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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 102, Nos. 1-3

January 20, 2017

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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*

Loreal Monroe, *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>

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Tuesday, January 10, 2017**

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66-96-BZ            510 East 74<sup>th</sup> Street, Manhattan  
74-07-BZ            6-10 West 70<sup>th</sup> Street, Manhattan  
2016-4129-A &      72 & 74 Harris Lane, Staten Island  
  2016-4130-A  
2016-4186-A thru    Sullivan Drive, Queens  
  2016-4207-A  
2016-4227-A    112 Fleet Place, aka 167 Willoughby Street, Brooklyn  
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**Affecting Calendar Numbers:**

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2017-2-BZ           40 Seafoam Street, Staten Island  
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201-15-BZ           218 57<sup>th</sup> Street, Brooklyn  
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2016-4123-BZ      168 Havemeyer Street, Brooklyn  
2016-4141-BZ      99 Church Street, aka 27 Barclay Street, Manhattan

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# DOCKETS

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New Case Filed Up to January 10, 2017  
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**2016-4466-A**

10002 Farragut Road, located on Farragut Road between East 100th and East 101st Streets, Block 08169, Lot(s) 31, Borough of **Brooklyn, Community Board: 18**. Application seeking an interpretive appeal of the NYC Department of Buildings interpretation that Regulated Medical Waste transshipment use at the premises constitutes a Use Group 18 use pursuant to ZR §42-15. The applications seeks confirmation that such use constitutes a Use Group 16 pursuant to ZR §32-25. C8-1 zoning district. C8-1 district.  
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**2016-4467-BZ**

69-25 Astoria Boulevard, located on an interior lot on Astoria Boulevard between Hazen and 70th Streets, Block 01001, Lot(s) 21, Borough of **Queens, Community Board: 1**. Variance (§72-21) to permit the legalization of an illuminated advertising sign contrary to ZR §22-35 (advertising signs not permitted in residential districts) and ZR §52-731.1 (non conforming advertising signs in residential districts shall be terminated after 10 years from December 15, 1961). R4 zoning district. R4 district.  
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**2016-4468-BZ**

27 East 61st Street, located on the north side of East 61st Street between Madison and Park Avenues., Block 01376, Lot(s) 24, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to permit the conversion and horizontal enlargement of an existing six-story mixed use building into a six-story commercial (UG 6) building contrary to ZR §33-122 (Maximum Permitted Floor Area). C5-1 (Madison Avenue Preservation District) - Type I I C5-1 (Madison Avenue Preservation District) district.  
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**2016-4469-BZ**

49-23 Astoria Boulevard, located on the corner formed by Astoria Boulevard and Hazen Street., Block 01000, Lot(s) 19, Borough of **Queens, Community Board: 1**. Variance (§72-21) to permit the legalization of an indirectly illuminated advertising sign contrary to ZR §22-35 (advertising signs not permitted in residential districts) and ZR §52-731.1 (non conforming advertising signs in residential districts shall be terminated after 10 years from December 15, 1961). R4 zoning district. R4 district.  
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**2016-4470-BZ**

140 Broadway, located on the east side of Broadway bounded by Broadway, Libert, Nassau and Cedar Streets., Block 00048, Lot(s) 1, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to operate a physical culture establishment (Crunch Fitness) within an existing building. C5-5 (Lower Manhattan Special District) within the Marine Midland Bank Building (New York City Landmark). C5-5(LM) district.  
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**2016-4471-BZ**

1014 Virginia Avenue, located on Virginia Avenue between Bruckner Boulevard and Chatteron Avenue, Block 03787, Lot(s) 6, Borough of **Bronx, Community Board: 9**. Variance (§72-21) to permit the conversion of a two-family residential building with a doctor's office (BSA Calendar Number: 955-66-BZ) to a four family residential building contrary to bulk regulations. R5 zoning district. R5 district.  
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**2016-4472-BZ**

245-01 Jamaica Avenue, located on the north side of Jamaica Avenue/Jericho Turnpike between 245th and 246th Street, Block 08659, Lot(s) 1, Borough of **Queens, Community Board: 13**. Variance (§72-21) to permit the legalization of a Physical Culture Establishment (Body By Fitness) within the cellar and first floor of an existing building contrary to ZR §32-10. C1-3/R4 C1-3/R4 district.  
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**2016-4473-A**

72-74 East 3rd Street, located on the south side of East 3rd Street between 1st and 2nd Avenues, Block 00444, Lot(s) 7501, Borough of **Manhattan, Community Board: 3**. Application filed pursuant to §310 of the Multiple Dwelling Law ("MDL") requesting to vary §211 of the MDL to allow for the partial one story vertical enlargement of an existing tenement building. R8B zoning district. R8B district.  
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**2017-1-BZ**

570 Melrose Avenue, located on the northeast corner of the intersection formed by Melrose Avenue and East 150th Street, Block 02374, Lot(s) 1, Borough of **Bronx, Community Board: 1**. Special Permit (§73-36) to operate a physical culture establishment (Blink) within an existing building. C4-4 zoning district. C4-4 district.  
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# DOCKETS

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## 2017-2-BZ

40 Seafoam Street, located on Seafoam Street between Cedar Grove Avenue and Sustan Street, Block 04081, Lot(s) 58, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-X zoning district. R3-X district.

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## 2017-3-BZ

1 Wall Street, bounded by Wall Street, Broadway, Exchange Place and New Street, Block 00023, Lot(s) 7, Borough of **Manhattan, Community Board: 1**. Special Permit (73-36) to allow the operation of a physical culture establishment (La Palestra) on the 35th and 36th floors of the subject premises. C5-5 zoning district. (Special Lower Manhattan District) Located in the North Tower of the subject building designated as an individual NYC Landmark. C5-5 Special Lower Manhattan District district.

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## 2017-4-A

339 Victory Boulevard, located on the corner formed by Cebra Avenue and Victory Boulevard, Block 00115, Lot(s) 63, Borough of **Staten Island, Community Board: 1**. Proposed construction of a two story, mixed use residential and commercial building located within the bed of a mapped street, contrary to General City Law Section 35. C1-3/R4 zoning district. C1-3/R4 district.

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## 2017-5-A

620A Sharrotts Road, located on a private road wthat connects to Sharrotts Road, Block 07400, Lot(s) 40, Borough of **Staten Island, Community Board: 3**. Proposed construction of three buildings, two buildings with retail and office space and one warehouse, not fronting on a legally mapped street, contrary to General City Law 36. M1-1 zoning district. M1-1 district.

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## 2017-6-A

620B Sharrotts Road, located on a private road wthat connects to Sharrotts Road, Block 07400, Lot(s) 40, Borough of **Staten Island, Community Board: 3**. Proposed construction of three buildings, two buildings with retail and office space and one warehouse, not fronting on a legally mapped street, contrary to General City Law 36. M1-1 zoning district. M1-1 district.

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## 2017-7-A

620B Sharrotts Road, located on a private road wthat connects to Sharrotts Road, Block 07400, Lot(s) 40, Borough of **Staten Island, Community Board: 3**. Proposed construction of three buildings, two buildings with retail and office space and one warehouse, not fronting on a legally mapped street, contrary to General City Law 36. M1-1 zoning district. M1-1 district.

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## 2017-8-BZ

356-362 East 139th Street, located approximately 233' west fo the intersection formed by East 139th Street and Willis Avenue, Block 02301, Lot(s) 12, 13, 14 & 15, Borough of **Bronx, Community Board: 1**. Variance (§72-21) to permit the construction of a new school (UG 3) (Academic Leadership Charter School) contrary to ZR §24-11 (Maximum Allowable Lot Coverage), ZR §24-522 (Heights and Setbacks) and ZR §2436 (Rear Yard). R6 zoning district. 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 FEBRUARY 14, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 14, 2017, 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

#### 704-59-BZ

APPLICANT – Carl A. Sulfaro, Esq., for The Rand Properties Group, LLC, owner; Danes Parking Corp., lessee.  
SUBJECT – Application May 9, 2016 – Extension of Term (§11-411) of a previously approved variance which permitted a parking lot (UG 8) which expired on June 3, 2010; Waiver of the Rules. R8 zoning district.  
PREMISES AFFECTED – 53 East 177<sup>th</sup> Street (fka 53-57 East 177<sup>th</sup> Street), Block 2828, Lot 1, Borough of Bronx.  
**COMMUNITY BOARD #5BX**

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#### 7-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Redmont Realty Company, LLC, owner; TSI Whitestone, LLC dba New York Sports Club, lessee.  
SUBJECT – Application August 30, 2016 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on August 8, 2016; Amendment to permit a change in hours of operation. C1-2/R3-2 zoning district.  
PREMISES AFFECTED – 153-37 Cross Island Parkway, Block 4717, Lot 16, Borough of Queens.  
**COMMUNITY BOARD #7Q**

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#### 163-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee.  
SUBJECT – Application February 24, 2016 – Extension of time to obtain a certificate of occupancy for a previously granted physical culture establishment (Crunch Fitness) which expired on October 29, 2014; Waiver of the Rules. C2-4/R7A zoning district.  
PREMISES AFFECTED – 671/99 Fulton Street, Block 2096, Lot(s) 66, 69, Borough of Brooklyn.  
**COMMUNITY BOARD #2BK**

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#### 133-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Trinity Hudson Holdings, owner; TSI Varick Street, LLC dba New York Sports Club, lessee.  
SUBJECT – Application August 1, 2016 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (New York Sports Club) located on the second floor of an existing 12 story commercial building which expired on July 1, 2006. M1-5 Zoning District.  
PREMISES AFFECTED – 225 Varick Street, Block 581, Lot 63, Borough of Manhattan.  
**COMMUNITY BOARD #2M**

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### APPEALS CALENDAR

#### 2016-4232-A thru 2016-4235-A

APPLICANT – Eric Palatnik, P.C., for Anthony Gallo, owner.  
SUBJECT – Application August 3, 2016 – Proposed three-story two and cellar residential development which is within the unbuilt portion of the mapped street, contrary to General City Law 35. R5 zoning district.  
PREMISES AFFECTED – 139-12, 139-16, 139-19 and 139-22 Atlantic Avenue, aka 95<sup>th</sup> Avenue, Block 10006, Lot(s) 5, 7, 8, 9, Borough of Queens.  
**COMMUNITY BOARD #12Q**

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## REGULAR MEETING FEBRUARY 14, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 14, 2017, 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

#### 252-12-BZ

APPLICANT – Richard Bowers of Akerman Senterfitt, LLP, for Mia & 223<sup>rd</sup> Street Management Corp., owner.  
SUBJECT – Application August 15, 2012 – Variance (§72-21) to legalize four single family homes which do not comply with the rear yard requirements, ZR §23-47. R1-2 zoning district.  
PREMISES AFFECTED – 39-39 223<sup>rd</sup> Street & 223-01/15/19 Mia Drive, Block 36343, Lot(s) 154-157, Borough of Queens.  
**COMMUNITY BOARD #11Q**

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# CALENDAR

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**273-15-BZ**

APPLICANT – Michio Sanga, for Seucharran Sewdat, owner.

SUBJECT – Application December 15, 2015– Variance (§72-21) to permit the construction of a 2-story two-family residence contrary to ZR §23-461c (open area between buildings containing residences). R3A zoning district.

PREMISES AFFECTED – 110-43 160<sup>th</sup> Street, Block 12164, Lot 4, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**274-15-BZ**

APPLICANT – Michio Sanga, for Nohar Sumasar, owner.

SUBJECT – Application December 15, 2015– Variance (§72-21) to permit the construction of a 2-story two-family residence contrary to ZR §23-461c (open area between buildings containing residences) and ZR §23-141 (Lot Coverage) R4-1 zoning district.

PREMISES AFFECTED – 144-29 South Road aka Tuskegee Airmen Way, Block 10045, Lot 18, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**2016-4178-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 350 Lafayette Owner LP, owner.

SUBJECT – Application April 25, 2016 – Variance (§72-21) to allow retail (Use Groups 6 and 10) below the floor level of the second story contrary to ZR §42-14(D)(2)(b), and Use Group 10 retail use, contrary to ZR §42-12. M1-5B zoning district.

PREMISES AFFECTED – 11-13 Bond Street aka 348-354 Lafayette Street, Block 529, Lot 15, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**2017-32-BZ**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Rosemary Grasso, owner.

SUBJECT – Application January 30, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. C1-1/R3X zoning district.

PREMISES AFFECTED – 62 Milbank Road, Block 4092, Lot 72, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**2017-41-BZ**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application February 9, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged / destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 67 Mapleton Avenue. Block 3806, Lot 7. Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**2017-42-BZ**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application September 9, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged / destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. C1-1/R3-1 zoning district.

PREMISES AFFECTED – 15 Hett Avenue. Block 4064, Lot 40. Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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*Ryan Singer, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JANUARY 10, 2017  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**171-05-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 568 Broadway Property LLC, owner; Equinox 568 Broadway Inc., lessee.

SUBJECT – Application February 1, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (*Equinox*) which expires on February 7, 2016. M1-5B zoning district.

PREMISES AFFECTED – 568 Broadway, Block 511, Lot 1, Borough of Manhattan.

**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 for an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on February 7, 2016; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice-Chair Hinkson performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the applicant represented to the Board that Community Board 2, Manhattan, waived its recommendation for this application because it was an extension of term and not a new special permit; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Broadway and Prince Street, in an M1-5B zoning district, in the SoHo-Cast Iron Historic District, in Manhattan; and

WHEREAS, the site has approximately 126 feet of frontage along Broadway, 200 feet of frontage along Prince Street, 111 feet of frontage along Crosby Street, 23,605 square feet of lot area and is occupied by a 12-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the site since February 7, 2006, when, under the subject calendar number, the Board granted a special permit,

pursuant to ZR § 73-36, allowing the establishment of a PCE, operated as Equinox, located in portions of the cellar, first floor, mezzanine and third floors and the entirety of the second floor of the subject building for a term of ten (10) years, expiring February 7, 2016; and

WHEREAS, the previous term of the special permit having expired, the applicant seeks the extension of the term for an additional ten (10) years; and

WHEREAS, the facility remains in operation as Equinox and no modifications are proposed to the previously approved hours of operation: Monday through Thursday 5:30 a.m. to 11:00 p.m., Friday 5:30 a.m. to 10:00 p.m., and Saturday through Sunday 8:00 a.m. to 9:00 p.m.; and

WHEREAS, as approved, the PCE was proposed to occupy 1,236 square feet of floor space in the cellar, 1,496 square feet of floor area on the ground floor, 413 square feet of floor area on the mezzanine, 19,802 square feet of floor area on the second floor, and 3,765 square feet of floor area on the third floor for a total of 25,476 square feet of floor area in the subject building; and

WHEREAS, the applicant represents that the PCE currently occupies 1,157 square feet of floor space in the cellar, 1,460 square feet of floor area on the ground floor, 435 square feet of floor area on the mezzanine, 19,996 square feet of floor area on the second floor, and 3,921 square feet of floor area on the third floor for a total of 25,812 square feet of floor area in the subject building; and

WHEREAS, as conditioned in the prior approval, sprinklers and an interior fire alarm were installed within the PCE space and subsequently approved and signed off by Department of Buildings; and

WHEREAS, the Board finds that a ten (10) 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 February 7, 2006, 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, expiring February 7, 2026, *on condition* that the site shall substantially conform to drawings as filed with this application, marked ‘Received August 22, 2016’-Nine (9) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years from February 7, 2016, expiring February 7, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Thursday 5:30 a.m. to 11:00 p.m., Friday 5:30 a.m. to 10:00 p.m., and Saturday through Sunday 8:00 a.m. to 9:00 p.m.;

THAT accessibility compliance under Local Law 58/87 will be reviewed and approved by Department of Buildings (“DOB”);

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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THAT all massages shall be performed only by practitioners with valid and current NYS massage licenses;

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 revised Certificate of Occupancy shall be obtained within one (1) year, by January 10, 2018;

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

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

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

Adopted by the Board of Standards and Appeals, January 10, 2017.

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## 80-54-BZ

APPLICANT – Sheldon Lobel, P.C., for Dryden Hotel Associates, LLC, owner.

SUBJECT – Application June 28, 2016 – Extension of Term (§11-411) of a previously granted variance which permitting commercial uses on the first floor and cellar of an existing residential building, which expired on July 2, 2016. R8B zoning district.

PREMISES AFFECTED – 150 East 39<sup>th</sup> Street, Block 894, Lot 52, Borough of Manhattan.

### COMMUNITY BOARD #6M

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 January 24, 2017, at 10 A.M., for decision, hearing closed.

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## 120-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Harry McNulty, owner.

SUBJECT – Application March 14, 2016 – Extension of Term (§11-411) of a previously approved variance which permitted an Automotive Repair Facility (UG 16B) with the sale of used automobiles which expired on May 10, 2014; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 222-19 Linden Boulevard, Block 11323, Lot 1, Borough of Queens.

### COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over to March 7, 2017, at 10 A.M., for continued hearing.

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## 66-96-BZ

APPLICANT – Francis R. Angelino, Esq., for Haug Properties, LLC, owner; Epiphany Community Nursery School, lessee.

SUBJECT – Application June 21, 2016 – Extension of Term of a previously approved Special Permit (§73-19) permitting the operation of a day care center school (UG 3) which expires on August 6, 2016. M1-4 zoning district.

PREMISES AFFECTED – 510 East 74<sup>th</sup> Street, Block 1485, Lot 45, Borough of Manhattan.

### COMMUNITY BOARD #8M

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 March 7, 2017, at 10 A.M., for decision, hearing closed.

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## 74-07-BZ

APPLICANT – Fried, Frank, Harris, Shriver & Jacobson LLP, for Trustees of the Congregation Shearith Israel of the City of New York, owner.

SUBJECT – Application June 16, 2016 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting a nine (9) story residential/community facility building contrary to regulations for lot coverage (§24-11), rear yard (§24-36), base height, building height and setback (§23-633) and rear setback (§23-663) which expired on January 22, 2016; Amendment to the approved plans; Waiver of the Rules. R8B and R10A districts.

PREMISES AFFECTED – 6-10 West 70<sup>th</sup> Street, Block 1122, Lot(s) 36 & 37, Borough of Manhattan.

### COMMUNITY BOARD #7M

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 February 28, 2017, at 10 A.M., for decision, hearing closed.

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# MINUTES

## APPEALS CALENDAR

### 2016-4129-A & 2016-4130-A

APPLICANT – Eric Palatnik, P.C., for Harris Lane Associates Corp., owner.

SUBJECT – Application March 4, 2016 – Proposed construction of family dwelling not fronting on a legally mapped street contrary to General City Law 36. R3-1 (SRD) zoning district.

PREMISES AFFECTED – 72 & 74 Harris Lane, Block 7094, Lot(s) 1 & 9, Borough of Staten Island.

#### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to March 7, 2017, at 10 A.M., for continued hearing.

