11 Percentage of Lot Coverage

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R6B zoning district, the construction of a four-story with penthouse community facility (Use Group 3) building to be occupied by the School Settlement Association, Inc. (the "Applicant"), which does not comply with the underlying zoning district regulations for street wall location, setback, maximum building height, maximum base height, zoning floor area and lot coverage, contrary to ZR §§ 23-633 and 24-11; and

WHEREAS, a public hearing was held on this application on October 7, 2015, after due notice by publication in *The City Record*, with continued hearings held on February 10, 2015, March 31, 2015, April 28, 2015, and September 22, 2015 and then to decision on November 17, 2015; and

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

WHEREAS, Community Board 1, Brooklyn, recommends approval of the application, with certain modifications; and

WHEREAS, New York State Assemblyman Joseph R. Lentol wrote a letter in support of the application; and

WHEREAS, New York City Council Member Antonio

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Reynoso wrote a letter in support of the application; and

WHEREAS, certain members of the community appeared before the Board and made written submissions in opposition to the subject application (those members of the community are referred to collectively herein as the "Opposition"); and

WHEREAS, the concerns articulated by the Opposition, all of which were considered by the Board, include, *inter alia*, that the Applicant is not a school and, therefore, that the Applicant is not entitled to educational deference with respect to the waivers sought herein; that the use of the Proposed Building (defined below) by a public school does not entitle the Applicant to deference under *Cornell Univ. v Bagnardi*, 68 NY2d 583 (1986); that New York City School Construction Authority ("SCA") standards are not applicable to the Applicant; that the Applicant does not meet SCA gymnasium standards with respect to width and, as such, need not provide the proposed gymnasium height; that the plenums proposed throughout the Proposed Building are more than is required; that fitness classes are not needed and are not part of the Applicant's mission; that the plans submitted with the subject application do not show required water source for science labs, cooking or culinary classes consistent with the Applicant's statements; that the proposed rooftop space is not justified by the programmatic needs stated by the Applicant; and

WHEREAS, the subject site is a corner lot located on the southwest corner of the intersection of Manhattan Avenue and Jackson Street, within an R6B zoning district, in Brooklyn; the site has approximately 100 feet of frontage along the south side of Jackson Street and approximately 50 feet of frontage along the west side of Manhattan Avenue, and contains 5,000 sq. ft. of lot area; and

WHEREAS, the site is occupied by a 111 year old building containing 11,156 sq. ft. of floor area (2.25 FAR) (the "Existing Building"); the Applicant represents that the site is uniquely burdened by subsurface conditions and is inadequate to meet its programmatic needs related to the education of children, teenagers and adults; the Existing Building also houses the Applicant's not-for-profit affiliate, the School Settlement Home Attendant Service Corp. (the "Senior Home Care Program"), which provides home health care to seniors and disabled people in the community; and

WHEREAS, the Applicant notes that the Existing Building is not handicapped-accessible, that it does not meet a number of fire safety and occupancy standards of the applicable New York City Construction Codes, and that it does not meet the standards promulgated by the SCA for small group instruction classrooms or small gymnasiums; and

WHEREAS, thus, the applicant proposes to construct a four-story with penthouse community facility (Use Group 3) building with 20,201 sq. ft. of floor area, a height of 80'-0" (including an 11'-0" penthouse but exclusive of fencing around a rooftop outdoor recreation area located on the main roof) containing classrooms, an SCA-compliant gymnasium with accessory facilities, and office space and work stations for the full- and part-time staff and teachers who will work in the facility (the "Proposed Building"); and

WHEREAS, the Proposed Building does not comply

with applicable regulations for FAR (as per ZR § 23-41, a maximum FAR of 2.0 for community facility is permitted, an FAR of 4.08 is proposed); lot coverage (as per ZR § 23-41, a maximum lot coverage of 80 percent on corner lots above a height of 23'-0" is permitted, the proposed lot coverage is 100 percent); height and setback (as per ZR § 23-633, a setback of 15'-0" on narrow streets above a height of 40'-0" is required, with a maximum height of 50'-0", the Proposed Building will rise without setback to a height of 69'-0", and then set back 15'-0" from the street wall to a height of 80'-0"); or street wall location (as per ZR § 23-633, the street wall must be located no closer to or further from the street line than the street wall of an adjacent building, that portion of the Proposed Building which fronts along Manhattan Avenue is set back by 1'-0"); and