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### 2016-4186-A thru 2016-4207-A

APPLICANT – Eric Palatnik, P.C., for Fulcrum Real Estate Advisors, LLC, owner.

SUBJECT – Application May 13, 2016 – Proposed construction for twenty-two single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law. R2 zoning district.

PREMISES AFFECTED – 150-11 / 15 / 19 / 23 / 27 / 31 / 35 / 37 / 43 / 49 / 53 / 12 / 18 / 22 / 26 / 32 / 36 / 42 / 50 / 56 / 60 / 66 Sullivan Drive, Block 4509, Lot(s) 16, 18, 20, 22, 24, 26, 28, 30, 34, 36, 78, 80, 82, 84, 86, 88, 90 92, 94, 06, and 98, Borough of Queens.

#### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to February 28, 2017, at 10 A.M., for continued hearing.

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### 2016-4227-A

APPLICANT – Cozen O'Connor, for Boys Town New York, Inc. (f/k/a Girls and Boys Town of New York, Inc.), owner.

SUBJECT – Application July 13, 2016 – Proposed development which is within the bed of a mapped but unopened portion of Fleet Place, located on the north west corner of Willoughby Street and Fleet Place, contrary to General City Law 35 and related bulk waivers pursuant to ZR Section 72-01(g). C6-4 (Special Downtown Brooklyn District) zoning district.

PREMISES AFFECTED – 112 Fleet Place (aka 167 Willoughby Street), Block 2062, Lot 23, Borough of Brooklyn.

#### COMMUNITY BOARD #2BK

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 January 24, 2017, at 10 A.M., for decision, hearing closed.

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## ZONING CALENDAR

### 322-13-BZ

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

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

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

#### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to February 28, 2017, at 10 A.M., for continued hearing.

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### 22-15-BZ

APPLICANT – Simons & Wright LLC, for 219 26<sup>th</sup> Street, LLC, owner.

SUBJECT – Application February 5, 2015 – Variance (72-21) to proposed to construct a residential building on a small lot at premises, located in an M1-1D zoning district, contrary to (Section 42-00) not permitted as of right.

PREMISES AFFECTED – 219 26<sup>th</sup> Street, Block 655, Lot 55, Borough of Brooklyn.

#### COMMUNITY BOARD #7BK

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for continued hearing.

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### 71-15-BZ

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

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

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

#### COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Laid over to February 14, 2017, at 10 A.M., for continued hearing.

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# MINUTES

## 171-15-BZ

APPLICANT – Juan D. Reyes, III, Shefarth Shaw LLP, for 281 Broadway LLC, owner; James and Jennifer McDate (CrossFit), lessee.

SUBJECT – Application July 29, 2015 – Special Permit (§73-36) to allow a physical culture establishment (*CrossFit*) to be operated within an existing building. C6-4A zoning district.

PREMISES AFFECTED – 281 Broadway, between Reade Street and Chambers Street, Block 149, Lot 7502, Borough of Manhattan.

### COMMUNITY BOARD #1M

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 January 24, 2017, at 10 A.M., for decision, hearing closed.

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## 2016-1221-BZ

APPLICANT – Jay Goldstein, Esq., for Fifth Jam Development, LLC, owner; EVF Row House Inc., lessee.

SUBJECT – Application February 11, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Row House*) on the second floor of an existing commercial building. C2-7A zoning district.

PREMISES AFFECTED – 269 West 23<sup>rd</sup> Street, Block 773, Lot 9, Borough of Manhattan.

### COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.

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## REGULAR MEETING

TUESDAY AFTERNOON, JANUARY 10, 2017

1:00 P.M.

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

## ZONING CALENDAR

### 2016-1214-BZ

#### CEQR #16-BSA-071M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Elk 33 East 33<sup>rd</sup> LLC, owner; 305 Fitness Studio Two LLC, lessee.

SUBJECT – Application January 25, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*305 Fitness*) to operate within an existing commercial building. C5-2 zoning district.

PREMISES AFFECTED – 33 East 33<sup>rd</sup> Street, Block 863, Lot 29, Borough of Manhattan.

### COMMUNITY BOARD #5M

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 24, 2015, acting on DOB Application No. 122564466, reads in pertinent part:

“Proposed Physical culture establishment is not permitted . . . . This job must be referred to the Board of standards and appeals [*sic*] for approval pursuant to ZR 73-36”;

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C5-2 zoning district, the operation of a physical culture establishment (“PCE”) in the cellar and first floor of an existing 12-story building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

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

WHEREAS, the subject site is located on the north side of East 33<sup>rd</sup> Street, between Madison Avenue and Park Avenue, in a C5-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 116 feet of frontage along East 33<sup>rd</sup> Street, 11,405 square feet of lot area and is occupied by a 12-story commercial building; and

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# MINUTES

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WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-

04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and Certificate of Occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 4,249 square feet of floor area in the cellar, containing the reception area, locker rooms, two dance studios and storage space, and 359 square feet of floor area on the ground floor of the existing building; and

WHEREAS, the PCE has been in operation as 305 Fitness since the spring of 2016; and

WHEREAS, the PCE's hours of operation are Monday through Friday, 6:00 a.m. to 9:00 p.m., Saturday, 9:30 a.m. to 3:00 p.m. and Sunday, 9:30 a.m. to 5:30 p.m.; and

WHEREAS, the applicant represents that the PCE use will not disrupt the character of the surrounding area, specifically, that it is predominantly located in the cellar of a commercial building with only commercial uses located above it; and

WHEREAS, the applicant submits that sound attenuation measures have been provided within the space so that that the sound level in other parts of the subject building will not exceed 45 dBA; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides facilities for cardiovascular dance instruction, which has the effects of increasing practitioner's stamina and physical fitness; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, by letter dated January 3, 2017, the Fire Department states that it has no objection to the approval of this application, the existing conditions satisfy all Fire

# MINUTES

Department requirements and that the interior fire alarm system has been inspected and is functional, but minor deficiencies were noted and the alarm is scheduled to be inspected again in order to confirm that the required revisions have been made; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

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

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-071M, dated January 25, 2016; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C5-2 zoning district, the operation of a physical culture establishment on the cellar and ground floor of a 12-story building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 29, 2016” – Five (5) sheets; and

THAT the term of the PCE grant will expire on March 20, 2027;

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 minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a revised Certificate of Occupancy shall be obtained within one year, by January 10, 2018;

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, January 10, 2017.

## 2017-2-BZ

### CEQR #17-BSA-060R

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation (“HRO”)

SUBJECT – Application October 31, 2016 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program.

PREMISES AFFECTED – 40 Seafoam Street Staten Island.

### COMMUNITY BOARD #2 SI

**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 Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3X zoning district, the reconstruction, development and enlargement of a previously existing single-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front and rear yards, pursuant to ZR §§ 23-45, 23-47 and 23-52; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-05.3 (Filing Period), (3) 2 RCNY § 1-05.4 (Application Referral), (4) 2 RCNY § 1-05.6 (Hearing Notice), (5) 2 RCNY § 1-05.7 (List of Affected Property Owners), (6) 2 RCNY § 1-09.4 (Owner’s Authorization), and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of Seafoam Street, between Cedar Grove Avenue and

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# MINUTES

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Dustan Street, in an R3X zoning district, on Staten Island; and

WHEREAS, the site has approximately 60 feet of frontage along Seafoam Street, a depth of 60 feet, 3,600 square feet of lot area and is occupied by a one-story, single-family dwelling; and

WHEREAS, Seafoam Street is an unmapped street; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-1037-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a single-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, on the dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction, development and enlargement of the existing one-story single-family dwelling with a front yard of 4’-11” and a rear yard of 7’-3”; and

WHEREAS, the existing dwelling on the site has 1,931 square feet of floor area, a floor area ratio (“FAR”) of 0.54, a front yard measuring 9’-10”, a rear yard of 4’-3”, and side yards of 29’-9” and 6’-4”; and

WHEREAS, the applicant represents that the dwelling is in poor condition and technically unsuitable for elevation; and

WHEREAS, the applicant proposes to demolish the existing dwelling and construct a three-story, one-family dwelling with 2,068 square feet of floor area, 0.57 FAR, a 4’-11” front yard, a 7’-3” rear yard; and

WHEREAS, at the subject site, the minimum required front yard is 10 feet, pursuant to ZR § 23-45, and a minimum rear yard of 20 feet is required pursuant to ZR §§ 23-47 and 23-52; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-

CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant states that the shallowness of the lot and orientation of surrounding homes perpendicular to the street creates a practical difficulty in comply with flood-resistant construction standards without the modification of the front yard and rear yard requirements and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes that modification of the proposed perpendicular floor plan would alter the existing streetscape and that the proposed design facilitates the provision of certain accessibility features, including a chair lift and interior clearances, required by the owners of the subject site; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the Board finds that the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the building is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the neighborhood is characterized by single- and two-family dwellings, both detached and semi-detached, and that the layout of the proposed reconstructed dwelling perpendicular to the street is consistent with the surrounding dwellings; and

# MINUTES

WHEREAS, the applicant additionally notes that the proposed reconstruction provides a larger rear yard than currently exists and decreases the degree of non-compliance with the rear yard regulations applicable at the subject site; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction and enlargement satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-060R, dated January 4, 2017; and

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92, to permit, on a site within an R3X zoning district, the reconstruction, development and enlargement of a single-family dwelling, which does not comply with the zoning requirements for front and rear yards, pursuant to ZR §§ 23-45, 23-47 and 23-52; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received January 4, 2017”—Four (4) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard measuring at least 4’-11” and a rear yard measuring at least 7’-3”, as illustrated on the BSA-approved plans;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by January 10, 2021;

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

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

Adopted by the Board of Standards and Appeals, January 10, 2017.

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## **134-15-BZ**

APPLICANT – Sheldon Lobel, P.C., for David Aronowicz, owner; Cinderella 248, LLC, lessee.

SUBJECT – Application June 5, 2015 – Special Permit (§73-36) to allow the operation of a Physical Culture establishment (*Orange theory Fitness*) in the existing building on the first floor and cellar of a one story commercial building, located within an R7A/C2-4 zoning district.

PREMISES AFFECTED – 248 Flatbush Avenue, Block 936, Lot 12, Borough of Brooklyn.

### **COMMUNITY BOARD #6BK**

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.

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## **201-15-BZ**

APPLICANT – Law Office of Steven Simicich, for Jim Sidiropoulos, owner.

SUBJECT – Application August 27, 2015 – Special Permit (§73-53) to permit the enlargement of a one-story non-conforming warehouse building into a five story building containing parking, office space and residential use which exceeds the allowable commercial floor area. R6B & M1-2 zoning districts.

PREMISES AFFECTED – 218 57<sup>th</sup> Street, Block 845, Lot(s) 13 & 66, Borough of Brooklyn.

### **COMMUNITY BOARD #7BK**

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for continued hearing.

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## **258-15-BZ**

APPLICANT – Eric Palatnik, P.C., for Elijah Realty LLC, owner.

SUBJECT – Application November 18, 2015 – Special Permit (§73-44) to reduce the number of required accessory off street parking spaces from twenty nine (29) to fourteen (14) at the existing building. C4-2 zoning district.

PREMISES AFFECTED – 2619 East 16<sup>th</sup> Street, Block 7460, Lot 96, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for continued hearing.

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## **2016-4123-BZ**

APPLICANT – Eric Palatnik, P.C., for 168 Havemeyer Realty LLC, owner.

SUBJECT – Application February 23, 2016 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. C1-3/R6 zoning district.

PREMISES AFFECTED – 168 Havemeyer Street, Block 2420, Lot 30, Borough of Brooklyn.

### **COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for continued hearing.

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**2016-4141-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 30 Park Place Hotel LLC, owner; Four Seasons Hotel New York Downtown, lessee.

SUBJECT – Application March 17, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Four Seasons Hotel Spa*) on a portion of the third floor of a mixed-use hotel and residential building. C5-3 (LM) zoning district.

PREMISES AFFECTED – 99 Church Street (aka 27 Barclay Street, Block 123, Lot(s) 1101-1260 (fka 10), Borough of Manhattan.

**COMMUNITY BOARD #1M**

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 February 14, 2017, at 10 A.M., for decision, hearing closed.

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*Ryan Singer, Executive Director*

# 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.

Volume 102, Nos. 4-5

January 29, 2017

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# DOCKETS

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New Case Filed Up to January 24, 2017

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**2017-9-BZ**

561-565 Utica Avenue, located on the east side of Utica Avenue between Rutland Road and Winthrop Street, Block 04604, Lot(s) 69, Borough of **Brooklyn, Community Board: 17**. Special Permit (§73-19) to allow for a school (All My Children Daycare) (UG 3) to be located on the first (1st) floor of an existing two story commercial building contrary to use regulations (§32-10). C8-2 zoning district. C8-2 district.

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**2017-10-BZ**

34-11 Beach Channel Drive, located on a block bounded by Far Rockaway Boulevard, Beach 34th Street, Rockaway Freeway and Beach Channel Drive., Block 15950, Lot(s) 14, 24, Borough of **Queens, Community Board: 14**. Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for ambulatory diagnostic and treatment health care facility use (UG 4A) parking category (PRC-B1) to be located within a mixed-use building. C2-2/R6 zoning district. C2-2/R6 district.

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**2017-11-BZ**

3261 Westchester Avenue, located on the corner of the intersection formed by Westchester Avenue and Colonial Avenue, Block 04248, Lot(s) 56, Borough of **Bronx, Community Board: 10**. Special Permit (§73-36) to operate a physical culture establishment (ILOVEKICKBOXING) within a portion of the ground floor of an existing one-story commercial building. C2-4/R7A zoning district. C2-4/R7-1 district.

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**2017-12-BZ**

750 Grand Street, located on Grand Street between Graham Avenue and Humboldt Streets, Block 02789, Lot(s) 11, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to operate a physical culture establishment (Absolute Power) within the cellar of an existing building. C4-4A zoning district. C4-4A district.

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**2017-13-BZ**

29 East 19th Street, running thence north 92' 0"; Thence East 60' 0" feet; Thence south 92' 0" feet; Thence west 60' 0" feet., Block 00848, Lot(s) 23, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to operate a physical culture establishment (Rescue Spa) within the cellar and first floor of an existing building. M1-5M zoning district. (Ladies' Mile Historic District) M1-5M district.

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**2017-14-BZ**

230 West 27th Street, located on the south side of West 27th Street between 7th and 8th Avenues, Block 00776, Lot(s) 55, Borough of **Manhattan, Community Board: 5**. Variance (§72-21) to permit a one-story above-ground extension for a community facility (UG 3) (Fashion Institute of Technology (FIT) which exceeds the maximum permitted community facility floor area and is contrary to ZR §33-10. C6-2 zoning district. C6-2 district.

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**2017-15-BZ**

26-28 Edgecombe Avenue, located on the corner formed by Edgecombe Avenue and West 136th Street, Block 01960, Lot(s) 29 & 30, Borough of **Manhattan, Community Board: 10**. Variance (§72-21) to permit two buildings to be combined and to add a two-story rear extension to be used as House of Worship (UG 4) (Seventh-Day Adventist Church) contrary to ZR §24-11 (Lot Coverage). R8 zoning district. R8 district.

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**2017-16-A**

15-58 Clintonville Street, located on the east side of Clintonville Street at the intersection formed by Clintonville Street and the Cross Island Parkway., Block 04699, Lot(s) 20, Borough of **Queens, Community Board: 7**. Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district. R3-1 district.

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**2017-17-A**

15-62 Clintonville Street, located on the east side of Clintonville Street at the intersection formed by Clintonville Street and the Cross Island Parkway., Block 04699, Lot(s) 21, Borough of **Queens, Community Board: 7**. Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district. R3-1 district.

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**2017-18-A**

150-95 Clintonville Court, located on the east side of Clintonville Street at the intersection formed by Clintonville Street and the Cross Island Parkway., Block 04699, Lot(s) 23, Borough of **Queens, Community Board: 7**. Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district. R3-1 district.

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# DOCKETS

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## 2017-19-A

150-93 Clintonville Court, located on the east side of Clintonville Street at the intersection formed by Clintonville Street and the Cross Island Parkway., Block 04699, Lot(s) 24, Borough of **Queens, Community Board: 7**. Proposed construction of a two story, two family building located within the bed of a mapped street, contrary to General City Law Section 35. R3-1 zoning district. R3-1 district.

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

## 2017-20-BZ

550 5th Avenue, located on the northwest corner of the intersection formed by 15th Street and 5th Avenue, Block 01041, Lot(s) 7501, Borough of **Brooklyn, Community Board: 6**. Variance (§72-21) to permit legalization of a Physical Cultural Establishment (Harbor Fitness) on a portion of the cellar and first floors contrary to ZR §§22-10 & 32-10. R6B & C4-3A zoning district. R6B & C4-3A district.

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## 2017-21-BZ

34-38 38th Street, located on the northerly side of 38th Street, 115' feet easterly of 35th Avenue, Block 00645, Lot(s) 10, Borough of **Queens, Community Board: 1**. Variance (§72-21) to permit the enlargement of an existing building contrary to ZR §43-28 (Rear Yard Equivalent) and a Special Permit (§73-36 to permit the operation of a Physical Cultural Establishment (Astoria Sports Complex) which is contrary to ZR §42-10. M1-5 zoning district. M1-5 district.

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## 2017-22-BZ

16-45 Decatur Street, located on Decatur Street between Wyckoff and Cypress Avenues, Block 03555, Lot(s) 74, Borough of **Queens, Community Board: 5**. Special Permit (§73-36) to operate a physical culture establishment (CrossFit) within an existing one-story building. M1-4D zoning district. M1-4D district.

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## 2017-23-BZ

32 Lexington Avenue, located on a through lot with frontage along Lexington Avenue and Quincy Street, between Grand and Classon Avenues., Block 01969, Lot(s) 33, Borough of **Brooklyn, Community Board: 2**. Variance (§72-21) to allow the development of a UG 3 School (Unity Preparatory Charter School) contrary to ZR §§23-153 and 24-165 (maximum lot coverage, ZR §23-153 (permitted floor area, ZR §23-622 (maximum permitted height, maximum number of stories and required 15 foot initial setback and ZR 24-36 (required rear yard). R6B zoning district. R6B district.

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# CALENDAR

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## REGULAR MEETING FEBRUARY 28, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 28, 2017, 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

#### 418-50-BZ

APPLICANT – Law Office of Stuart Klein, for WOTC Tenants’ Corp., owner.

SUBJECT – Application November 21, 2014 – Amendment seek to modify the grant to allow for the addition of 98 parking spaces and the development of a clubhouses which will provide additional amenities and recreation space for the sole use and enjoyment of the residents at the premises, located in an R3-2 zoning district.

PREMISES AFFECTED – 73-69 217<sup>th</sup> Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74<sup>th</sup> Avenue (Block 7754, Lot 3); 73-10 220<sup>th</sup> Street (Block 7755, Lot 3), Borough of Queens.