WHEREAS, hence the Applicant seeks the subject variance; and

WHEREAS, as discussed in greater detail below, the Applicant states that the Existing Building is functionally obsolete and that the Proposed Building is the minimum-sized facility adequate to meet its programmatic needs; and

WHEREAS, the Applicant considered a lesser variance and states that it is unable to reduce the floor area of the Proposed Building; specifically, the Applicant considered a reduction in the floor area of the Proposed Building from 4.08 FAR to 3.08 FAR, for a total of 17,221 sq. ft. of floor area in a three-story building with a height of 71'-0" (the "Lesser Variance"), and states that such building would be inadequate to meet its programmatic needs; the Applicant notes that the Lesser Variance would result in a building substantially similar to the Existing Building, which, it states, is inadequate to meet its programmatic needs; indeed, the Applicant states that the Lesser Variance results in a building which would contain one floor with a gymnasium, one floor with two SCA-compliant classrooms that could be divided into four classrooms, and one floor with office space for the Senior Home Care Program, such that the Lesser Variance would provide less useable program area than currently exists in the Existing Building; and

WHEREAS, at the request of the Board, the Applicant also considered below grade construction to reduce the zoning floor area of the Proposed Building; and

WHEREAS, the Applicant represents that below grade construction to reduce the zoning floor area is impracticable and would not adequately meet the Applicant's needs; and

WHEREAS, specifically, the Applicant states that, as explained in the Report prepared by Mueser Rutledge Consulting Engineers, dated September 10, 2013 (the "Mueser Report"), as well as a letter from Mueser Rutledge Consulting Engineers, dated July 20, 2015 (the "Mueser Letter"), it is not safe to construct a cellar or basement on the site and that, assuming, *arguendo*, that it was safe to do so, the cost of constructing a one-story programmable space below grade would be an additional \$2.5 million dollars; and

WHEREAS, the Applicant states that the variance sought herein is required because the 2009 Greenpoint-Williamsburg contextual downzoning changed the zoning regulations applicable to the subject site from R6 to R6B, noting that under the previous R6 regulations, community facility buildings with an FAR of 4.08, without height

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limitations, were permitted; the Applicant states that it was planning to construct a new facility, larger than the Proposed Building, before the rezoning, which reduced the maximum permitted community facility FAR to 2.0 and imposed the height limitation now-applicable to the subject site; and

WHEREAS, the Applicant states that the Existing Building has been used by P.S. 132, and other local schools, to meet the New York City Department of Education's (the "DOE") curricular requirements for physical education; the Applicant notes that P.S. 132 does not have a gymnasium on its premises and that, in addition to using the Existing Building for physical education and theatre/auditorium purposes, it also uses the Existing Building's classrooms and computer labs; and

WHEREAS, the Applicant notes that, due to the Existing Building's deteriorating condition, the Applicant's partnership with P.S. 132 was suspended, and that there is no other gymnasium available for use by P.S. 132 students during school hours; the Applicant states that P.S. 132 plans to resume its partnership with the Applicant, and use of the Proposed Building, upon its completion; and

WHEREAS, the Applicant submitted a letter from Beth Lubeck, the principal of P.S. 132, dated August 14, 2015, which notes that the school has used the Existing Building "for over a generation" (the "Lubeck Letter"); the Lubeck Letter also states that while a formal Memorandum of Understanding between the Applicant and the DOE regarding the school's use of the Proposed Building cannot be entered into until the Proposed Building is further developed, that the school anticipates bringing multiple classes of children to the Proposed Building daily, so that students can use the proposed gymnasium and classrooms; and

WHEREAS, specifically, the Lubeck Letter states that the school anticipates approximately 1,575 child visits to the Proposed Building each week in order to (1) satisfy applicable physical education requirements; (2) facilitate students' performing arts education; and (3) use the Applicant's Science, Technology, Engineering, and Mathematics ("STEM") classrooms; and

WHEREAS, the Lubeck Letter also states that many of P.S. 132's students will use the low or no cost afterschool programs at the Proposed Building, which are offered by the Applicant; and

WHEREAS, the Applicant states that the Proposed Building will also be used by participants in the Out-of-School Time Program, in which students are engaged in reading, arts, performances, and physical education; the Applicant notes that the program is funded by the New York City Department of Youth and Community Development, and that the program currently serves 500 school-aged children per week; and

WHEREAS, thus Applicant articulated the following programmatic needs which must be met in order for it to partner with P.S. 132 and continue to serve the community: (1) the Applicant must maintain its facility at the subject site; and (2) it must provide adequate facilities for P.S. 132's physical

education requirements, performing arts needs, and STEM program; and

WHEREAS, the Applicant provided a Program Utilization Chart which established that the Proposed Building will be fully utilized by the Applicant and by the public school system; and

WHEREAS, the Applicant states that subsurface conditions at the site constitute a unique physical condition which creates practical difficulties and unnecessary hardship in complying with the bulk regulations applicable to the site while meeting its programmatic needs; and

WHEREAS, specifically, the Applicant states that the site is burdened by a shallow groundwater table, unstable soils and sand overlying clay; the Applicant states further that the groundwater at the site is up to 10'-0" higher than the groundwater table in the area surrounding the site; and

WHEREAS, in support of its argument that the groundwater table and geological features are a unique physical condition, the Applicant referred to the Mueser Report and Mueser Letter; and

WHEREAS, the Applicant states that, because of the subsurface conditions identified in the Mueser Report, it cannot construct a cellar on the site because the cellar slab would need to be designed to resist buoyancy, uplift and hydrostatic pressure from the water table, and because of likely groundwater intrusion through the cellar slab and foundation walls; and

WHEREAS, the Applicant states further that excavation of the site for a below-grade space would also pose a significant risk to adjacent structures; and

WHEREAS, the Applicant argues that because of the foregoing subsurface conditions, it is not possible to construct an SCA compliant 24'-0" floor-to-ceiling height gymnasium below grade, nor, the Applicant states, is it feasible to construct offices in the cellar and maintain the required 12'-0" floor-to-floor heights; and

WHEREAS, the applicant states that the waivers sought herein all relate to its programmatic needs and the unique subsurface conditions which render development of the site in conformance with the applicable zoning regulations impracticable in light of those needs; specifically, the Applicant states that the need to provide an SCA compliant, or near compliant, gymnasium on the subject site, the subsurface conditions of which preclude locating such gymnasium below grade in a cellar, effectively determined the size and massing of the Proposed Building and the waivers sought herein; and

WHEREAS, with respect to FAR of the Proposed Building, the Applicant states that its programmatic need to provide adequate classroom space and an SCA-compliant, or near compliant, gymnasium, cannot be met without the FAR waiver sought herein; specifically, the Applicant states that in order to meet its programmatic need to serve up to 1,800 children per week through the city-funded after school and summer programs at the Proposed Building, as well as 1,575 students per week through its partnership with P.S. 132, the Proposed Building must include, in addition to a gymnasium, seven SCA-compliant classrooms (the Applicant notes that two of the seven classrooms can be subdivided, such that nine

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classrooms are shown on the plans for the Proposed Building, four on each of the first and second floors, and one on the roof); and

WHEREAS, the Applicant also states that, in addition to the gymnasium and classroom space, the following must be provided: pantry and teachers' offices, ancillary space for a lobby on the first floor of the Proposed Building, circulation space, restrooms, and storage space; and

WHEREAS, the Applicant states that the SCA compliant gymnasium must be 68'-8" x 46'-7" and must have 3,200 sq. ft. on a single, column-free floor; the Applicant states further that the gymnasium must also have ancillary space for circulation, vertical circulation, and storage, and must also have an athletic director's office, locker rooms, and bathrooms in close proximity to the gymnasium; the Proposed Building will contain a 3,200 sq. ft. gymnasium plus a mezzanine housing the athletic director's office, locker rooms and bathrooms; and

WHEREAS, the Applicant states that its Senior Home Care Program will contain 4,983 sq. ft. of floor area on the third floor of the Proposed Building, and that the Applicant will occupy offices on the second floor of the Proposed Building; and