**COMMUNITY BOARD #11Q**

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#### 66-12-BZ

APPLICANT – Rosenberg & Estis, P.C., for Ladera LLC, owner.

SUBJECT – Application August 18, 2016 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a new mixed-use building containing a FRESH Program food store, a preschool and 164 residential units, contrary to use (§22-10), lot coverage (§24-11) and parking (§25-23) regulations which is set to expire October 23, 2016 . R7A, R8A/C2-4 zoning districts.

PREMISES AFFECTED – 223-237 St. Nicholas Avenue, 305 W. 121<sup>st</sup> Street, 300 W. 122<sup>nd</sup> Street, Block 1948, Lot(s) 30, 35, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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## APPEALS CALENDAR

#### 2016-4139-A

APPLICANT – Alexander Levkovich, for Zafar Mahmudov, owner.

SUBJECT – Application March 16, 2016 – Proposed construction of 2-story, 2-family semi-detached home not fronting on a legally mapped street contrary to General City Law 36, R3-1 zoning district.

PREMISES AFFECTED – 3737 Cypress Avenue, Block 6791, Lot 58, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

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#### 2016-4253-A

APPLICANT – Eric Palatnik, P.C., for Zev Johns, LLC, owner.

SUBJECT – Application September 14, 2016 – Appeal seeking a determination that the owner has acquired common law vested rights for a development commenced under the prior R7-1 district regulations. R3 Zoning district.

PREMISES AFFECTED – 565 St. John’s Place, Block 1175, Lot 87, Borough of Brooklyn

**COMMUNITY BOARD #8BK**

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#### 2016-4256-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Stecher Street LLC, owner.

SUBJECT – Application September 20, 2016 – Proposed construction of a one family, two-story dwelling not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law. R1-2 (SRD) zoning district.

PREMISES AFFECTED – 147 Stecher Street, Block 6565, Lot 11, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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# CALENDAR

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## REGULAR MEETING FEBRUARY 28, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, February 28, 2017, 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

#### 178-14-BZ

APPLICANT – Sheldon Lobel, P.C., for NLO Holding Corp., owner.

SUBJECT – Application July 24, 2014 – Variance (§72-21) seek a waiver of Section 22-10 ZR to permit a Use Group 6 retail use on the ground floor with accessory cellar storage a proposed four-story, two unit building located with an R6A zoning district.

PREMISES AFFECTED – 263 McGuinness Boulevard aka 261 McGuinness Boulevard, Block 2559, Lot 32, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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#### 226-14-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Sharey Tefilah, owner.

SUBJECT – Application September 18, 2014 – Variance (§72-21 to permit the proposed three (3) story use group 4 Synagogue, school and Rabbi's office. R4 zoning district.

PREMISES AFFECTED – 147-02 76<sup>th</sup> Road, Block 6686, Lot 1, Borough of Queens.

**COMMUNITY BOARD #8Q**

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#### 317-14-BZ

APPLICANT – Brian Cave LLP, for Acadia 3780-3858 Nostrand Avenue LLC, owner.

SUBJECT – Application December 4, 2014 – Special Permit (§73-44): that would allow the reduction in the number of off street parking spaces for ambulatory diagnostic treatment facilities listed in use group 4 and Uses in Parking Requirement Category Br, located within and C2-2/R4 zoning district.

PREMISES AFFECTED – 3780-3860 Nostrand Avenue, Block 7445, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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#### 25-15-BZ

APPLICANT – Slater & Beckerman, P.C., for The Roman Catholic Church of St. John the Baptist, owner; 71-85 Lewis Avenue LLC, lessee.

SUBJECT – Application February 17, 2015 – Special Permit (73-46) to allow a waiver of all required accessory off-street parking spaces required for dwelling units created by a conversion a five-story community facility, located within an R6B zoning district.

PREMISES AFFECTED – 71 Lewis Avenue, Block 1592, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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#### 200-15-BZ

APPLICANT – Dennis D. Dell'Angelo, for Baruch M. Wieder, owner.

SUBJECT – Application August 27, 2015 – Special Permit (§ZR 73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1364 East 23<sup>rd</sup> Street, Block 7568 Lot 76, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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#### 2016-4237-BZ

APPLICANT – Eric Palatnik, P.C., for 232 Smith Street LLC, owner; Crunch LLC, lessee.

SUBJECT – Application August 9, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Crunch*) within a new commercial building. C2-4/R6B zoning district.

PREMISES AFFECTED – 240 Smith Street, Block 408, Lot 41, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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#### 2017-46-BZ

APPLICANT – NYC Mayor's Office of Housing Recovery Operations, for Mathew Loughran, owner.

SUBJECT – Application February 16, 2017– Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 35 Nova Court, Block 8866, Lot 1398, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Ryan Singer, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JANUARY 24, 2017  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**80-54-BZ**

APPLICANT – Sheldon Lobel, P.C., for Dryden Hotel Associates, LLC, owner.

SUBJECT – Application June 28, 2016 – Extension of Term (§11-411) of a previously granted variance which permitting commercial uses on the first floor and cellar of an existing residential building, which expired on July 2, 2016. R8B zoning district.

PREMISES AFFECTED – 150 East 39<sup>th</sup> Street, Block 894, Lot 52, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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

**THE VOTE TO GRANT** –

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

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

**THE RESOLUTION** –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board pursuant to ZR § 11-411, which expired on July 2, 2016; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in *The City Record*, and then to decision on January 24, 2017; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of East 39th Street, between Lexington Avenue and Third Avenue, in an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 75 feet of frontage along East 39th Street, 100 feet of depth, 7,483 square feet of lot area and is improved with a 16-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 13, 1955, when, under the subject calendar number, the Board granted a variance permitting the change in use of apartments on stories one through five to office use with a coffee shop and cocktail lounge at the front of the first floor for a term of twenty (20) years, expiring December 13, 1975, on condition, *inter alia*, that the building not be increased in height or area and that

the residential aspect of the building be maintained; and

WHEREAS, on July 18, 1961, under the subject calendar number, the Board reopened and amended the resolution to permit an extension of time to complete construction and to permit transient-hotel use of the fourth and fifth floors along with other minor modifications; and

WHEREAS, on July 17, 1962, under the subject calendar number, the Board granted an application permitting an enlargement of the building's penthouse and an enlargement of the transient hotel's accessory dining room contrary to rear yard and setback regulations for a term of fifteen (15) years, expiring July 17, 1977; and

WHEREAS, on June 28, 1977, under the subject calendar number, the Board reopened and amended the resolution to restore the second and third floors to conforming use, permit office use at the rear of the first floor and to extend the term of the variance for an addition ten (10) years, expiring June 28, 1987; and

WHEREAS, the grant was subsequently amended and extended at various times to convert all floors of the premises except the cellar and first floor to as-of-right residential use; and

WHEREAS, on April 23, 2002, under the subject calendar number, the Board reopened and amended the resolution to permit the reduction of commercial cellar space and to permit an accessory recreation room in the cellar for the residents of 148–152 East 39th Street and 108 East 38th Street, Manhattan, on condition that the maximum occupancy for the recreation room be limited to twenty-five (25) persons; and

WHEREAS, on September 11, 2007, under the subject calendar number, the grant was extended for a period of ten (10) years, to expire on July 2, 2016; and

WHEREAS, by letter dated February 10, 2014, the Board approved the conversion of a portion of the first floor from commercial to residential as-of-right use; and

WHEREAS, the term of the variance having expired, the instant application seeks a further extension of the term for an additional ten (10) years to permit the continued operation of commercial uses on portions of the first floor and cellar of the existing mixed-use building; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension of the term of the variance 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 September 11, 2007, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years to expire on July 26, 2026; *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received October 11, 2016’-Five (5) sheets; and *on further condition*:

THAT this grant shall expire July 26, 2026;

THAT the hours of operation for all commercial uses shall be limited to 6:00 a.m. to 9:00 p.m., daily;

THAT the Certificate of Occupancy shall be amended to reflect that use of the recreation room in the cellar is limited to

# MINUTES

residents of 150 East 39th Street and residents of 108 East 38th Street, Manhattan;

THAT the maximum occupancy for the accessory recreation room shall be 25 persons;

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

THAT an amended Certificate of Occupancy shall be obtained within one (1) year, by January 24, 2018;

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 Department of Buildings/other jurisdiction objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, January 24, 2017.

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## 1151-81-BZ

APPLICANT – Greenberg Traurig, LLP

SUBJECT – Application May 19, 2016 – Amendment of a previously variance to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development. M1-6 (IHDA) zoning district.

PREMISES AFFECTED – 95 Vandam Street, Block 00597, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Commissioner Montanez and Commissioner Chanda.....3

Negative: .....0

Abstain: Vice-Chair Hinkson .....1

Absent: Commissioner Ottley-Brown.....1

#### THE RESOLUTION –

WHEREAS, this is an application to reopen and amend a variance, previously granted by the Board, which permitted residential uses on all floors above the first floor of a six-story former manufacturing building in an M1-6 zoning district; and

WHEREAS, the purpose of this application is to facilitate the transfer of 18,667 square feet to unused development rights appurtenant to the subject site by the owner of the site to the owner of a development site (tentatively comprised of Block 597, Lots 39 and 46, the “Development Site”) to be incorporated into a mixed-used commercial and residential building; and

WHEREAS, a public hearing was held on this application on September 27, 2016, after due notice by publication in *The City Record*, with a continued hearing on January 24, 2017, and then to decision on the same date; and

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

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

WHEREAS, this application is brought on behalf of the V-Dog Condominium, which owns the subject site and seeks the Board’s authorization to merge the subject site with the Development Site; and

WHEREAS, the subject site is located on the north side of Vandam Street, between Greenwich Street and Hudson Street, within an M1-6 zoning district and the Special Hudson Square District, in Manhattan; and

WHEREAS, the site has approximately 49 feet of frontage along Vandam Street, 4,965 square feet of lot area and is occupied by a six-story building containing 26,848 square feet of floor area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 15, 1927, when, under BSA Cal. No. 35-27-S, the Board granted a variance from the labor law to permit egress from the existing six-story building to the fire escape on an adjacent building to the west; and

WHEREAS, on June 5, 1928, under BSA Cal. No. 90-28-S, the Board granted another variance from the labor law, which required the provision of a fire-resistant enclosure around an interior stairway; and

WHEREAS, on March 20, 1984, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the maintenance of all floors above the first floor as a multiple dwelling on condition, *inter alia*, that double-glazed windows and mechanical ventilation systems be provided to attenuate exterior ambient noise levels to less than 40 dBA within the residential portions of the building (the “Variance”); and

WHEREAS, on October 8, 1985, under BSA Cal. No. 1152-81-ALC, the Board granted an application to exclude a total of 21,875 square feet of floor area (4,375 square feet on each of the second through sixth floors) from the payment of the conversion contribution then required pursuant to ZR § 15-551 in connection with conversion of the second through sixth floors of the existing building to residential use; and

WHEREAS, the applicant represents that no changes to the subject building are associated with the proposed merger of the zoning lots and development rights transfer; and

WHEREAS, in addition, the applicant states that the proposed transfer of development rights is consistent with the New York Court of Appeals’ decision in *Bella Vista v. Bennett*, 89 N.Y.2d 565 (1997), setting forth the parameters of Board review of requests for the transfer of development rights from sites for which a variance has been previously granted; and

WHEREAS, the applicant represents that the transfer of the unused development rights from the subject site is not in conflict with the Variance; and

WHEREAS, the applicant notes that the Board made all of the findings required pursuant to ZR § 72-21 in the Resolution for the Variance (the “Resolution”), but that the Resolution is silent as to whether the Board assigned any value

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to the unused development rights at the subject site; and

WHEREAS, accordingly, the applicant assumes that the Board ascribed no value to the unused development rights and, in support of that assumption, submits a letter from a financial consultant analyzing the value of the unused development rights appurtenant to the subject site in 1984 and concluding that the rights, indeed, had no value at that time because (1) the excess development rights could only be utilized to enlarge the existing six-story building with commercial or manufacturing uses and the market for such uses in the early 1980s was severely limited and (2) that all adjacent properties were held in separate ownership and, thus, there was no market for the transfer of these excess development rights; and

WHEREAS, the applicant additionally contends that ten of the 11 lots directly adjacent or secondarily adjacent to the subject lot that could have purchased its excess development rights were significantly underbuilt in 1984 and, thus, could have enlarged their buildings using their own unutilized floor area, but that existing bulk regulations prevented the full use of that floor area, making it further unlikely that these sites, which the applicant characterizes as narrow and irregularly shaped, would have provided a market for the subject site's excess development rights; and

WHEREAS, with regards to the last of the 11 lots directly adjacent or secondarily adjacent to the subject lot, the applicant states that the building on that lot was likely overbuilt at the time of the Variance and, as it is only secondarily adjacent to the subject lot, would have needed to merge with other zoning lots in addition to the subject site in order to use the subject site's excess development rights and, because these interstitial sites were underbuilt, the eleventh lot would have been much more likely to enlarge with the unutilized floor area appurtenant to those underbuilt sites than use the excess development rights of the subject site; and

WHEREAS, finally, the applicant notes that the mechanism for enabling the transfer of development rights through zoning lot mergers was only added to the Zoning Resolution in 1977 and, at the time, economic conditions in New York City were severely distressed, thus, development rights transfers in 1988 were highly unlikely in the zoning district; and

WHEREAS, therefore, the applicant states that an amendment to the variance to facilitate the transfer of the unused development rights from the subject site to the Development Site does not undermine the integrity of the Board's earlier findings with regards to ZR §§ 72-21(b) or 72-21(e) because the facts of the instant application are readily distinguishable from those underlying the Court's holding in *Bella Vista*; and

WHEREAS, specifically, as stated above, the applicant submits that, at the time of the variance, the subject premises were held in separate and unrelated ownership from all other parcels on the subject block and that more than 30 years have elapsed since the grant of the Variance; and

WHEREAS, the Board notes that *Bella Vista* concerned a permit request for a new as-of-right residential building proposed to be built through the transfer of development rights—from a site in which the Board granted a use variance

to permit the operation of a movie theater in a residential zoning district, to a separate adjacent site under common ownership—for the development of a complying residential building; and

WHEREAS, the Court held that review and approval of such transfers by the Board was required, *inter alia*, because the basis for the original grant, particularly with respect to the findings of financial hardship under ZR § 72-21(b) and minimum variance needed to provide relief under ZR § 72-21(e), may be implicated by the proposed transfer; and

WHEREAS, the Board credits the applicant's assertions that, unlike in *Bella Vista*, the subject site and Development Site have been under separate, unrelated ownership since the Variance that that, therefore, the applicant lacked control over the timing and nature of the development of the Development Site; and

WHEREAS, the Board also notes that a brief period of time elapsed between the issuance of the variance underlying the *Bella Vista* decision and the date of the permit application in which the owner proposed to use the floor area transferred from the variance site, further distinguishing that case from the instant application; and

WHEREAS, the Board acknowledges that in *Bella Vista*, the permit application proposing to use floor area transferred from the variance site was filed only three years after the Board grant, whereas the subject Variance was issued more than 30 years ago; and

WHEREAS, the Board agrees that the differences in timing and the health of the respective real estate markets distinguish the *Bella Vista* case from the instance case and supports the conclusion that the use of the subject site's unused development rights was not foreseeable by the owner of the Development Site or the Board; and

WHEREAS, therefore, the Board finds that the proposed transfer of development rights does not implicate or affect the basis for its findings pursuant to ZR § 72-21, specifically the (b) and (e) findings, at the time that they were made; and

WHEREAS, at hearing, the Board requested that the applicant demonstrate compliance with the conditions of the prior Resolution, including the condition requiring noise attenuation measures in the form of double-glazed windows upon the observation that several windows appear to be original and single-paned; and

WHEREAS, in response, the applicant submitted a technical memorandum analyzing whether such window attenuation remained necessary to achieve the interior noise levels deemed acceptable by the CEQR Technical Manual noise exposure guidance; and

WHEREAS, the technical memorandum, completed upon the performance of noise testing at the premises during the pendency of this application, concluded that the maximum measured noise level was in the "Acceptable" category of residential uses and below the 70 dBA threshold at which window attenuation is required under the CEQR Technical Manual; and

WHEREAS, by letter dated November 30, 2016, the New York City Department of Environmental Protection ("DEP"), determined that, upon review of the submitted noise analysis



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and data, no potential significant adverse noise impacts were expected; and

WHEREAS, the applicant also submitted evidence sufficient to prove compliance with regards to the remaining conditions imposed on the site in connection with the Variance; and

WHEREAS, based upon its review of the record, the Board does not object to the transfer of unused development rights from the subject site to the Development Site or to the proposed zoning lot merger, but notes that any further changes to the subject site that are inconsistent with this or prior approvals are subject to the Board's review and approval.

Therefore, it is Resolved, that the Board of Standards and Appeals reopens and amends the resolution, adopted on March 20, 1984, so that as amended this portion of the resolution shall read: to permit the merger of the subject site with contiguous parcels on Block 597, in Manhattan, and the associated modifications to the BSA approved site plan; and on condition:

THAT the zoning calculations, including any transfer of development rights, shall be subject to DOB's review and approval and shall be in full compliance with underlying bulk regulations;

THAT the site shall remain subject to the Board's jurisdictions, including modifications to the buildings on the site;

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

Adopted by the Board of Standards and Appeals, January 24, 2017.

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## 320-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for The Peterfield Condominium, owner; Crunch LLC, lessee.

SUBJECT – Application May 11, 2016 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (Crunch) which expired on May 16, 2016. C6-2A zoning district.

PREMISES AFFECTED – 113 4<sup>th</sup> Avenue, Block 558, Lot 7502, Borough of Manhattan.

### COMMUNITY BOARD #3M

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

THE VOTE TO GRANT –

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

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION —

WHEREAS, this is an application for an extension of the term for a previously granted special permit for a physical culture establishment ("PCE"), which expired on May 16, 2016; and

WHEREAS, a public hearing was held on this application on December 6, 2016, after due notice by publication in *The City Record*, and then to decision on January 24, 2017; 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 northeastern corner of Fourth Avenue and East 12th Street, within a C6-2A zoning district, in Manhattan; and

WHEREAS, the site has approximately 71 feet of frontage along Fourth Avenue, 126 feet of frontage along East 12th Street, 13,830 square feet of lot area and is occupied by an eight-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the site since May 16, 2006, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, allowing the establishment of a PCE, operated as a Crunch gym, located on portions of the cellar and first floor of the subject building for a term of ten (10) years, expiring May 16, 2016; and

WHEREAS, the previous term of the special permit having expired, the applicant seeks an extension of term for an additional ten (10) years; and

WHEREAS, the facility remains in operation as a Crunch gym and no modifications are proposed to the previously approved hours of operation: Monday through Friday, 5:00 a.m. to 11:00 p.m., and Saturdays and Sundays, 7:30 a.m. to 9:00 p.m.; and

WHEREAS, the applicant notes that the PCE continues to occupy 13,793 square feet of floor space in the cellar and 11,682 square feet of floor area on the first floor, as the Board previously approved; and

WHEREAS, as conditioned in the prior approval, sprinklers and an interior fire alarm were installed within the PCE space and subsequently approved and signed off by the Department of Buildings; and

WHEREAS, the Department of Buildings issued a Letter of Completion, dated July 28, 2016, for the fire alarm system at the premises and a Letter of Completion, dated July 28, 2016, for the sprinkler system at the premises; and

WHEREAS, the Board finds that a ten (10) 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 16, 2006, 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, expiring May 16, 2026, on condition that the site shall substantially conform to drawings as filed with this application, marked 'Received January 3, 2017'-Four (4) sheets; and on further condition:

THAT this grant shall be limited to a term of ten (10) years from May 16, 2016, expiring May 16, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

# MINUTES

THAT the hours of operation shall be limited to Monday through Friday, 5:00 a.m. to 11:00 p.m., and Saturdays and Sundays, 7:30 a.m. to 9:00 p.m.;

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

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

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

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

Adopted by the Board of Standards and Appeals, January 24, 2017.