WHEREAS, with respect to the height of the Proposed Building, the Applicant states the following programmatic requirements necessitate the waiver requested herein: the 16'-0" floor-to-floor height of the first floor is necessary to meet SCA standards for small group instruction classrooms which require a minimum finish ceiling height of 10'-0", as well as to provide an additional 2'-0" of height for select exercise space pursuant to industry standards, and a 4'-0" mechanical and structural plenum and structural slab; the 14'-0" height of the second floor is similarly calculated to comply with SCA classroom height standards together with a 4'-0" plenum and structural slab; the 12'-0" floor-to-floor height of the third floor meets NYC Building Code and industry standards for office space (8'-0") with a 4'-0" plenum and structural slab; the 27'-0" floor-to-floor height of the fourth floor meets the SCA requirements for the gymnasium (24'-0") with a 3'-0" plenum and structural slab (the Applicant notes that the shallower plenum on the fourth floor is possible because of the roof's long span structural support and exposed ceiling, which allows for greater integration of MEP and HVAC systems); the rooftop classroom meets the SCA's 10'-0" floor-to-ceiling height with a 1'-0" plenum and structural slab (the Applicant notes that shallower plenum is sufficient because the rooftop classroom is significantly smaller than the other areas of the Proposed Building); and

WHEREAS, with respect to the Proposed Building's lot coverage, the Applicant states that the waiver sought herein is necessary to accommodate the gymnasium, which requires a floor plate that extends to the lot line; the Applicant states that the gymnasium must be located on the fourth floor of the Proposed Building, because of the subsurface conditions at the site, and argues that it is impracticable and illogical for the second and third floors of the Proposed Building to have a smaller floor plate than the fourth floor; the Applicant notes that the first floor of a community facility building is permitted to have 100% lot coverage as-of-right; and

WHEREAS, with respect to setback, the Applicant states that the waiver sought herein is necessary to accommodate the gymnasium which, as noted, is located on the Proposed Building's fourth floor; the fourth floor location is required because of the subsurface conditions at the site and also because there are structural advantages to support the long span required to cover a gymnasium by placing such gymnasium at the top of the a building; the Applicant notes that the gymnasium floor plate extends to the lot line, thus, the Proposed Building cannot be set back below the fourth floor; and

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

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

WHEREAS, the Applicant argues that, by virtue of its longstanding relationship with New York City public schools and its history of providing educational programs required by DOE in the Existing Building, that it is an educational institution to which deference should be accorded; and

WHEREAS, the Applicant argues further that even if it is not to be accorded deference as an educational institution sufficient to warrant all of the waivers sought herein, its mission to provide educational programming to New York City school children, in conjunction with the unique physical condition which burdens the subject site, (i.e., the subsurface conditions established in the Mueser Report and further discussed in the Mueser Letter), satisfy the requirements set forth in ZR § 72-21(a); and

WHEREAS, the Board finds that the Applicant is entitled to limited deference under *Cornell Univ. v Bagnardi* which, coupled with unique physical conditions at the site, entitle it to the waivers sought herein as they relate to the Applicant's inability to meet its programmatic needs; and

WHEREAS, specifically, the Board finds that the Applicant, a not-for-profit institution with a longstanding and well-established relationship with the New York City public school system, which seeks to continue to provide and/or facilitate DOE-recognized educational programming within its own facility, is entitled to deference with respect to those waivers that relate to such programming; and

WHEREAS, the Board also finds that the unique physical conditions at the subject site impact the Applicant's ability to facilitate the educational programming for which deference is appropriate, as such, the requirements set forth in ZR § 72-21(a) are met; and

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1 In support of the foregoing, the Applicant cites to BSA Cal. Nos. 206-04-BZ and BSA Cal. No. 127-06-BZ.

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

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

WHEREAS, the Applicant states that the proposed building would be in keeping with the character of the surrounding neighborhood; and

WHEREAS, the Applicant notes that it is maintaining a longstanding as-of-right use of the site; and

WHEREAS, the Board notes that, in response to concerns raised by the Board, the Applicant reduced the height of the Proposed Building, which was originally proposed at a base height of 77'-0" and a total height of 89'-0" to the top of the penthouse; The Proposed Building now will rise without setback to a height of 69'-0", and then set back 15'-0" from the street wall to a height of 80'-0"; and

WHEREAS, the Applicant states the height of the Proposed Building is consistent with neighborhood character, and notes that there are 17 buildings with a height in excess of 50'-0" within the area surrounding the site, and that three of those buildings, all within one block of the site, rise to heights of 110'-0", 82'-0", and 74'-0"; and

WHEREAS, in support of the foregoing representation about the height of the Proposed Building, the Applicant submitted a study of building heights in the surrounding neighborhood; and

WHEREAS, the Applicant notes that the penthouse classroom is set back from both of the street lines on which it fronts and argues that, therefore, the penthouse is not visible from either Jackson Street or Manhattan Avenue, thereby alleviating any negative impact the height of the Proposed Building might have on neighborhood character; and