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## 72-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for VNO One Park LLC, owner; Equinox One Park Avenue, Inc., lessee.

SUBJECT – Application May 11, 2016 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Equinox) within an existing commercial building which expires on September 19, 2016. C5-3/C6-1 zoning district. PREMISES AFFECTED – 1 Park Avenue, Block 888, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #5M

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

#### THE VOTE TO GRANT –

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

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

#### THE RESOLUTION —

WHEREAS, this is an application for an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on September 19, 2016; and

WHEREAS, a public hearing was held on this application on December 6, 2016, after due notice by publication in *The City Record*, and then to decision on January 24, 2017; and

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

WHEREAS, Community Board 5, Manhattan, waived its recommendation for this application; and

WHEREAS, the subject site is located on the east side of Park Avenue, between East 33rd Street and East 32nd Street, partially within a C5-3 zoning district and partially within a C6-1 zoning districts, in Manhattan; and

WHEREAS, the site has approximately 198 feet of frontage along Park Avenue, 230 feet of frontage along East 33rd Street, 230 feet of frontage along East 32nd Street, 45,425 square feet of lot area and is occupied by an 18-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the site since September 19, 2006, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, allowing the establishment of a PCE, operated as Equinox Fitness, located on a portion of the first floor and the entire second floor of the subject building for a term of ten (10) years, expiring September 19, 2016; and

WHEREAS, the previous term of the special permit having expired, the applicant seeks an extension of term for an additional ten (10) years; and

WHEREAS, the facility remains in operation as Equinox Fitness, and no modifications are proposed to the previously approved hours of operation: Monday through Friday, 5:00 a.m. to 11:00 p.m., and Saturday and Sunday, 7:30 a.m. to 9:00 p.m.; and

WHEREAS, the applicant notes that the PCE continues to occupy 40,144 square feet of total floor area in the building, 856 square feet of floor area on the first floor and 39,288 square feet of floor area on the second floor, as previously approved by the Board; and

WHEREAS, as conditioned in the prior approval, sprinklers and an interior fire alarm were installed within the PCE space and subsequently approved and signed off by the Department of Buildings; and

WHEREAS, the Department of Buildings issued a Letter of Completion, dated February 15, 2007, for the sprinkler system at the premises, and the Fire Department issued a Letter of Approval, dated July 19, 2007, for the fire alarm system at the premises; and

WHEREAS, the Board finds that a ten (10) 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 September 19, 2006, 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, expiring September 19, 2026, *on condition* that the site shall substantially conform to drawings as filed with this application, marked ‘January 3, 2017’-Three (3) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years from September 19, 2016, expiring September 19, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Friday, 5:00 a.m. to 11:00 p.m., and Saturday and Sunday, 7:30 a.m. to 9:00 p.m.;

THAT all massages shall be performed by New York

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# MINUTES

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State-licensed massage therapists only;

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

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

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

Adopted by the Board of Standards and Appeals, January 24, 2017.

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## **1129-64-BZ**

APPLICANT – Davidoff Hatcher & Citron, LLP, for 147-36 Brookville Boulevard Corp., owner.

SUBJECT – Application January 11, 2016 – Extension of Term of a previously approved Variance (72-21) permitting the operation of an Auto Supplies Sales Establishment (UG 6) which expired on June 10, 2015; Amendment to legalize interior layout changes, permit general Use Group 6 Use and eliminate the term of the variance; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 147-36 Brookville Boulevard, Block 13729, Lot(s) 30, 33, Borough of Queens.

### **COMMUNITY BOARD #13Q**

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for continued hearing.

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## **374-71-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 205-11 Northern Boulevard LLC, owner.

SUBJECT – Application May 7, 2014 – Extension of Term of a previously granted Variance (72-21) for the continued operation of an automobile showroom with open display of new and used cars (UG16) with accessory customer and employee parking in a previously unused vacant portion of the premises which expired on July 18, 2011. C2-2 (R3-2) zoning district.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 06269, Lot 20, Borough of Queens.

### **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for adjourned hearing.

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## **716-82-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP for Cigarette Realty Co., LLC, owner.

SUBJECT – Application November 9, 2015 – Extension of term of variance (72-21) which permitted retail stores,

offices and accessory parking at the rear of the building which expired on June 13, 2013; Extension of Time to Obtain a Certificate of Occupancy which expired on June 13, 2003; Waiver of the Rules. C2-2/R6 & R4 zoning district.

PREMISES AFFECTED – 209-30 Northern Boulevard, Block 7309, Lot 15, Borough of Queens.

### **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for adjourned hearing.

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## **109-93-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.

SUBJECT – Application December 24, 2015 – Extension of Term of a previously approved Variance (72-21) permitting an eating and drinking establishment (UG 6) which expired on May 24, 2014; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 189-11 Northern Boulevard, Block 5365, Lot 5, Borough of Queens.

### **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.

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## **19-94-BZ**

APPLICANT – Andrew Schwarsin, Esq., for Walter R. Schwarsin, owner.

SUBJECT – Application July 13, 2016 – Extension of Term of a previously approved Variance permitting a public parking lot (UG 8) of which a portion of the lot lies in a residential zoning district which expired on July 18, 2015; Waiver of the rules. C4-3/R-5 zoning district.

PREMISES AFFECTED – 37-18 75<sup>th</sup> Street, Block 1285, Lot 47, Borough of Queens.

### **COMMUNITY BOARD #3Q**

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for continued hearing.

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# MINUTES

## 65-94-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for KGH Realty Corp., owner.

SUBJECT – Application March 7, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted an enlargement contrary to side yard regulations and community facility (UG 4) on the ground and cellar floors and commercial offices (UG 6) in the garage which expired on March 5, 2016. R4B zoning district.

PREMISES AFFECTED – 144-02 Jewel Avenue, Block 6642, Lot 2, Borough of Queens.

### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.

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## 174-94-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for David Rosero, owner.

SUBJECT – Application May 30, 2014 – Extension of the term of the variance, permitting an automotive sales establishment, which expired on May 6, 2012: Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 99-07 Roosevelt Avenue, Block 1765, Lot 44, Borough of Queens.

### COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for adjourned hearing.

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## 201-97-BZ

APPLICANT – Eric Palatnik, P.C., for Monroe Queens-Rockaway, LLC, owner.

SUBJECT – Application August 6, 2015 – Amendment of a previously approved Variance (§72-21) which permitted the erection and use of a one-story building as a non-conforming Use Group 6 drug store with accessory parking. The Amendment seeks to eliminate the term of the variance since the use is now permitted in the district. C2-3/R3-2 zoning district.

PREMISES AFFECTED – 119-02 Rockaway Boulevard, corner of Rockaway Boulevard and Lefferts Boulevard, Block 11712, Lot 28, Borough of Queens.

### COMMUNITY BOARD #10Q

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for adjourned hearing.

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## 4-98-BZ

APPLICANT – Eric Palatnik, P.C., for Madison Queens & Guy Brewer, LLC, owner.

SUBJECT – Application July 24, 2015 – Amendment of a previously approved variance (72-21) which permitted the operation of a drug store (UG 6) contrary to uses regulations. The amendment seeks to eliminate the term of the variance and reflect non-compliance with respect to bulk. C1-3/R3X zoning district.

PREMISES AFFECTED – 127-04 Guy Brewer Boulevard,

corner of Guy Brewer Boulevard and Baisley Boulevard, Block 12269, Lot 29, Borough of Queens.

### COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for adjourned hearing.

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## 180-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TCAM Core Property Fund Operating LP, owner; Equinox 85<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application February 4, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (Equinox) which expires on February 28, 2016. C2-8A/R8B zoning district.

PREMISES AFFECTED – 1511 Third Avenue (a/k/a 201 East 85<sup>th</sup> Street) Block 1531, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for postponed hearing.

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## APPEALS CALENDAR

### 2016-4227-A

APPLICANT – Cozen O'Connor, for Boys Town New York, Inc. (f/k/a Girls and Boys Town of New York, Inc.), owner.

SUBJECT – Application July 13, 2016 – Proposed development which is within the bed of a mapped but unopened portion of Fleet Place, located on the north west corner of Willoughby Street and Fleet Place, contrary to General City Law 35 and related bulk waivers pursuant to ZR Section 72-01(g). C6-4 (Special Downtown Brooklyn District) zoning district.

PREMISES AFFECTED – 112 Fleet Place (aka 167 Willoughby Street), Block 2062, Lot 23, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

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

THE VOTE TO GRANT –

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

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 12, 2016, acting on Department of Buildings (“DOB”) Application No. 321183312, reads in pertinent part:

1. Proposed construction located partially within the bed of a mapped street is contrary to Section 35 of the General City Law. Obtain Board of Standards and Appeals approval;
2. Proposed new building has bulk-non-

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compliances resulting from the location of such mapped street. Obtain Board of Standards and Appeals waiver pursuant to Zoning Resolution § 72-01(g); and

WHEREAS, this is an application to permit the development of an 11-story residential building partially within the bed of a mapped street, contrary to General City Law (“GCL”) § 35, and that affects compliance with the following applicable bulk regulations: minimum lot area (ZR §§ 34-11 and 23-32), minimum lot width (ZR §§ 34-11 and 23-32) and maximum floor area and floor area ratio (“FAR”) (ZR §§ 34-11 and 23-152); and

WHEREAS, accordingly, a waiver pursuant to ZR § 72-01(g) is requested to permit the inclusion of the mapped, but unbuilt, portion of the street into the zoning calculation for lot area, lot width, floor area and FAR; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in *The City Record*, and then to decision on January 24, 2017; and

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

WHEREAS, Community Board 2, Brooklyn, waived, in writing, the holding of a public hearing regarding this application,

WHEREAS, the subject site is located on the northwestern corner of the intersection of Fleet Place and Willoughby Street, in a C6-4 zoning district within the Special Downtown Brooklyn District, in Brooklyn; and

WHEREAS, the site has approximately 100 feet of frontage along Fleet Place, 24 feet of frontage along Willoughby Street, 2,435 square feet of lot area and is occupied by a three-story building; and

WHEREAS, the site is traversed by a 10 foot wide mapped but unbuilt portion of Fleet Place; and

WHEREAS, the mapped width of Fleet Place between Willoughby Street and Fair Street was increased from 50 feet to 60 feet, effective August 12, 2006, pursuant to a 2004 Amendment to the Brooklyn Center Urban Renewal Plan proposed by the New York City Department of City Planning (“DCP”) and the New York City Economic Development Corporation (“EDC”) and adopted by the City Planning Commission; and

WHEREAS, the street was never physical widened and EDC states, by an undated letter, that no widening of the street at the subject site is anticipated and that EDC has no objection to the subject application; and

WHEREAS, by letter dated September 1, 2016, the New York City Department of Transportation (“DOT”) confirms that Fleet Place between Willoughby Street and Myrtle Avenue is mapped to a width of 50 feet and has a Corporation Council Opinion of Dedication (“CCO”) for the entire width; and

WHEREAS, DOT additionally states that the subject lot is not presently included in DOT’s Capital Improvement Program; and

WHEREAS, the applicant proposes to demolish the

existing building and construct an 11-story residential building with 24,111 square feet of floor area (9.94 FAR); and

WHEREAS, the applicant represents that the proposal complies with all bulk regulations applicable in a C6-4 zoning district except regulations regarding minimum lot area, minimum lot width and maximum floor area and FAR due to the fact that the lot is partially located within the bed of a mapped, but unbuilt portion, of Fleet Place; and

WHEREAS, in the subject zoning district, the minimum lot area for multi-family residential buildings is 1,700 square feet pursuant to ZR §§ 34-11 and 23-32; the minimum lot width required is 18 feet pursuant to ZR §§ 34-11 and 23-32; and the maximum floor area permitted is 24,250 square feet (10 FAR) pursuant to ZR §§ 34-11 and 23-152; and

WHEREAS, because of the 10 foot wide by 100 foot long portion of the subject site located in the bed of a mapped, but unbuilt portion, of Fleet Place, the maximum lot area of the site available for development as-of-right is 1,425 square feet and the maximum width of the lot developable as-of-right is approximately 14 feet; and

WHEREAS, accordingly, the applicant seeks a waiver, pursuant to ZR § 72-01(g), to permit the inclusion of the portion of the subject site in a mapped, but unbuilt portion, of Fleet Place in the calculation of lot area and lot width for the premises; and

WHEREAS, in addition, the proposed floor area of 24,111 square feet is greater than 14,250 square feet, the maximum permitted floor area for the portion of the lot not located in the bed of the mapped, but unbuilt portion of Fleet Place, which is developable as-of-right; and

WHEREAS, because the proposed 24,111 square feet of floor area does, however, comply with the maximum floor area permitted at the site if the area located in the mapped, but unbuilt portion of the street, is included in the floor area calculation, the applicant seeks a waiver pursuant to ZR § 72-01(g) to permit the inclusion of that area in such calculation; and

WHEREAS, in addition to the representation provided by EDC that widening of Fleet Place at this location is not anticipated, the applicant suggests that such widening is impracticable because of, *inter alia*, significant development in the area, which would need to be demolished to effectuate such widening, and the availability of public transportation in the area which makes widening Fleet Place in order to accommodate additional automobile traffic unnecessary; and

WHEREAS, by letter dated January 9, 2017, the New York City Department of Environmental Preservation (“DEP”) states that there is a 12-inch diameter combined sewer and an 8-inch diameter city water main in Fleet Place between Willoughby Street and Myrtle Avenue and a 15-inch diameter combined sewer in the bed of Fleet Place between Willoughby Street and Myrtle Avenue, but that DEP has no objections to the proposed application; and

WHEREAS, by letter dated January 18, 2017, the New York City Fire Department confirms that there are no plans to widen Fleet Place, that the proposed project complies with site access requirements and that the Fire Department has no objections to the proposed application; and

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

WHEREAS, the Board additionally 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 Department of Buildings (“DOB”), dated July 12, 2016, acting on DOB Application No. 321183312, 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 drawings filed with the application marked “Received July 13, 2016”– One (1) sheet; and *on further condition*:

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 January 24, 2021;

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 Certificate of Occupancy;

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, January 24, 2017.

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## 2016-4245-A thru 2016-4248-A

APPLICANT – Law Office of Steven Simicich, for Over Development, LTD, owner.

SUBJECT – Applications September 8, 2016 – Proposed construction of four single family residential buildings not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1 zoning district  
PREMISES AFFECTED – 4004, 4006, 4008, 4010 Manhattan Avenue, Block 7024, Lot(s) 119, 120, 121, 122, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 331-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Nissim Gindi, owner.

SUBJECT – Application December 30, 2014 – Special Permit (§73-622) for the enlargement of an existing single family contrary to side yards (ZR 23-461) and less than the minimum rear yard (ZR 23-47). R5 (OP) zoning district.  
PREMISES AFFECTED – 2171 Ocean Parkway, east side of Ocean Parkway between Avenue U and Avenue V, Block 7133, Lot 45, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

THE VOTE TO GRANT –

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

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 20, 2015, acting on DOB Application No. 320593256, reads in pertinent part:

1. ZR 23-47: Proposed rear yard condition is less than the minimum 30’-0” required; contrary to ZR 23-47;
2. ZR 23-461(a): Two side yards are required for a total of 13’-0”, with any side yard a minimum width of 5’-0”. The proposed side yard condition is less than required; contrary to ZR 23-461(a);
3. ZR 23-461(c): Proposed distance between buildings is less than the minimum 8’ required pursuant to ZR 23-461(c);
4. ZR 23-48: Proposed side yard for existing narrow lot 4’/foot; in no event may side yard be less than 5’ each, nor a combined total of less than 10’; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R5 zoning district, within the Special Ocean Parkway District and partially within the Special Ocean

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Parkway Subdistrict, the proposed enlargement of an existing single-family residence that does not comply with the zoning requirements for rear yards, side yards, distance between buildings, contrary to ZR §§ 23-47, 23-461 and 23-48; and

WHEREAS, a public hearing was held on this application on April 12, 2016, after due notice by publication in *The City Record*, with continued hearings on June 2, 2016, July 19, 2016, and November 1, 2016, and then to decision on January 24, 2017; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Ocean Parkway, between Avenue U and Avenue V, in an R5 zoning district, within the Special Ocean Parkway District and partially within the Special Ocean Parkway Subdistrict Area, in Brooklyn; and

WHEREAS, the site has approximately 27 feet of frontage along Ocean Parkway, a depth of 130 feet and 3,445 square feet of lot area; and

WHEREAS, the site is occupied by a two-story single-family detached residence with 1,682 square feet of floor area, a floor area ratio of ("FAR") of 0.49, side yards measuring 7'-2" and 2'-8" and a rear yard of 43'-8"; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

WHEREAS, the Board notes that, in addition to the foregoing, its determination herein is also subject to and guided by, among other things, 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 detached residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant seeks to enlarge the existing single-family residence with an additional story, decrease the rear yard from 43'-8" to 20 feet, reduce the 7'-2" side yard to 6' and provide a straight-line extension along the existing 2'-8" side yard; and

WHEREAS, at the subject premises, ZR § 23-47 requires a 30-foot rear yard, ZR § 23-461(a) requires two side yards totaling 13 feet wide, each measuring at least 5 feet wide; ZR

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§ 23-461(c) further requires a minimum 8-foot distance between buildings containing residents on adjacent zoning lots; and, because the subject lot is more narrow than the minimum lot width required for residences set forth in ZR § 23-32, ZR § 23-48 permits a reduction in the minimum side yards required by ZR § 23-461(a), but requires two side yards totaling 10 feet wide having minimum widths of 5 feet; and

WHEREAS, the applicant has submitted a 1930 map of the premises and surrounding area to demonstrate that the existing side yards predate the 1961 Zoning Resolution and, thus, the northern 2'-8" side yard is a lawful, non-complying condition; and

WHEREAS, the applicant represents that the proposed enlargement is consistent with the character of the surrounding neighborhood; and

WHEREAS, in support of this contention, the applicant provided the Board with a rear-yard comparison study of the subject block demonstrating that, of the 40 one-and-two-family residences on the same block as the subject site, 20 (50 percent) have rear yards with depths of less than 30 feet, six (15 percent) have rear yards with depths of less than 20 feet and 18 (45 percent) have garages located in the rear yard, often directly against the rear lot line, effectively reducing the depth and amount of open space in those yards; and

WHEREAS, additionally, the applicant agreed to provide a 25'-0" rear yard at the second and third floors of the proposal and represents that the garage currently located in the rear yard of the subject site will be removed as part of the subject proposal; thus, while the rear yard will be reduced, the removal of the garage will result in additional open space; and

WHEREAS, the Board acknowledges the inconsistent and irregular depths of rear yards on the subject block, particularly the prevalence of rear yards measuring 20 feet of depth or less and rear-yard garages, and notes that it is these specific existing conditions that lead to its finding that the 20-foot rear yard proposed at the subject site is consistent with the character of the surrounding neighborhood; and

WHEREAS, additionally, the Board inquired at hearing about the massing of the proposed building, specifically whether the proposed three-story residence, and its attendant height, was consistent with neighborhood character; and

WHEREAS, in response, the applicant submitted information regarding the height of surrounding residences demonstrating that the subject proposal's height was supported by existing neighborhood conditions and, thus, not inconsistent with the surrounding area; and

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

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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,

in an R5 zoning district, the proposed enlargement of a single-family residence that does not comply with zoning requirements for rear yards, side yards and distance between buildings, contrary to ZR §§ 23-47, 23-461 and 23-48; *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 January 5, 2017"-Nine (9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: side yards with minimum widths of 6'-0" and 2'-8" and a rear yard of at least 20'-0", as illustrated on the BSA-approved plans;

THAT all existing exterior walls and joists shall remain, as shown on the BSA-approved plans, or the special permit is void;

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 special 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 24, 2017.

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## 101-15-BZ

### CEQR #15-BSA-203Q

APPLICANT – Law Office of Jay Goldstein, for Nesiv Hatorah Inc., owner.

SUBJECT – Application May 11, 2015 – Variance (§72-21) to permit construction of a two-story use group 4 synagogue contrary to underlying bulk requirements. R2X zoning district.

PREMISES AFFECTED – 830 Hicksville Road, Block 15583, Lot 11, Borough of Queens.

### COMMUNITY BOARD #14Q

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

THE VOTE TO GRANT –

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

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 12, 2016, acting on Department of Buildings ("DOB") Application No. 421039325 reads in pertinent part:

Proposed lot coverage . . . contrary to ZR 24-11;

Proposed front yards are contrary to ZR 24-34;

Proposed side yards are contrary to ZR 24-35(a);

Proposed rear yards/rear yard equivalent are contrary to ZR 24-382(b);



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Proposed wall height/sky exposure contrary to ZR 24-521;

Proposed parking contrary to ZR 25-31; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an R2X zoning district, the construction of a Use Group 4 house of worship that does not comply with the applicable lot coverage, front yard, side yard, rear yard, wall height, sky exposure plane and parking regulations of ZR §§ 24-11, 24-34, 24-35(a), 24-382(b), 24-521 and 25-31; and

WHEREAS, this application is filed on behalf of K'hal Nesiv Hatorah (the "Congregation"), a non-profit religious organization; and

WHEREAS, a public hearing was held on this application on July 12, 2016, after due notice by publication in *The City Record*, with continued hearings on September 13, 2016, December 6, 2016, December 13, 2016, and then to decision on January 24, 2017; and

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

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

WHEREAS, Donovan Richards, Council Member for the 31st District, Queens, submitted a letter in support of this application; and

WHEREAS, the Board received and reviewed additional letters in support of the application and an objection on the basis that the proposed development will cause more car and pedestrian traffic in the surrounding area; and

WHEREAS, the subject site is located on the north side of Hicksville Road, between Beach 9 Street and Elvira Avenue, in an R2X zoning district, in Queens; and

WHEREAS, the site has approximately 85 feet of frontage along Hicksville Road, 74 feet of frontage along Frisco Avenue, 11,368 square feet of lot area and is currently vacant; and

WHEREAS, the applicant represents that the site was historically developed with a one-family residence, but such residence was demolished, along with its foundation, because it was insufficient to serve the needs of the Congregation; and

WHEREAS, the Congregation proposes to construct a two-story, plus cellar, Use Group 4 synagogue on the site with 10,697 square feet of floor area, a floor area ratio ("FAR") of 0.94, 59 percent lot coverage, a 7'-1" front yard, side yards measuring 7'-0" and 3'-5", rear yards measuring 26'-9" and 7'-2" and a base wall height of 25'-8" that breaches the sky exposure plane, and provide two parking spaces; and

WHEREAS, the cellar level of the proposed synagogue will consist of a social hall with a capacity of 235 persons, intended for religious celebratory use only, a prep kitchen with both refrigerated and dry storage, bathroom facilities and storage space; the first floor will contain the main prayer area with a capacity for 180 congregants,

additional bathroom facilities, a study area and rabbi's office; and the second floor will include a women's prayer area with a capacity of 179 congregants open to the main prayer area below, an administrative office, a playroom and women's bathroom facilities; and

WHEREAS, the applicant states that the social hall will not be utilized for any commercial catering and agreed to such limitation on its use being made a condition of this approval; and

WHEREAS, at the subject site, the maximum lot coverage permitted is 55 percent pursuant to ZR § 24-11; two front yards of at least 15 feet are required pursuant to ZR § 24-34; two side yards measuring at least 8 feet are required pursuant to ZR § 24-35(a); a rear yard equivalent of either an open area with a minimum depth of 60 feet midway between the two street lines, two open areas with a minimum depth of 30 feet along the full length of a street line or an open area along the full length of each side lot line with a minimum width of 30 feet is required pursuant to ZR § 24-382(b); and 24 parking spaces are required pursuant to ZR § 25-31; and

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

WHEREAS, the Congregation states that the waivers sought are essential to its ability to meet its programmatic needs, including accommodating its current membership of 116 households, 114 of which live within a three-quarter mile radius of the subject site; and

WHEREAS, the Congregation currently rents space from a girls school for religious services on weekends and Jewish holidays, when the school is not in session, and rents from neighboring facilities for its daily classes and lecture offerings; and

WHEREAS, the applicant asserts that its programming, and the growth of its membership have been inhibited by the spatial constraints of the facilities it rents; and

WHEREAS, the applicant contends that the subject proposal will provide seating adequate to accommodate its existing congregation as well as allow for modest future growth, space necessary to hold various classes and lectures simultaneously, play space for children during religious services, a library (kollel) with additional space for smaller lectures, necessary administrative offices, including an office for the Rabbi, and a social hall to be used by the Congregation on special occasions; and

WHEREAS, the Congregation represents that the irregular shape of the lot creates practical difficulties or unnecessary hardship in strictly complying with the bulk provisions of the Zoning Resolution; and

WHEREAS, specifically, the applicant states that the irregular shape of the western lot line—which runs from the northern lot line in a slightly westerly direction for approximately 63 feet before running in a slightly easterly direction for approximately 76 feet to the southern lot line, resulting in frontage along Frisco Avenue that is 11 feet

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narrower than the frontage along Hicksville Road—prevents the construction of a symmetrical building with sufficient space to meet the Congregation’s programmatic needs; and

WHEREAS, a synagogue constructed at the premises as-of-right would provide sanctuary space on the first floor to accommodate 131 congregants, a sanctuary space on the second floor for a maximum of 82 congregants and provide a social hall with a capacity of 162 persons, which the applicant states is insufficient for the growing congregation; and

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

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), an educational or religious institution’s application is to be granted unless it can be shown to have an adverse effect on 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 such application; and

WHEREAS, based on the above, the Board finds that the programmatic needs of the Congregation create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant first notes that the proposed use is permitted as-of-right in the subject zoning district and that substantial efforts have been made to design the proposed building to appear consistent with surrounding residential and community facility buildings; and

WHEREAS, the Congregation initially proposed a building with a base wall height of 27’-2”, including the location of the first floor 3 feet above the flood plain elevation, and total proposed height of 38’-7”; and

WHEREAS, the applicant explained that the building was proposed to be lifted from grade in order to both emphasize the special function of the proposed synagogue as a religious institution and help prevent flooding at the first floor; and

WHEREAS, while the subject site is not located in a flood zone, the applicant represents that it is located across the street from a flood zone and, thus, prone to being flooded; and

WHEREAS, nevertheless, in response to Board concerns that the originally proposed building was too tall

and the overall design of the roof appeared too massive, particularly as perceived from Frisco Avenue, the applicant reduced the height of the first floor from 3’-0” to 1’-6” above grade, reduced the height of the proposed parapet along Frisco Avenue by 2’-0” to match the heights of adjacent residences and revised the roof design from a solid mansard to one with dormers along the sides fronting Hicksville Road and Frisco Avenue, intended to block the rooftop bulkheads from view; and

WHEREAS, additionally at the Board’s request, the applicant modified the plans to provide wrought iron fencing along the entire length of both side yards, gates at the side yards to prevent the utilization of the side yards for congregating or play and trees along the side lot lines to buffer the proposed use from surrounding residences; and

WHEREAS, with regards to parking, the applicant states that the requested reduction in parking spaces to 2 is reasonable for the subject use because congregants are prohibited from driving on religious days and holidays, thus the greatest need for parking will be weekday mornings and evenings, where lesser numbers of congregants will travel to the synagogue for assorted classes, lectures and small study groups; and the applicant states that, even at those times, approximately half of congregants will walk to the site because they live within a three-quarter mile radius of the premises; and

WHEREAS, based on the anticipated programming schedule at the building, the applicant concluded that 33 parking spaces would be required during peak weekday hours and prepared parking studies of the surrounding area during both morning and evening hours demonstrating that sufficient on-street parking spaces were, indeed, available; and

WHEREAS, in response to the Board’s concerns regarding the use of on-street parking by other community facilities located in the immediate area, the applicant further agreed to arrange for access to 17 parking spaces accessory to a school located across the street from the subject site on Beach 9th Street on weekdays between 5:30 a.m. and 8:30 a.m. and provided a letter confirming such access from that school’s administrator; and

WHEREAS, the applicant additionally notes that the provision of 2 parking spaces is greater than the number of parking spaces that would be required if the Congregation applied to the City Planning Commission for the parking waiver available for locally oriented houses of worship pursuant to ZR § 25-35, which the Congregation asserts it would qualify for and, under which, few enough parking spaces would be required such that all required parking could be waived pursuant to ZR § 25-33; and

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

WHEREAS, the Congregation states that, per ZR § 72-21(d), the hardship was not self-created; and

WHEREAS, the Board finds that the hardship herein

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was not created by the Congregation; and

WHEREAS, the Congregation represents that, consistent with ZR § 72-21(e), the proposal represents the minimum variance needed to accommodate its programmatic needs; and

WHEREAS, the Board finds that this proposal is the minimum necessary to allow the synagogue to fulfill its programmatic needs; and

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Environmental Assessment Statement (EAS) Short Form CEQR No. 15BSA203Q, dated November 18, 2016; 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; Open Space; Shadows; Historical and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, by correspondence dated December 6, 2016, the New York City Landmarks Preservation Commission confirms that the subject site is of no architectural or archaeological significance; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site located in an R2X zoning district, the construction of a Use Group 4 house of worship that does not comply with the applicable lot coverage, front yard, side yard, rear yard, wall height, sky exposure plane and parking regulations of ZR §§ 24-11, 24-34, 24-35(a), 24-382(b), 24-521 and 25-31, *on condition* that all work will substantially conform to drawings filed with this application marked “Received January 24, 2017”-Twelve (12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 59 percent lot coverage, a minimum 7’-1” front yard, side yards measuring at least 7’-

0” and 3’-5”, rear yards measuring a minimum of 26’-9” and 7’-2”, a maximum base wall height of 25’-8” that breaches the sky exposure plane, and the provision of at least two parking spaces, as indicated on the BSA-approved plans;

THAT the gates to the side yards shall remain locked at all times and provide access for maintenance only;

THAT landscaping and fencing shall be provided as indicated on the Board-approved plans and maintained, repaired and replaced as needed;

THAT no occupancy of the roof is permitted;

THAT no portion of the building, including but not limited to the cellar level social hall, may be utilized for commercial catering;

THAT the above conditions shall be listed on the Certificate of Occupancy;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a Certificate of Occupancy shall be obtained within four (4) years, by January 24, 2021;

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 shall be considered approved only for the portion 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, January 24, 2017.

## 160-15-BZ

### CEQR #16-BSA-006K

APPLICANT – Sheldon Lobel, P.C., for 186 Montague Street, LLC, owner.

SUBJECT – Application July 16, 2015 – Special Permit (73-36) to permit the operation of a Physical Culture Establishment (*Orangetheory Fitness*). C5-2A zoning district.

PREMISES AFFECTED – 186 Montague Street, Block 250, Lot 34, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

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

THE VOTE TO GRANT –

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

Negative: .....0

Absent: Commissioner Otley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 15, 2016, acting on DOB Application No. 320625463, reads in pertinent part:

“Proposed use, ‘physical culture or health establishment’, is not permitted as-of-right in C5-

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2A, DB district and a BSA special permit is required”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C5-2A zoning district, within the Special Downtown Brooklyn District and the Borough Hall Skyscraper Historic District, the operation of a physical culture establishment (“PCE”) on a portion of the second floor of a four-story, with cellar, commercial building, contrary to ZR § 32-10;

WHEREAS, a public hearing was held on this application on December 13, 2016, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; 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 south side of Montague Street, between Clinton Street and Court Street, in a C5-2A zoning district, within the Special Downtown Brooklyn District and the Borough Hall Skyscraper Historic District, in Brooklyn; and

WHEREAS, the site has approximately 50 feet of frontage along Montague Street, 100 feet of depth, 5,000 square feet of lot area, and is occupied by a four-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such use is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such use contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [sic] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or

health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 3,950 square feet of floor area on the second floor; and

WHEREAS, the PCE has operated as Orangetheory Fitness since March 5, 2016; and

WHEREAS, the applicant represents that the PCE uses the main entrance, lobby and elevator on the first floor and that the second floor contains areas for treadmills, elliptical machines, stationary bicycles, rowers and weights as well as a reception area, locker rooms with restrooms and showers, an office and retail; and

WHEREAS, the PCE’s hours of operation are Monday through Thursday, 5 a.m. to 9 p.m., Fridays, 5 a.m. to 8 p.m., Saturdays, 7 a.m. to 1 p.m., Sundays, 8 a.m. to 2 p.m.; and

WHEREAS, the applicant states that Montague Street is a frequently traveled commercial corridor with numerous commercial and mixed-use buildings; that nearby restaurants

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and retail stores are compatible with the PCE; and that, therefore, the PCE will not alter the essential character, future use or development of the surrounding area; and

WHEREAS, with regards to sound attenuation in the PCE, the applicant states that the PCE has installed a gypsum ceiling, a wood floating-floor system beneath the treadmills and Pliteq GenieMat FIT 70 rubber flooring material in the weights area; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to the use of the premises, the applicant states that the PCE contains facilities for physical-improvement, body-building, weight-reduction and aerobics programs; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant has submitted plans to the Board indicating that the PCE will be fully sprinklered and that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space; and

WHEREAS, by letter dated December 9, 2016, the Fire Department states that, based on its review of the drawings and supporting documentation for the subject PCE, as well as the fact that on-site operational testing of the interior fire alarm has already been scheduled, it has no objections to this application; and

WHEREAS, the Landmarks Preservation Commission (“LPC”) issued Certificate of No Effect No. 17-433 dated July 20, 2015, and expiring July 22, 2019, for interior alterations on the second floor associated with the subject PCE application, finding that the work will have no effect on significant protected features of the building; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant states that the PCE will not interfere with any pending or approved public improvement project; and

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

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-006K, dated July 16, 2015; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.3 and 617.5, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C5-2A zoning district, within the Special Downtown Brooklyn District and the Borough Hall Skyscraper Historic District, the operation of a physical culture establishment (PCE) on the second floor of a four-story, with cellar, commercial building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked “Received January 4, 2017”- Eight (8) sheets; and on further condition:

THAT the term of this grant shall be for ten (10) years, expiring March 5, 2026;

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

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system shall be maintained in the entire PCE space and that such system shall include: area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and connection of the interior fire alarm and sprinkler system to an FDNY-approved central station;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT noise abatement measures shall be provided and maintained within the PCE space—including a gypsum ceiling, a wood floating-floor system beneath the treadmills and rubber flooring in the weights area—as indicated on the BSA-approved plans;

THAT all exterior signage shall comply with applicable zoning district regulations and shall be subject to approval by the Landmarks Preservation Commission;

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

THAT a Certificate of Occupancy shall be obtained within one (1) year, by January 24, 2018;

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,

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January 24, 2017.

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**171-15-BZ**

**CEQR #16-BSA-011M**

APPLICANT – Juan D. Reyes, III, Shefarth Shaw LLP, for 281 Broadway LLC, owner; James and Jennifer McDate (CrossFit), lessee.

SUBJECT – Application July 29, 2015 – Special Permit (§73-36) to allow a physical culture establishment (*CrossFit*) to be operated within an existing building. C6-4A zoning district.