WHEREAS, the Applicant states that the Proposed Building will not impair the use or development of adjacent properties, specifically the properties known as and located at 112 Jackson Street and 353 Manhattan Avenue; the property at 112 Jackson Street has one window at the first floor set back from the lot line, the view from that window would be obstructed by an as-of-right development at the subject site, the property at 353 Manhattan Avenue does not have lot line windows; and

WHEREAS, the Applicant states that the Proposed Building, which will contain sound attenuation measures within its interior spaces and will not be a source of noise that will negatively impact adjacent properties; the Applicant states further that sound attenuation is not required at the rooftop of the Proposed Building because the play area is set back from the edge of the roof on all sides and is located 69'-0" above grade; the Applicant also states that the sound pressure level from the roof top playground to

the adjacent buildings is estimated to be less than that of the background sound pressure levels facing Jackson Street during the hours when the playground space is in use; the foregoing was supported by letters dated December 19, 2014 and October 28, 2015 from Acoustic Distinctions, a sound and acoustical consultant retained by the Applicant for the purposes of this application; and

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

WHEREAS, the Applicant states that, in accordance with ZR § 72-21(d), the hardship was not self-created; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, the Applicant represents that the requested waivers are the minimum relief necessary to accommodate the projected programmatic needs, pursuant to ZR § 72-21(e); and

WHEREAS, the Board has reviewed the Applicant's programmatic needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow the Applicant to meet its programmatic needs; and

WHEREAS, with respect to concerns raised by the Opposition which relate to the Applicant's entitlement to deference to its programmatic needs, the Board notes that the Lubeck Letter identifies specific programs that currently operate and previously operated within the Existing Building, and also identified inadequacies in the Existing Building that preclude the Applicant's ability to continue to provide them in the future, absent the Proposed Building; the Board also notes that the Lubeck Letter explains that while a Memorandum of Understanding cannot be entered into with DOE until plans for the Proposed Building are finalized, it does purport to commit the school to future use of the Proposed Building, which is consistent with its previous use of the Existing Building; and

WHEREAS, with respect to concerns raised by the Opposition which relate to the rooftop play area, the Board credits the Applicant's Program Utilization Schedule; and

WHEREAS, with respect to concerns raised by the Opposition which relate to SCA standards, the Applicant states, and the Board accepts, that the SCA standards applicable to New York City public schools and New York City afterschool programs are relevant, but not dispositive, where, as here, a not-for-profit organization with an established partnership with a public school is constructing its facility, in whole or in part, to house the school's educational program; the Board notes, moreover, that the deficiencies in the dimensions between the SCA standards and the Proposed Building are not significant; and

WHEREAS, in response to concerns raised by the Board, the Applicant submitted a Security & Visitor Management Plan, dated November 16, 2015, which the Board reviewed; pursuant to the Security & Visitor Management Plan, the Applicant represents that the Proposed Building is designed to manage access to all egress points on each floor, and will have a single outside entry point and ground floor reception/security,

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as well as limitations on the use of the elevators and restrictions on floor-specific reentry; and

WHEREAS, specifically, as stated in the Security & Visitor Management Plan, the Proposed Building will have two elevators that will be dedicated for use by different programs; the elevators will be equipped with a card access system to prevent unauthorized visitors from accessing restricted floors, including floors with classrooms for school-aged children undergoing daytime school-related instruction; and

WHEREAS, the Security & Visitor Management Plan also provides that the Proposed Building will be equipped with cameras to cover all corridors and activity rooms, and that such cameras shall be viewable from the lobby reception/security desk; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 14-BSA-140K, dated August 23, 2014; and

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

WHEREAS, the New York City Landmarks Preservation Commission’s Environmental Review of the proposal indicated that the site has no architectural significance and no archaeological significance;

WHEREAS, the New York City Department of Environmental Protection’s (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials and determined that a Phase II Investigation is necessary; and

WHEREAS, the site is currently occupied by an active community facility with nearly full lot coverage; and