PREMISES AFFECTED – 281 Broadway, between Reade Street and Chambers Street, Block 149, 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 Montanez and Commissioner Chanda.....4

Negative: .....0

Absent: Commissioner Otley-Brown.....1

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 23, 2015, acting on DOB Application No. 121192146, reads in pertinent part:

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

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a zoning lot partially located within a C6-4A zoning district, partially within a C6-3A zoning district and partially within the Tribeca Mixed-Use District, a physical culture establishment (“PCE”) in the cellar of an existing 20-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, a public hearing was held on this application on October 18, 2016 after due notice by publication in *The City Record*, with a continued hearing on January 10, 2017, and then to decision on January 24, 2017; and

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

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

WHEREAS, Lot 7502 is part of a zoning lot description, filed February 5, 2007, that includes adjacent Lots 3 and 29 on Block 149 (collectively, the “Development Site”) for purposes of facilitating a transfer of development rights; and

WHEREAS, the Development Site is partially located within a C6-4 zoning district, partially within a C6-3A zoning district and partially within the Tribeca Mixed-Use

District, in Manhattan; and

WHEREAS, the Development Site has approximately 100 feet of frontage along Broadway, 198 feet of frontage along Reade Street and 50 feet of frontage along Chambers Street; and

WHEREAS, the subject PCE is located solely on the portion of the Development Site identified as Lot 7502 (the “Subject Site”), located on the west side of Broadway, between Reade Street and Chambers Street and is wholly located within a C6-4A zoning district, in Manhattan; and

WHEREAS, the Subject Site has approximately 75 feet of frontage along Broadway, 27 feet of frontage along Reade Street, 9,098 square feet of lot area and is occupied by a twenty-story, with cellar, mixed-use commercial and residential building (the “Subject Building”); and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such use is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such use contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [sic] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a

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background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 4,765 square feet of floor space in the cellar of the Subject Building; and

WHEREAS, the PCE has been operating as CrossFit TriBeCa since approximately September 2013; and

WHEREAS, the applicant represents that the cellar contains fitness areas, including areas for weight lifting, rowing and high bar use, showers, changing areas, a reception area, storage and a retail area; and

WHEREAS, the PCE is primarily accessed via stairs or an elevator from the lobby of the Subject Building fronting Broadway and represents that one of the bathrooms and shower facilities, in addition to all interior aisles and spaces, will be handicap accessible; and

WHEREAS, the PCE's hours of operation are 5:00 a.m. to 9:00 p.m. seven days per week; and

WHEREAS, the applicant states that the subject PCE is located entirely within the cellar of the existing building and, therefore, its visibility from the street is limited; that the surrounding area is predominantly commercial, containing a range of uses from retail and commercial offices to parkland; that the PCE would generate less traffic than nearby existing commercial uses; and that, therefore, the PCE will not impair the essential character or future uses in the area; and

WHEREAS, with regards to sound attenuation in the proposed PCE, the applicant states that the walls around the studios contain two layers of 5/8" gypsum board on both side of 3/8" metal studs with sound attenuation blanks and an STE rating of 52; that the weight lifting area utilizes 1-

inch plywood mounted to 6" wood frames on rubber isolators with isolation rubber on top; that the drop cushioned areas feature multiple layers of matting, a steel plate, 4" foam rubber, with 1" deflection spring isolators inset into foam to support the steel plate; that the studios contain sound-insulated transfer ducts; and that the primary structure of the building is concrete, which minimizes sound transference between floors; and

WHEREAS, as the subject PCE is located in a building with residential uses, the Board asked for proof of notice of this application to building residents in an effort to illicit neighborhood comment or complaints, if any, regarding the efficacy of the PCE's sound attenuation measures or the disruptive nature of the PCE use; and

WHEREAS, in response to the Board's request, the applicant provided a copy of the 30-day notice and represented that the same was posted in the residential lobby of the Subject Building; and

WHEREAS, in addition, the applicant submitted the results of acoustical and vibrational weight drop testing in the PCE, utilizing 150-pound weights, and concluded that the sounds and vibrations of the weights were imperceptible from the 11 nearby testing locations; and

WHEREAS, in the course of hearings, no persons submitted oral or written testimony in opposition to the subject application; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to the use of the premises, the applicant represents that the PCE contains a single open exercise room, which is used for instruction and programs for physical improvement; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant has submitted plans to the Board indicating that the entire PCE space contains an approved interior fire suppression sprinkler system as well as an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station; and

WHEREAS, the Fire Department confirms, by letter dated October 17, 2016, that, an approved interior fire alarm system has been legally installed, tested and approved and that the Subject Building has an inspected and approved full sprinkler system; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

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WHEREAS, the applicant states that the PCE will not interfere with any pending or approved public improvement project; and

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

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-011M, dated July 29, 2015; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.3 and 617.5, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a zoning lot partially located within a C6-4 zoning district, partially within a C6-3A zoning district and partially within the Tribeca Mixed-Use District, , the operation of a physical culture establishment on a portion of the cellar of a 20-story, with cellar, mixed-use commercial and residential building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked “Received December 27, 2016”-Two (2) sheets and “January 17, 2017”-Three (3) sheets; and on further condition:

THAT the term of this grant shall be for ten (10) years, expiring January 24, 2026;

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

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that exit pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system shall be maintained in the entire PCE space and that such system shall include: area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and connection of the interior fire alarm and sprinkler system to an FDNY-approved central station;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT an approved fire suppression sprinkler system shall be maintained in the entire PCE space;

THAT noise attenuation measures shall be installed and maintained as indicated on the BSA-approved plans;

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

THAT a Certificate of Occupancy shall be obtained within one (1) year, by January 24, 2018;

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

THAT the approved plans shall be considered

approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, January 24, 2017.

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## 277-15-BZ

APPLICANT – Law Office of Jay Goldstein, for Benjamin and Rivka Perl, owner.

SUBJECT – Application December 30, 2015 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to (ZR 23-141B). R2 zoning district. PREMISES AFFECTED – 2621-2623 Avenue R (aka 1788-1798 East 27<sup>th</sup> Street) Block 6809, Lot 47, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

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

THE VOTE TO GRANT –

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

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 28, 2015, acting on Department of Buildings (“DOB”) Application No. 320909406, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(b) in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%;
2. Proposed plans are contrary to ZR 23-141(b) in that the proposed Open Space is less than the required 65%;
3. Proposed plans are contrary to ZR 23-141(b) in that the proposed lot coverage exceeds the maximum required 35%; and

WHEREAS, the Board notes that since the time of this application, the Zoning Resolution has been amended and the text formerly found in ZR § 23-141(b), setting forth the maximum floor area ratio, open space and lot coverage permitted in an R3-2 zoning district is now found at ZR § 23-142; thus the Board treats the citation to ZR § 23-141(b) in DOB’s objection as a citation to ZR § 23-142; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-2 zoning district, the proposed enlargement of a single-family residence that does not comply with the zoning requirements for floor area ratio, open space and lot coverage, contrary to ZR § 23-142; and

WHEREAS, a public hearing was held on this application on August 16, 2016, after due notice by publication in *The City Record*, with a continued hearings on September 27, 2016, and December 13, 2016, and then to



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decision on January 24, 2017; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Avenue R and East 27th Street, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 33 feet of frontage along Avenue R, 100 feet of frontage along East 27th Street and 3,333 square feet of lot area; and

WHEREAS, the site is occupied by a two-story single-family detached residence with 1,654 square feet of floor area, a floor area ratio ("FAR") of 0.50, a side yard along the western lot line measuring 4'-10" for a length of 9'-6" and 5'-2" for the remainder, a side yard along the northern lot line measuring 39'-3", a front yard fronting Avenue R measuring 9'-6", a front yard fronting East 27th Street measuring 9'-9" and 7'-8" for 14'-7" at the entrance, and a garage in the lot's northwest corner; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

WHEREAS, the Board notes that, in addition to the foregoing, its determination herein is also subject to and guided by, among other things, 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 detached residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant seeks to enlarge the existing single-family residence by adding an additional story, increasing the floor area from 1,654 square feet (0.5 FAR) to 3,331 square feet (1.0 FAR), reducing the open space from 2,434 square feet (73 percent) to 2,012 square feet (60 percent), increasing the lot coverage from 27 percent to 40 percent; and

WHEREAS, at the subject premises, a maximum of 1,667 square feet of floor area (0.5 FAR), a minimum of 65 percent open space and maximum of 35 percent lot coverage is required, pursuant to ZR § 23-142; and

WHEREAS, the applicant represents that the enlargement as currently proposed is consistent with the character of the neighborhood; and

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WHEREAS, in support of this contention, the applicant provided the Board with a lot-coverage diagram demonstrating that, within a 400-foot radius, there are 136 lots, 89 (65 percent) of which have lot coverage between 37 and 72 percent;

WHEREAS, the applicant also provided an FAR study demonstrating that, within a 400-foot-radius, there are 33 other lots with similar FARs, ranging from 0.75 to 1.47, as well as a photo-streetscape diagram showing lot area, floor area, FAR and height of buildings within the neighborhood; and

WHEREAS, additionally, in response to Board concerns regarding the apparent massing of the proposed enlargement, the applicant revised the proposal with modifications including a reduction in roof height from 35 feet to 31 feet and a reduction in dormer height from 35 feet to 31 feet; and

WHEREAS, based upon its review of the record and inspections of the site and surrounding neighborhood, the Board finds that the proposed enlargement will neither alter the essential character of the neighborhood, nor impair the future use or 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 NYCRR 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, in an R3-2 zoning district, the proposed enlargement of a single-family residence that does not comply with the zoning requirements for floor area ratio, open space and lot coverage, contrary to ZR § 23-142; *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 January 4, 2017”-Fifteen (15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: floor area of 3,331 square feet (1.0 FAR), open space of 60 percent and lot coverage of 40 percent, as illustrated on the BSA-approved plans;

THAT all existing exterior walls as shown on the BSA-approved plans shall remain or the special permit is void;

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 special relief granted; and

THAT the Department of Buildings 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 24, 2017.

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## 2016-1212-BZ

### CEQR #16-BSA-069X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 932 Southern Boulevard Realty, LLC, owner; 932 Southern Boulevard, lessee.

SUBJECT – Application January 19, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Blink*) within an existing building. C2-4/R7-1 zoning district.

PREMISES AFFECTED – 932 Southern Boulevard, Block 2735, Lot 14, Borough of Bronx.

### COMMUNITY BOARD #2BX

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

#### THE VOTE TO GRANT –

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

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”) Bronx Borough Commissioner, dated November 22, 2016, acting on DOB Application No. 220547558, reads in pertinent part:

“Proposed ‘physical culture establishment’ is not permitted as-of-right as per section ZR 32-10 and a special permit by the Board of Standards and App[e]als (BSA) is required to comply with ZR 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located in an R7-1 (C2-4) zoning district the operation of a physical culture establishment (“PCE”) on a portion of the first, second and third floors of a three-story, with cellar, commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 13, 2016, after due notice by publication in *The City Record*, and then to decision on January 24, 2017; and

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

WHEREAS, Vice-Chair Hinkson performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the eastern side of Southern Boulevard, between Barretto Street and Hunts Point Avenue, in an R7-1 (C2-4) zoning district, in the Bronx; and

WHEREAS, the site has approximately 75 feet of frontage along Southern Boulevard, 100 feet of depth, 7,500 square feet of lot area, and is occupied by a three-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such use is so located as not to impair

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- the essential character or the future use or development of the surrounding area; and
- (2) that such use contains:
    - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [sic] courts, tennis courts; or
    - (ii) a swimming pool of a minimum 1,500 square feet; or
    - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
    - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning

Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE will occupy a total of 14,519 square feet of floor area in the subject building: 1,219 square feet of floor area on the first floor, 6,650 square feet of floor area on the second floor and 6,650 square feet of floor area on the third floor; and

WHEREAS, the PCE will be operated as Blink Fitness; and

WHEREAS, the applicant represents that the first floor will contain a lobby, stairwell and dedicated elevator; the second floor will feature a reception area, an office, a stretch area, a locker room and fitness areas; and the third floor will house additional exercise areas with cardiovascular exercise equipment and another locker room; and

WHEREAS, the PCE's proposed hours of operation are Monday through Saturday, 5:30 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant states that the portion of Southern Boulevard near the premises is a busy commercial thoroughfare developed with commercial buildings and mixed-use buildings with commercial ground-floor uses that are compatible with the proposed PCE and, therefore, the proposed PCE will not impair the essential character or future use or development of the area; and

WHEREAS, with regards to sound attenuation in the PCE, the applicant represents that noise abatement measures shall be provided in the PCE space to ensure that sound levels in other portions of the building—including sound emanating from any sound system, if installed—do not exceed a maximum interior noise level of 45 dBA; and

WHEREAS, the applicant additionally represents that no sound issues associated with the proposed PCE use are anticipated as the PCE is adjacent only to commercial uses; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to the use of the premises, the applicant represents that the PCE contains facilities for physical-improvement, body-building, weight-reduction and aerobics programs; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant has submitted plans to the Board indicating that the PCE will be fully sprinklered and that an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit,

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local audible and visual alarms and connection of the interior fire alarm and sprinkler system to an FDNY-approved central station—shall be installed in the entire PCE space; and

WHEREAS, by letter dated December 8, 2016, the Fire Department states that, based on its review of the drawings and supporting documentation for the proposed PCE, it has no objection to this application; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant states that the PCE will not interfere with any pending or approved public improvement project; and

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

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-069X, dated January 19, 2016; and

*Therefore, it is Resolved,* that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.3 and 617.5, §§ 5-02(a) and 5-02(b)(2) 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 an R7-1 (C2-4) zoning district the operation of a physical culture establishment (PCE) on a portion of the first, second and third floors of a three-story, with cellar, commercial building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked “August 11, 2016”-Five (5) sheets; and on further condition:

THAT the term of this grant shall be for ten (10) years, expiring January 24, 2027;

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

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system shall be installed in the entire PCE space—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm and sprinkler system to an FDNY-approved central station;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT all partitions and exits shall be as approved by DOB;

THAT the PCE shall be fully sprinklered;

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

THAT noise abatement provided in the PCE space shall ensure that sound levels in other portions of the building do not exceed the maximum interior noise level of 45 dBA—including sound emanating from any sound system, if installed;

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

THAT a Certificate of Occupancy shall be obtained within four (4) years, by January 24, 2021;

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, January 24, 2017.

## 259-14-BZ

APPLICANT – Fried, Frank, Harris, Shriver & Jacobson LLP, for The Rector, Church-Wardens and Vestrymen of Trinity Church in the City of New York, owner.

SUBJECT – Application October 17, 2014 – Variance (§72-21) to permit the proposed structure in rear yard of the interior lot portion of the site contrary to (ZR 33-23 and ZR 33-26) of the zoning resolution. C5-5 (SLMD) zoning district.

PREMISES AFFECTED – 68-74 Trinity Place aka 103-109 Greenwich Street, Block 51, Lot 7, Borough of Manhattan.

### COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to February 14, 2017, at 10 A.M., for decision, hearing closed.

## 2016-4164-BZ

APPLICANT – Law Office of Lyra J. Altman, for Mark M. Papa and Chana S. Papa, owners.

SUBJECT – Application April 6, 2016 – Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yard requirements (§§23-461 & 23-48) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1744 East 29<sup>th</sup> Street, Block

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# MINUTES

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6811, Lot 22, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.  
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**REGULAR MEETING**

**TUESDAY AFTERNOON, JANUARY 24, 2017**

**1:00 P.M.**

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

Absent: Commissioner Ottley-Brown.

**ZONING CALENDAR**

**128-15-BZ thru 130-15-BZ**

APPLICANT – Law Office of Steven Simicich, for John Massamillo, owner.

SUBJECT – Application May 29, 2015 – Variance (§72-21) to allow for the construction on a three family attached residential building (Use Group 2). R2/SHPD zoning district.

PREMISES AFFECTED – 680, 682 and 684 Van Duzer Street, Block 613, Lot(s) 95, 96 and 97, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.  
-----

**2016-3-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seneca Clove Corp., owner.

SUBJECT – Application January 4, 2016 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store (UG 16B). C2-1/R2 zoning district.

PREMISES AFFECTED – 1212 Victory Boulevard, Block 651, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for postponed hearing.  
-----

**2016-4136-BZ & 2016-4137-BZ**

APPLICANT – Sheldon Lobel, P.C., for Astoria Warehouse Enterprises, Inc., owner.

SUBJECT – Application March 15, 2016 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. M1-1 zoning district.

PREMISES AFFECTED – 19-59 & 19-61 49<sup>th</sup> Street, Block 755, Lot(s) 5 and 6; 19-55 & 19-57 49<sup>th</sup> Street, Block 755, Lot(s) 7 & 8, Borough of Queens.

**COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.  
-----

**2016-4183-BZ**

APPLICANT – Stroock & Stroock & Lavan LLP, for East 14<sup>th</sup> Street Owner LLC, owner.

SUBJECT – Application May 9, 2016 – Variance (§72-21) to permit the construction of a mixed residential and commercial building contrary to ZR §§23-163 (floor area and 35-65 (Height and setback). C1-6A zoning district.

PREMISES AFFECTED – 432-438 East 14<sup>th</sup> Street a/k/a 435-445 East 13<sup>th</sup> Street, Block 441, Lot(s) 23 & 32, Borough of Manhattan.

**COMMUNITY BOARD #3M**

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for continued hearing.  
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*Ryan Singer, Executive Director*

# 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.

Volume 102, No. 6

February 10, 2017

### DIRECTORY

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# DOCKETS

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New Case Filed Up to January 31, 2017  
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## 2017-24-BZ

1400 Bay Street, located on the north west corner of Fingerboard Road, Block 02864, Lot(s) 57, Borough of **Staten Island, Community Board: 1**. Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Service Station (UG 16B)(Mobile) with accessory uses which expired on March 19, 2004; Waiver of the Rules. R3A zoning district. R3A district.  
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## 2017-25-A

3094 Dare Place, located on Dare Place between Pennyfield Avenue and Eastchester Bay, Block 05229, Lot(s) 487, Borough of **Bronx, Community Board: 10**. Interpretative Appeal challenging the Department of Buildings determination application R3-1 district.  
-----

## 2017-26-A

3093 Casler Place, located on Dare Place between Pennyfield Avenue and Eastchester Bay, Block 05229, Lot(s) 488, Borough of **Bronx, Community Board: 10**. Interpretative Appeal challenging the Department of Buildings determination. R3-1 district.  
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## 2017-27-A

3095 Casler Place, located on Dare Place between Pennyfield Avenue and Eastchester Bay, Block 05229, Lot(s) 500, Borough of **Bronx, Community Board: 10**. Interpretative Appeal challenging the Department of Buildings determination. R3-1 district.  
-----

## 2017-28-A

3098 Dare Place, located on Dare Place between Pennyfield Avenue and Eastchester Bay, Block 05229, Lot(s) 489, Borough of **Bronx, Community Board: 10**. Interpretative Appeal challenging the Department of Buildings determination. R3-1 district.  
-----

## 2017-29-BZ

2570 Flatbush Avenue, located on Flatbush Avenue; Avenue V to the north, Hendrickson Street to the west, Hendrickson Place to the south and Flatbush Avenue to the east., Block 08590, Lot(s) 31, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-44) for the reduction in parking from 144 to 72 spaces to facilitate a Use Group 10 furniture store (Raymour & Flanigan) in parking category PRC B1. C8-1 zoning district. C8-1 district.  
-----

## 2017-30-A

16 Garage Tuttle Street, located on Tuttle Street between Devens Street and Home Place, Block 01481, Lot(s) 96, Borough of **Staten Island, Community Board: 1**. To permit the proposed development of a one family home, contrary to Article 3 Section 36 of the General City Law. R3X zoning district. R3X district.  
-----

## 2017-31-BZ

107-17 34th Avenue, located on the northeast corner of the intersection formed by 34th Avenue and 108th Street, Block 01722, Lot(s) 27, Borough of **Queens, Community Board: 3**. Variance (§72-21) to permit the development of a three-story, three-family residential building on a narrow corner lot contrary to ZR §23-632 (front yard) and ZR §23-462 (a) (required side yards). R5 zoning district. R5 district.  
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## 2017-32-BZ

62 Milbank Road, located on Milbank Road between Neutral and Cedar Grove Avenues, Block 04092, Lot(s) 72, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. C1-1/R3X zoning district. C1-1/R3X 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 MARCH 7, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 7, 2017, 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

### 395-60-BZ

APPLICANT – Eric Palatnik, P.C., for Ali Swati, owner.  
SUBJECT – Application March 11, 2016 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Repair Facility (UG 16) which expired on December 9, 2015; Waiver of the Rules. R5 zoning district.  
PREMISES AFFECTED – 2557 Linden Boulevard, Block 4461, Lot 27, Borough of Brooklyn.  
**COMMUNITY BOARD #5BK**

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### 149-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Brodcom West Development Company, LLC, owner; TSI West End, LLC dba New York Sports Club, lessee.  
SUBJECT – Application July 28, 2016 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*New York Sports Club*) which expires on July 30, 2016. C4-7 zoning district.  
PREMISES AFFECTED – 75 West End Avenue, Block 1171, Lot 63, Borough of Manhattan.  
**COMMUNITY BOARD #7M**

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### 48-12-BZ

APPLICANT – Meister Seelig & Fein LLP, for IGS Realty Co., owner.  
SUBJECT – Application August 30, 2016 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the legalization of an existing 14-story commercial building for use as offices, contrary to Special Garment Center District regulations (ZR §121-11) which expires on September 11, 2016. C6-4M (Special Garment Center District) zoning district.  
PREMISES AFFECTED – 336 West 37<sup>th</sup> Street, Block 760, Lot 63, Borough of Manhattan.  
**COMMUNITY BOARD #4M**

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## APPEALS CALENDAR

### 235-15-A & 259-15-A

APPLICANT – Sheldon Lobel, P.C., for Richard Roel, owner.  
SUBJECT – Applications October 7, 2015 & November 18, 2015 – Proposed construction of building that does not provide adequate frontage on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R2A zoning district.  
PREMISES AFFECTED – 8 Cornell Lane, Block 8129, Lot 156, Borough of Queens.  
**COMMUNITY BOARD #11Q**

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## REGULAR MEETING MARCH 7, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 7, 2017, 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

### 56-15-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Feiger, owner.  
SUBJECT – Application March 13, 2015 – Special Permit (§73-622) to permit the enlargement of an existing three story one family home contrary to floor area (ZR 23-141 (b)). R2 zoning district.  
PREMISES AFFECTED – 2124 Avenue J, Block 7603, Lot 49, Borough of Brooklyn.  
**COMMUNITY BOARD #14BK**

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### 234-15-BZ

APPLICANT – Sarah Tadros Awad, for Nawal Tosson, owner.  
SUBJECT – Application October 7, 2015 – Special Permit (§73-622) to permit the legalization of an enlargement and the conversion to a two family home of an existing single-family, semi-detached residential building contrary to floor area ZR 23-141 and perimeter wall height 23-631(b). R4-1 zoning district.  
PREMISES AFFECTED – 1223 67<sup>th</sup> Street, Block 5760, Lot 70, Borough of Brooklyn.  
**COMMUNITY BOARD #10BK**

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# CALENDAR

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## **2016-4121-BZ**

APPLICANT – Eric Palatnik, P.C., for Fifteen and Fifth LLC, owner; Crunch LLC, lessee.

SUBJECT – Application February 19, 2016– Special Permit (§73-36) to operate a physical culture establishment (*Crunch*) within an existing building. C4-3A zoning district.

PREMISES AFFECTED – 555 5<sup>th</sup> Avenue, Block 1042, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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## **2016-4147-BZ**

APPLICANT – Sheldon Lobel, P.C., for Pietro Alesci, owner.

SUBJECT – Application March 17, 2016 – Variance (§72-21) to permit the development of a three-story, three-family residential building (UG 2) contrary to ZR §42-10. M1-1D zoning district.

PREMISES AFFECTED – 57-12 58<sup>th</sup> Place, Block 2672, Lot 96, Borough of Queens.

**COMMUNITY BOARD #5Q**

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## **2016-4168-BZ**

APPLICANT – Law Office of Steven Simicich, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application April 8, 2016 – Variance (§72-21) to permit the construction of single family detached home, contrary to side yard and minimum distance regulation (ZR §23-461c). R3A zoning district.

PREMISES AFFECTED – 94 Elm Street, Block 158, Lot 84, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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## **2016-4208-BZ**

APPLICANT – Sheldon Lobel, P.C., for USD 142 W 19 LLC, owner.

SUBJECT – Application May 13, 2016 – Variance (§72-21) to permit the development of a 10-story residential building contrary to ZR §23-692. C6-3A zoning district.

PREMISES AFFECTED – 142 West 19<sup>th</sup> Street, Block 794, Lot 63, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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## **2016-4254-BZ**

APPLICANT – Mango & Lacoviello, LLP, for Central Harlem Plaza Commercial Unit, LLC, owner; Infitme LLC, lessee.

SUBJECT – Application September 15, 2016 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*I Love Kickboxing*) on a portion of the first floor of an existing building. C4-5X zoning district.

PREMISES AFFECTED – 120 Lenox Avenue a/k/a 47 West 116<sup>th</sup> Street, Block 1600, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #11M**

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## **2017-46-BZ**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Mathew Loughran, owner.

SUBJECT – Application February 16, 2017– Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 35 Nova Court, Block 8866, Lot 1398, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Ryan Singer, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, JANUARY 31, 2017  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**94-58-BZ**

APPLICANT – Walter T. Gorman, P.E., P.C., for Alliance Energy LLC, owner; Nor-East S/S/ Inc., lessee.

SUBJECT – Application November 19, 2015 – Extension of Term (11-411) to permit the continued use of a previously approved Automotive Service Station (UG 16B) which expired on September 30, 2013; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 25-65 Brooklyn Queens Expressway, Block 1046, Lot 1, Borough of Queens.

**COMMUNITY BOARD #3Q**

**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 Board’s Rules of Practice and Procedure and an extension of the term of a variance, previously granted by the Board, which expired on September 30, 2013; and

WHEREAS, a public hearing was held on this application on September 20, 2016, after due notice by publication in *The City Record*, with continued hearing on December 6, 2016, and then to decision on January 31, 2017; and

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

WHEREAS, Community Board 3, Queens, recommends approval of this application on condition that signage posted on the premises relating to cash purchases be written in a larger font and that an attendant be provided to assist senior and disabled patrons; and

WHEREAS, the subject site is a full block bound by the Brooklyn Queens Expressway to the north and west, 70th Street to the east and 30th Avenue to the south, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 278 feet of frontage along the Brooklyn Queens Expressway, 221 feet of frontage along 70th Street, 100 feet of frontage along 30th Avenue, 17,147 square feet of lot area and is occupied by an automotive service station (UG 16B), including a one-story repair bay and convenience store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 30, 1958, when, under the subject calendar number, the Board granted a variance permitting the construction of a gasoline service station with accessory uses of a lubritorium, minor auto repairs, car washing, storage room, office and sales, and the parking and storage of motor vehicles for a term of fifteen (15) years, expiring September 30, 1973; and

WHEREAS, on May 15, 1973 and November 22, 1983, under the subject calendar number, the Board granted applications to extend the variance for additional ten (10) year terms, the latter of which expired on September 30, 1993; and

WHEREAS, on June 2, 1987, under the subject calendar number, the Board amended the resolution to permit the conversion of the sale of gasoline to self-service, the construction of two new steel canopies over two new gasoline pump islands and alterations to the existing accessory building to accommodate an attendant’s booth on condition, *inter alia*, that the gasoline pump island fronting 30th Avenue remain full-service; and

WHEREAS, on May 17, 1994, under the subject calendar number, the Board granted an application for an additional ten (10) year term, expiring September 30, 2003; and

WHEREAS, on November 18, 2008, under the subject calendar number, the Board granted a request for the waiver of its Rules, legalized certain modifications to the site—including the conversion of office space in the accessory building to a convenience store, the installation of a car vacuum and air machine, enlargements of the three curb cuts and the locating of an above-ground waste oil tank on the southeast corner of the site—and extended the term of the variance for an additional ten (10) years, expiring September 30, 2013; and

WHEREAS, the most recent term having expired, the applicant request an extension of the term of the variance for an additional ten (10) years; and

WHEREAS, the applicant also requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(3)(i) to permit the filing of this application more than two years but less than 10 years after the expiration of the term; and

WHEREAS, the applicant has submitted daily gasoline delivery reports for the site dating from approximately November 2013 through July 2016 and bills for utility services provided from approximately October 2013 through February 2016 demonstrating that the use at the gasoline service station use has been continuous at the site since the expiration of the term and that substantial prejudice would result without the requested waiver; and

WHEREAS, in response to conditions suggested by Community Board 3, the applicant has provided three easily readable signs at the site indicating that prices are the same regardless of the payment method provided and has agreed to add an additional sign indicating that patrons requiring full service may honk their horns and/or call a specified phone number; and

# MINUTES

WHEREAS, the applicant additionally requests the substitution of a condition of the 1987 resolution amendment requiring the maintenance of a full-service gasoline pump with a condition that full service will be provided to senior and disabled patrons upon request; and

WHEREAS, at hearing, the Board agreed to such proposed substitution and specifically waives the condition that the gasoline pump island fronting 30th Avenue remain full-service; and

WHEREAS, the Board finds that a ten (10) year extension of the term of the variance 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 September 30, 1958, as amended through November 18, 2008, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years from the expiration of the last grant to expire on September 30, 2023 and to permit the noted modifications to the previously-approved plans; *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received January 5, 2017’-Seven (7) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years expiring September 30, 2023;

THAT no car sales shall be permitted on the site;

THAT no overnight parking of any vehicles shall be permitted on the site;

THAT all planted areas and street trees, as indicated on BSA-approved plans, shall be maintained and replaced when required;

THAT a sign indicating that disabled and senior patrons may obtain full service by calling a specified phone number or honking their horn shall be maintained at the site within clear view;

THAT all signage shall comply with C1 zoning district regulations;

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT the above conditions shall be reflected on the Certificate of Occupancy;

THAT a new Certificate of Occupancy shall be obtained within one (1) year, by January 31, 2018;

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 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, January 31, 2017.

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## 619-73-BZ

APPLICANT – Sheldon Lobel, P.C., for CI Gateway LLC, owner.

SUBJECT – Application July 15, 2016 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted an eating and drinking establishment (UG 6) with an accessory drive thru which expired on June 15, 2016. R4 zoning district.

PREMISES AFFECTED – 2940 Cropsey Avenue, Block 6949, Lot 37, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

**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 obtain a certificate of occupancy, which was to have been obtained by June 16, 2016; and

WHEREAS, a public hearing was held on January 31, 2017 after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Montanez inspected the site and surrounding neighborhood; and

WHEREAS, the subject site is a through lot as well as a corner lot bound by Cropsey Avenue to the east, Bay 52nd Street to the north and Bay 53rd Street to the south, within an R4 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 201 feet of frontage along Cropsey Avenue, 92 feet of frontage along Bay 52nd Street, and 108 feet of frontage along Bay 53rd Street; and

WHEREAS, the site has approximately 19,960 square feet of lot area and is occupied by a vacant one-story eating-and-drinking establishment with 19 parking spaces that was operated as a Burger King franchise until November 2011 and has been vacant since that time; and

WHEREAS, the Board has exercised jurisdiction over the site since February 26, 1974, when, under the subject calendar number, it granted, pursuant to ZR § 72-21, an application to permit in an R4 zoning district the construction of a one-story building to be operated as an eating-and-drinking establishment (Use Group 6) with accessory signage and parking, contrary to use regulations, for a term of ten (10) years, to expire on February 26, 1984; and

WHEREAS, on June 5, 1979, under the subject calendar number, the Board amended the grant to authorize the operation of an accessory drive-through and the reconfiguration of parking spaces at the site; and

WHEREAS, on March 18, 1986, under the subject calendar number, the Board, upon waiving its Rules of Practice and Procedure, reopened and amended the grant to include an extension of term for a period of ten (10) years, expiring on February 26, 1994; and

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WHEREAS, on August 9, 1988, under the subject calendar number, the Board reopened and amended the grant to permit the enlargement of the existing building, the addition of a vestibule and alterations to the dining area within the building; and

WHEREAS, on October 20, 1998, under the subject calendar number, the Board, upon waiving its Rules of Practice and Procedure, reopened and amended the grant to extend the term of the variance for a period of ten (10) years, expiring on February 26, 2004; and

WHEREAS, on June 16, 2015, under the subject calendar number, the Board, upon waiving its Rules of Practice and Procedure, reopened and amended the grant to extend the term of the variance for a period of ten (10) years, expiring on June 16, 2025, and to permit the reinstatement of an eating-and-drinking establishment and a new drive-in bank, on condition, among other things, that a certificate of occupancy be obtained by June 16, 2016; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension of eighteen (18) months; and

WHEREAS, the applicant represents that it has experienced a number of administrative delays in obtaining necessary permits but anticipates obtaining a certificate of occupancy within the extension period requested; and

WHEREAS, based upon its review of the record, the Board finds that 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 February 26, 1974, as amended through June 16, 2015, so that as amended this portion of the resolution reads: “to grant an extension of time to obtain a certificate of occupancy to December 16, 2017, *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 the term of the variance shall expire on June 16, 2025;

THAT signage shall comply with the C1 regulations;

THAT all signs shall be installed and maintained in accordance with BSA approved plans;

THAT landscaping shall be maintained in accordance with the BSA-approved plans;

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

THAT all vehicular ingress to the premises shall be at Cropsy Avenue and Bay 52nd Street, all egress shall be from Cropsy Avenue and Bay 53rd Street;

THAT adequate fencing shall be maintained;

THAT the hours of operation shall be unrestricted;

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

THAT a certificate of occupancy shall be obtained by December 16, 2017;

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 Department of Buildings/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) or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, January 31, 2017.

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**240-55-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties LLC, owner.

SUBJECT – Application December 24, 2015 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair facility (UG 16B) which is set to expired on November 3, 2018; Amendment (§11-413) to permit a change in use from automotive repair facility (UG 16B) to automotive sales (UG 9A); Extension of Time to Obtain a Certificate of Occupancy which expired on April 1, 2015; Waiver of the Rules to permit the filing for an Extension of Term in excess of 1 year prior to the expiration and for filing in excess of 30 day but less than 1 year of the expiration of the time to obtain a Certificate of Occupancy. C2-2/R6B & R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Block 7305, Lot 19, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.

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**949-57-BZ**

APPLICANT – Akerman, LLP, for Pelham Bridges Realities, LLC, owner; NY Dealers Stations, LLC, owner.

SUBJECT – Application July 7, 2015 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on October 29, 2014; Waiver of the Rules. R5D zoning district.

PREMISES AFFECTED – 2100 Williamsbridge Avenue, Block 4310, Lot 30, Borough of Bronx.

**COMMUNITY BOARD #11BX**

**ACTION OF THE BOARD** – Laid over to March 7, 2017, at 10 A.M., for continued hearing.

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## **202-62-BZ**

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

SUBJECT – Application June 4, 2015 – Extension of Term and Waiver (§11-411) to extend the term and a Waiver of a previously granted variance for an automotive service station, which expired on April 3, 2011; Waiver of the Rules. C2-2/R4-1 zoning district.

PREMISES AFFECTED – 950 Allerton Avenue, southeast corner of the intersection of Allerton Avenue and Willamsbridge Road, Block 04447, Lot 062, Borough of Bronx.

### **COMMUNITY BOARD #11BX**

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for continued hearing.  
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## **234-84-BZ**

APPLICANT – Robert E. Schuster, AIA, for Forest Realty Management, LLC., owner.

SUBJECT – Application April 28, 2015 – Extension of Term (§11-411) of a previously approved Variance which permitted the operation of an Eating and Drinking Establishment (UG 6) which expired on February 12, 2015; Waiver of the Board's Rules. C81-/R3-1 zoning district.

PREMISES AFFECTED – 1076/82 Forest Avenue, Block 1696, Lot 26, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to March 7, 2017, at 10 A.M., for continued hearing.  
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## **67-91-BZ**

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

SUBJECT – Application September 11, 2015 – Amendment (§11-412) to a previously-granted Automotive Service Station (Gulf) (UG 16B), with accessory uses, to permit the enlargement of an existing 1 story building and convert service bays to an accessory convenience store and install 6 new multiple product dispensers. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 54-55 Little Neck Parkway aka 260-01 Horace Harding Expressway, Block 8274, Lot 135, Borough of Queens.

### **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.  
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## **26-94-BZ**

APPLICANT – Eric Palatnik, P.C., for CDC Realty, owner.

SUBJECT – Application December 4, 2015 – Extension of Term of a Special Permit (§73-242) for a (UG6) eating and drinking establishment (*The Mansion Grand*) which expires on March 5, 2016; Amendment. C3A (SSRD) zoning district.

PREMISES AFFECTED – 141 Mansion Avenue, Block 5201, Lot 33, Borough of Staten Island.

## **COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to March 7, 2017, at 10 A.M., for continued hearing.  
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## **57-95-A thru 59-95-A**

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application February 9, 2015 – Amendment/Time to complete construction filed under Certificate of Occupancy Modification. R7-2 zoning district.

PREMISES AFFECTED – 473 Central Park West, West side of Central Park West between West 107th and West 108th Streets, Block 01843, Lot 32, Borough of Manhattan.

### **COMMUNITY BOARD #7M**

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.  
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## **168-98-BZ**

APPLICANT – Robert J. Stahl for Herbert D. Freeman, 238 Street Holding, LLC, owner.

SUBJECT – Application April 10, 2015 – Extension of Term (§ 11-411) of a previously approved variance which permitted a parking lot for more than five motor vehicles (Use Group 8) which expired on March 23, 2009; Waiver of the Rules. R6/R4A zoning district.

PREMISES AFFECTED – 3050 Bailey Avenue, Block 3261, Lot 12, Borough of Bronx.

### **COMMUNITY BOARD #8BX**

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for continued hearing.  
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## **214-00-BZ**

APPLICANT – Sheldon Lobel, P.C., for Zaliv, LLC, owner.

SUBJECT – Application November 13, 2015 – Extension of Term of a previously approved Special Permit (73-242) which permitted the operation of an eating and drinking establishment (UG 6) which expired on November 16, 2015; Extension of Time to Obtain a Certificate of Occupancy which expired on March 20, 2013; Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2761 Plumb 2<sup>nd</sup> Street, Block 8841, Lot 500, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for adjourned hearing.  
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## 182-02-BZ

APPLICANT – Eric Palatnik, P.C., for Gaseteria Oil Corporation, owner.

SUBJECT – Application July 22, 2014 – Extension of Term of a previously approved (§72-21) permitting the operation of an Automotive Service Station (UG 16B) with an accessory convenience store which expired January 7, 2013; Waiver of the Rules. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 2990 Victory Boulevard, Block 2072, Lot 42, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for adjourned hearing.