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a negative declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and the Board of Standards and Appeals makes each and every one of the

required findings under ZR § 72-21 and grants a variance to permit, on a site within an R6B zoning district, the construction of a four-story with penthouse community facility (Use Group 3) building which does not comply with the underlying zoning district regulations for street wall location, setback, maximum building height, maximum base height, zoning floor area and lot coverage, contrary to ZR §§ 23-633 and 24-11, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received November 16, 2015” – ten (10) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building will be in accordance with the approved plans and be limited to: a maximum floor area of 20,201 sq. ft. (4.08 FAR); a maximum lot coverage of 100 percent; a maximum total height of 80’-0” (inclusive of penthouse classroom but exclusive of outdoor recreation area fencing), rising without setback to a height of 69’-0” and then setting back 15’-0”; and a 1’-0” setback from the street wall facing Manhattan Avenue, all as shown on the BSA-approved plans;

THAT any change in or cessation of use of the Proposed Building by the New York City Public School system requires further approval by the Board;

THAT party wall construction and design shall achieve a minimum sound attenuation rating of 70 STC;

THAT prior to DOB’s issuance of any building permit, OER must issue a Notice to Proceed or a Notice of No Objection pursuant to the site’s E-designation (E-368);

THAT prior to DOB’s issuance of a Certificate of Occupancy, OER must issue a Notice of No Objection or a Notice of Satisfaction;

THAT all refuse shall be stored within the subject building until prior to scheduled pick-up;

THAT the Security & Visitor Management Plan be implemented, including, without limitation, that the security infrastructure be installed and security staff and building personnel be informed and trained as noted therein;

THAT the outdoor roof area is used only between the hours of 8:15 a.m. and 7:30 p.m.;

THAT there is no amplified sound at the outdoor roof area;

THAT there is no lighting at the outdoor roof area other than as required by law;

THAT the any modification of the following programmatic elements of the subject building requires further approval from the BSA: (1) four classrooms on the first floor of the subject building; (2) four classrooms on the second floor of the subject building; (3) one classroom on the penthouse roof of the building; (4) that the third floor of the subject building be used exclusively for UG4 offices that relate directly to the provision of services to the community; (5) that the fourth floor gymnasium be constructed as shown on the BSA-approved plan; (6) that the fourth floor mezzanine be used for athletic director’s office, locker rooms and bathrooms;

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

THAT substantial construction shall be completed

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pursuant to ZR § 72-23;

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

Adopted by the Board of Standards and Appeals, November 17, 2015.

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## 60-15-BZ

### CEQR #15-BSA-177M

APPLICANT – Eric Palatnik, P.C., for Jacob Klein, owner; Bree and Oliver NYC II. Inc., lessee.

SUBJECT – Application March 17, 2015 – Special Permit (§73-36) to allow for a physical culture establishment (*Cross Fit*) within the cellar of a ten story mixed use building. C6-4/LM zoning district.

PREMISES AFFECTED – 111 Fulton Street, between William Street and Nassau Street, Block 091, Lot 7502, Borough of Manhattan.

### COMMUNITY BOARD #1M

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 2, 2015 and as revised October 5, 2015, acting on Department of Buildings Application No. 122233421, reads in pertinent part:

“ZR 32-31, ZR 73-36: Proposed use as a physical culture establishment, as defined by ZR 12-10 in zoning district C6-4/LM is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-4 zoning district and the Special Lower Manhattan District, the operation of a physical culture establishment (PCE) in a ten (10) story plus cellar mixed-used building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 17, 2015 after due notice by publication in *The City Record*, and then to decision on that same date; and

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

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

WHEREAS, the subject site is a corner through-lot

located on the west side of William Street, between Fulton Street and Nassau Street; and

WHEREAS, the site has approximately 196 feet of frontage along Fulton Street, 119 feet of frontage along William Street, 197 feet of frontage along Ann Street, and 23,298 sq. ft. of lot area, and is occupied by a ten (10) story plus cellar mixed-use building with commercial use on the ground floor and residential units on floors two (2) through nine (9); and

WHEREAS, the proposed PCE will occupy approximately 250 sq. ft. on the ground floor and 4,200 sq. ft. in the cellar level of the building, for a total of 4,450 sq. ft.; and

WHEREAS, the PCE will be operated as CrossFit; and

WHEREAS, the applicant represents that the subject PCE differs from other facilities of its kind in that it does not promote screaming and the dropping of weights from the patron’s waist or above the patron’s head onto the ground, but, instead, focuses primarily on strength training by technique; and

WHEREAS, the applicant represents that the PCE will contain work stations and weight lifting equipment and offer small classes and private training sessions; and

WHEREAS, the proposed hours of operation for the PCE are: Monday through Friday, 5:00 a.m. to 9:00 p.m., and Saturday through Sunday, 8:00 a.m. to 1:00 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 deemed to be satisfactory; and

WHEREAS, the Fire Department, by letter dated November 5, 2015, states that it has no objections to the proposal; and

WHEREAS, the applicant represents that the proposed PCE will contain an approved interior fire alarm system, including sprinklers, manual pull stations, backup lighting, local audible and visual alarms, and connection of the interior fire alarm to a Fire Department central station; and

WHEREAS, the applicant represents that, as the proposed PCE will be located on the cellar level, where a pool and residential gym is already in operation, it will have no adverse impact on the quiet enjoyment of the residential uses on floors two (2) through nine (9) of the building; nevertheless, a ¾” rubber mat will be installed directly on top of the existing concrete slab throughout the entire subject PCE in order to mitigate noise and vibration; 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

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evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an 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-177M, dated March 17, 2015; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site located in a C6-4 zoning district the Special Lower Manhattan District, the operation of a PCE in the cellar and ground floor levels of a ten (10) story plus cellar mixed-use building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 22, 2015"- Eight (8) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on November 17, 2025;

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

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

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

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

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

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 October 27, 2019;

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

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

THAT DOB must ensure compliance with all of 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, November 17, 2015.

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## **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 December 15, 2015, at 10 A.M., for adjourned hearing.

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## **41-14-BZ**

APPLICANT – The Law Office of Jay Goldstein, for United Talmudical Academy, owner.

SUBJECT – Application March 7, 2014 – Special Permit (§73-19) to legalize an existing school/yeshiva (UG 3). M1-2 zoning district.

PREMISES AFFECTED – 21-37 Waverly Avenue aka 56-58 Washington Avenue, between Flushing Avenue and Park Avenue front both Washington and Waverly Avenues, Block 1874, Lot 38, Borough of Brooklyn.

### **COMMUNITY BOARD #2BK**

**ACTION OF THE BOARD** – Laid over to January 22, 2016, at 10 A.M., for continued hearing.

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## **102-14-BZ**

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

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

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

### **COMMUNITY BOARD #3BK**

**ACTION OF THE BOARD** – Laid over to February 2, 2016, at 10 A.M., for continued hearing.

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## **229-14-BZ**

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

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

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

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## COMMUNITY BOARD #5Q

**ACTION OF THE BOARD** – Laid over to January 22, 2016, at 10 A.M., for adjourned hearing.

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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

**ACTION OF THE BOARD** – Laid over to January 12, 2016, at 10 A.M., for adjourned hearing.

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### 269-14-BZ

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

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

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

### COMMUNITY BOARD #5Q

**ACTION OF THE BOARD** – Laid over to January 22, 2016, at 10 A.M., for continued hearing.

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### 318-14-BZ

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

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

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

### COMMUNITY BOARD #11BK

**ACTION OF THE BOARD** – Laid over to January 22, 2016, at 10 A.M., for adjourned hearing.

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## REGULAR MEETING

**TUESDAY AFTERNOON, NOVEMBER 17, 2015**  
**1:00 P.M.**

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

## ZONING CALENDAR

### 35-14-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA., for Demetrius Partridge, owner; Mara Parr Corp. dba CKO Kickboxing, lessee.

SUBJECT – Application February 12, 2014 – Special Permit (§73-36) to permit the operation a physical culture (*CKO Kickboxing*) within the existing building. C4-2A zoning district.

PREMISES AFFECTED – 40-06 Astoria Boulevard, Astoria Boulevard South 28.0 feet east of the intersection of Steinway Street and Astoria Boulevard, Block 00686, Lot 12, Borough of Queens.

### COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda .....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 15, 2015, at 10 A.M., for decision, hearing closed.

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### 240-14-BZ

APPLICANT – Gregory J. Tarone, Esq., for Laura Ziba Bauta & Marteza Bauto, owner.

SUBJECT – Application October 3, 2014 – Special Permit (§73-622) for the enlargement of a single family home contrary to floor area, open space and lot coverage (ZR 23-141(b); side yard requirement (ZR 23-461); and perimeter wall height (ZR 23-361(b)). R3-1 zoning district.

PREMISES AFFECTED – 1620 Shore Boulevard, south side of Shore boulevard between Oxford and Norfolk Streets, Block 08757, Lot 87, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to February 2, 2016, at 10 A.M., for continued hearing.

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*Ryan Singer, Executive Director*