## APPEALS CALENDAR

### 166-12-A

APPLICANT – NYC Department of Buildings.

OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11<sup>th</sup> Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for continued hearing.

### 107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.

PREMISES AFFECTED – 638 East 11<sup>th</sup> Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for continued hearing.

### 2016-2-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Vincent Theurer, owner.

SUBJECT – Application January 4, 2016 – Appeal seeking determination that the Department of Buildings improperly denied an application for a permit for construction of cabana based on erroneous determination that the cabana should be considered a dwelling unit and not an accessory structure, requiring compliance with minimum required distance between buildings (ZR 23-711(f)) and minimum distance

between lot lines and building walls (ZR 23-881) in the lower density growth management area. R1-1(NA-1).

PREMISES AFFECTED – 74 Buttonwood Road, Block 877, Lot 32, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for continued hearing.

## ZONING CALENDAR

### 126-15-BZ

APPLICANT – Sheldon Lobel, P.C., for Hannah Hendel, owner.

SUBJECT – Application May 27, 2015 – Special Permit (§73-622) to permit the enlargement of a single family home. R3-2 zoning district.

PREMISES AFFECTED – 1782 East 27<sup>th</sup> Street, Block 006809, Lot 0044, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 11, 2016, acting on Department of Buildings (“DOB”) Application No. 321081752, reads in pertinent part:

1. The proposed enlargement represents an increase in the degree of non-compliance as to Permitted Floor Area Ratio, Required Open Space, and Permitted Lot Coverage, contrary to ZR Section 23-141;
2. The proposed enlargement represents an increase in the degree of non-compliance as to Required Side Yards and Rear Yard, contrary to ZR Section 23-461 and 23-47

Note: all other existing non-compliances regarding Lot Coverage; Minimum Lot Area & Width; Required Front Side and Rear Yards remain unchanged; and

WHEREAS, the Board notes that since the time of this application, the Zoning Resolution has been amended and the text formerly found in ZR § 23-141(b), setting forth the maximum floor area ratio, open space and lot coverage permitted in an R3-2 zoning district, is now found at ZR § 23-142; thus, the Board treats the citation to ZR § 23-141(b) in DOB’s objection as a citation to ZR § 23-142; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-2 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area ratio, open space, lot coverage, side yards and rear yards, contrary

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to ZR §§ 23-142, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on March 8, 2016, after due notice by publication in *The City Record*, with continued hearings on May 3, 2016, June 28, 2016, September 27, 2016, and December 13, 2016, and then to decision on January 31, 2017; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application on condition that the building not be utilized as a synagogue; and

WHEREAS, the subject site is located on the west side of East 27th Street, between Quentin Road and Avenue R, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 35 feet of frontage along East 27th Street, a depth of 100 feet and 3,500 square feet of lot area; and

WHEREAS, the site is occupied by a two-story single-family detached residence with 2,295 square feet of floor area, a floor area ratio ("FAR") of 0.66, lot coverage of 47 percent, open space of 53 percent, side yards measuring 7'-2.5" and 2'-11.5", a front yard measuring 9'-6.75" and a rear yard of 19'-4.75"; and

WHEREAS, at the subject site, the maximum floor area permitted is 1,750 square feet (0.5 FAR), the minimum required open space is 65 percent and the maximum permitted lot coverage is 35 percent, pursuant to ZR § 23-142; two side yards, each at least 5 feet wide and with a total combined width of at least 13 feet, are required pursuant to ZR § 23-461 and a rear yard of at least 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant represents that the existing non-complying floor area, floor area ratio, rear yard and side yards are the result of enlargements effectuated at the premises without necessary permits by one or more prior owners of the property between 1981 and 2007 and are, thus, not legal non-compliances; and

WHEREAS, with regards to the front yard, which does not comply with the 15 feet minimum required by ZR § 23-45, the applicant asserts that that condition pre-dates the 1961 Zoning Resolution and is, thus, a legal non-compliance and has provided the Board with Sanborn maps indicating that the front yard condition on the site is consistent with that present at the site in 1930; 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 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; and

- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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



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prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

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 detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, in response to concerns from Community Board 15 that the site will be used as a synagogue, the applicant asserts that the premises is to be used as the applicant's home, not a synagogue; and

WHEREAS, the applicant proposes to legalize the existing non-compliances and enlarge the existing residence to 3,350 square feet of floor area (0.95 FAR), reduce the lot coverage to 42 percent, increase the amount of open space to 58 percent, increase the rear yard to 20 feet at the first floor and 24'-2" at the second floor, maintain the 2'-11.5" side yard and enlarge the side yard currently measuring 7'-2.5" to 8'-4.5"; and

WHEREAS, the applicant represents that the proposed enlargement is consistent with the character of the neighborhood and in support of that contention submitted FAR and rear yard studies of the subject block and surrounding area demonstrating that of the 193 single- and two-family residences within 400 feet of the subject lot, 93 dwellings (67 percent) have an FAR equal to or greater than 0.5, but that, of the 53 other lots on the same block as the subject site, which are all occupied by single- or two-family dwellings, only 11 other dwellings (21 percent) have rear yards with depths equal to or less than 30 feet; and

WHEREAS, the applicant also asserts that the proposal to decrease the lot coverage, increase the open space on the site, and reduce the encroachment of the existing dwelling into the rear yard at both the first and second floors reduces the degree of the existing dwelling's non-compliance with underlying bulk regulations; and

WHEREAS, additionally, the Board expressed concern over the proposed 32 foot height of the dwelling, though compliant with the maximum building height of 35 feet permitted at the subject site pursuant to ZR § 23-631, being consistent with the existing neighborhood character and, in response, the applicant submitted a study of the heights of dwellings on the subject social block demonstrating that of the other 43 single- or two-family dwellings, 17 dwellings (40 percent) have roof heights of 30 feet or greater, and 13 of those dwellings are on the same side of East 27th Street as the subject site and one is directly adjacent to the subject site to the north; and

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

WHEREAS, therefore, the Board has determined that the

evidence in the record supports the findings required to be made under ZR § 73-622.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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, in an R3-2 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area ratio, open space, lot coverage, side yards and rear yards, contrary to ZR §§ 23-142, 23-461 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received January 11, 2017"- Fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: maximum floor area of 3,350 square feet (0.95 FAR), maximum lot coverage of 42 percent, minimum open space of 58 percent, a rear yard of at least 20 feet at the first floor and 24'-2" at the second floor and side yards measuring at least 2'-11.5" and 8'-4.5", as illustrated on the BSA-approved plans;

THAT no sleeping shall be permitted in the cellar, as indicated on the BSA-approved plans;

THAT this approval is based on the building being utilized as a single-family residence and that use of the building as a synagogue or other house of worship is not permitted;

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

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 special 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 31, 2017.

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**137-15-BZ**

**CEQR #15-BSA-214Q**

APPLICANT – Law Office of Jay Goldstein for Congregation YGS, owner.

SUBJECT – Application – Variance (72-21) change of use and enlargement from existing Use Group 9 trade school to use Group 3 religious school (*Yeshiva Godolah Seminary*) with additional classrooms and dormitories. M1-1 zoning district.

PREMISES AFFECTED – 74-10 88<sup>th</sup> Street, Block 3810, Lot 93, 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, the decision of the Queens Borough Commissioner dated June 8, 2015, acting on DOB Application No. 421079442 reads in pertinent part:

1. Proposed ‘UG 3 Occupancy Group E’ in M1-1 Zoning District is not permitted use as of right to comply with ZR 42-00; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an M1-1 zoning district, the occupancy of a Use Group 3 school that does not comply with use regulations, contrary to ZR § 42-00; and

WHEREAS, this application is filed on behalf of the United Talmudical Seminary (the “Yeshiva”), a non-profit religious corporation; and

WHEREAS, a public hearing was held on this application on July 19, 2016, after due notice by publication in *The City Record*, with continued hearings on September 27, 2016, and December 13, 2016, and then to decision on January 31, 2017; and

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

WHEREAS, Community Board 5, Queens, recommends disapproval of this application on the basis, *inter alia*, that the Yeshiva has not been transparent regarding the presence of the dormitory use at the site and that the proposed enlargement to the facility will place additional pressure on an already overburdened sewer system; and

WHEREAS, by letter dated July 14, 2016, Chaim M. Deutsch, New York City Council Member for the 48<sup>th</sup> District, expressed his support of this application; and

WHEREAS, by letter dated July 18, 2016, Dov Hikind, a member of the New York State Assembly, expressed his support of the subject application; and

WHEREAS, the subject site is located on the west side of 88th Street, between 72<sup>nd</sup> Drive and 77<sup>th</sup> Avenue, in an M1-1 zoning district, in Queens; and

WHEREAS, the site has approximately 175 feet of frontage along 88<sup>th</sup> Street, 135,587 square feet of lot area and is occupied by a one-story building; and

WHEREAS, the Yeshiva proposes to enlarge the building and convert its use from a Use Group 9 religious vocational trade school with accessory sleeping accommodations to a Use Group 3 school with accessory sleeping accommodations; and

WHEREAS, the applicant represents that the enlargement is as-of-right and seeks no waivers of the applicable bulk regulations in the subject application; and

WHEREAS, a Use Group 3 school is not permitted in an M1-1 zoning district pursuant to ZR § 42-00; and

WHEREAS, the applicant represents that the requested change in use groups is necessary to reflect the change in function of the Yeshiva, which the applicant represents has operated at the subject site for more than ten (10) years; and

WHEREAS, the Yeshiva is the only post-secondary school of the Satmar community school system, which serves more than 10,000 students across 15 facilities in New York, with a current enrollment of 1,050 students, aged 16 to 22; and

WHEREAS, the applicant states that the subject building was converted from a manufacturing use to a vocational trade school with sleeping accommodations in or around 2006 and received Certificate of Occupancy No. 401634148F, effective January 25, 2008; and

WHEREAS, at the time, the Yeshiva provided post-secondary instruction in a variety of professional trades—including the ritual slaughter of animals, kosher meat preparation, Torah-based supervision of kosher food production and calligraphy—as well as the various religious laws and codes that govern the trades and their associated rituals; and

WHEREAS, the Yeshiva’s programming has changed as a result of an increase in the Satmar community’s post-secondary school population and the number of students interested in a scholarly curriculum focused on the study of religious texts and philosophy intended to prepare them for careers as Torah scholars, researchers, instructors, pulpit rabbis, spiritual leaders and Torah-directed lay persons, instead of tradesmen; and

WHEREAS, accordingly, the Yeshiva seeks a variance to change from a Use Group 9 trade school to a Use Group 3 school; and

WHEREAS, the Yeshiva additionally proposes an enlargement of the existing building from 60,366 square feet of floor area (0.45 FAR) to 142,183 square feet of floor area (1.05 FAR) with a three-story addition to the existing easternmost one-story portion of the building and a cellar and four-story enlargement directly adjacent in order to provide additional classroom and dormitory space for its existing student population; and

WHEREAS, the Yeshiva previously utilized trailers on the premises for additional classroom space, but removed them upon DOB instruction and, in their absence, the Yeshiva has had to stagger its class schedule to accommodate lectures, a change that has substantially

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impacted the Yeshiva's operations and made the proposed expansion to the existing building necessary; and

WHEREAS, the applicant notes that the additional dormitory space is required both because of a change in the demographics of its student population, the majority of which used to come from Williamsburg, Brooklyn, but is increasingly from areas in upstate New York and abroad and require sleeping accommodations onsite and also to provide housing for more local students who prefer to live on site or wish to participate in early morning group study sessions; and

WHEREAS, the existing dormitories currently accommodate 286 students with the remaining students travelling to and from the site via 15 school buses and the proposed expansion in dormitory space, which will increase the number of beds onsite to 710, is anticipated to ultimately reduce the number of school buses travelling to and from the site daily to 6 buses; and

WHEREAS, the Yeshiva states that the waiver sought is essential to its ability to meet its programmatic needs, including providing sufficient classroom and dormitory space for its existing student population as well as the provision of religious instruction, at the same site from which it has operated for more than a decade; and

WHEREAS, the Yeshiva states that the site was originally chosen because of its simultaneous proximity to and distance from the Hassidic community located in Williamsburg and the Yeshiva's desire to provide a space that enables its students to fully devote themselves to the curriculum and fully concentrate on their studies without the distractions of everyday life and family; and

WHEREAS, the Yeshiva notes that the Satmar community heavily subsidizes the costs of tuition and boarding on site, that students are allowed to enroll and provided with on-site housing regardless of their ability to pay and that it is prohibitively expensive to acquire an additional location to accommodate its current spatial needs; and

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

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

WHEREAS, based on the above, the Board finds that the programmatic needs of the Congregation create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

WHEREAS, because the Yeshiva is a non-profit organization and the variance is needed to further its non-

profit mission, the finding set forth in ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant states that the site is surrounded by warehouse and accessory office uses and proposes that a garden on the premises will act as a buffer between the building and 88th Street; additionally, the applicant represents that its use of the premises is self-contained—its students eat all of their meals onsite and students rarely venture off campus—and, thus, does not interfere with neighboring uses; and

WHEREAS, in response to the Board's concerns regarding the storage and collection of trash at the premises, the applicant changed its original proposal to enclose the trash compactor with 8 foot walls surrounded by landscaping at the exterior of the building, so as to shield the compactor from the public, to one in which they will relocate the trash compactor to a refrigerated room on the building's interior accessed by a roll-up door; the applicant also agreed to provide an indoor refrigerated storage room for perishable trash; and

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

WHEREAS, the Yeshiva states that, per ZR § 72-21(d), the hardship was not self-created; and

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

WHEREAS, the Yeshiva represents that, consistent with ZR § 72-21(e), the proposal represents the minimum variance needed to accommodate its programmatic needs; and

WHEREAS, the Yeshiva provided an analysis of the findings required for a special permit pursuant to ZR § 73-19, whereby the Board may permit schools in C8 or M1 zoning districts and which provides, in pertinent part:

"In C8 or M1 Districts, the Board of Standards and Appeals may permit *schools* which have no *residential* accommodations except *accessory* accommodations for a caretaker, provided that the following findings are made . . . ."; and

WHEREAS, the Yeshiva states, and the Board agrees, that it is ineligible for the special permit because of the proposed onsite residential accommodations and that the requested use waiver is, therefore, the minimum variance; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to allow the Yeshiva to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings require to be

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made under ZR § 72-21; and

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment (“EAS”) CEQR No. 15-BSA-214Q, dated June 30, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, by letter dated August 12, 2016, the New York City Department of Environmental Protection (“DEP”) states that, upon review, the March 2016 Remediation Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) submitted in connection with this application is acceptable and recommends that, upon the completion of construction, a Remedial Closure Report certified by a Professional Engineer indicating that all remedial requirements have been implemented properly be submitted to DEP for review and approval; and

WHEREAS, at the Board’s request, in consideration of the fact that a school and dormitory use proposed herein is in a manufacturing district, the applicant submitted an indoor air quality study, dated September 2016, reporting that no VOCs at a concentration above the New York State Department of Health (“DOH”) Air Guideline Value or the range of anticipated background were detected in the indoor air samples; and

WHEREAS, in addition, the applicant submitted, at the Board’s request, an air permit search to DEP and found that none of the active permits for uses within 400 feet of the premises were for existing industrial sources; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site located in an M1-1 zoning district, the occupancy of a Use Group 3 school that does not comply with use regulations, contrary to ZR § 42-00, *on condition* that all work will substantially conform to drawings filed

with this application marked “Received January 11, 2017”- Twenty-Two (22) sheets; and *on further condition*:

THAT no overnight parking of buses shall be permitted on the premises;

THAT no parking of the buses on the street shall be permitted;

THAT buses are to be utilized for pick up and drop off only and returned to a storage location off-site;

THAT composite window wall noise attenuation of 28 dBA shall be provided along the 88th Street frontage of the site;

THAT a trash compactor and refrigerated trash storage shall be installed, as shown on the BSA-approved plans;

THAT lighting and landscaping shall be installed, maintained and replaced, as needed, as shown on the BSA-approved plans;

THAT, consistent with the recommendation of the New York City Department of Environmental Protection, a Remedial Closure Report certified by a Professional Engineer indicating that all remedial requirements have been implemented properly shall be submitted to DEP for review and approval upon the completion of construction;

THAT the above conditions shall be listed on the Certificate of Occupancy;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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 shall be considered approved only for the portion 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, January 31, 2017.

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## **248-15-BZ**

### **CEQR #16-BSA-045Q**

APPLICANT – Eric Palatnik, P.C., for HDL Management, owner.

SUBJECT – Application October 21, 2015 – Special Permit (73-44) to reduce the 49 required parking spaces to twenty-five (25) for a proposed new five story and cellar new UG4 ambulatory diagnostic treatment health facility building, R5/C1-2 zoning district.

PREMISES AFFECTED – 150-15 Barclay Avenue, Block 5058, Lot 5, Borough of Queens.

### **COMMUNITY BOARD #7Q**

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated January 14, 2016, acting on Department of Buildings (“DOB”) Application No. 421205555, reads:

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

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, on a site located within an R5 (C1-2) zoning district, the reduction in the required number of accessory parking spaces for a Use Group (“UG”) 4 ambulatory diagnostic or treatment facility from 50 spaces to 29 spaces, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on September 13, 2016, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2016, and then to decision on January 31, 2017; and

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

WHEREAS, Community Board 7, Queens, recommends disapproval of this application on the basis that the applicant’s previous proposal to reduce the number of spaces at the site to 25 spaces, as permitted by the special permit, was insufficient to meet the demand for parking in the area; and

WHEREAS, at hearings, members of the community expressed concerns about the reduction of parking at the site, citing the high demand for and lacking availability of parking in the area, the narrowness of Barclay Avenue, existing traffic congestion and the presence of and attendant traffic demands of a school and church across the street from the subject site; and

WHEREAS, the subject site is located on the north side of Barclay Avenue, between Murray Street and 150th Street, in an R5 (C1-2) zoning district, in Queens; and

WHEREAS, the site has approximately 50 feet of frontage along Barclay Avenue, a depth of 125 feet, 6,250 square feet of lot area and is occupied by two vacant residential buildings and a garage; and

WHEREAS, the applicant proposes to demolish the existing structures and construct a five-story, plus cellar, UG 4 ambulatory diagnostic or treatment facility building with 14,975 square feet of floor area; and

WHEREAS, the applicant states that, pursuant to ZR § 36-21, 50 accessory parking spaces are required for the proposed use, calculated at a rate of one space per 300 square feet of floor area and cellar space, except cellar space used for storage; however, the applicant seeks to provide 35 spaces, 15 fewer spaces than required; and

WHEREAS, ZR § 73-44 provides as follows:

In the districts indicated, the Board of Standards

and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
 PARKING SPACES REQUIRED FOR  
 AMBULATORY DIAGNOSTIC  
 OR TREATMENT FACILITIES LISTED IN  
 USE GROUP 4 AND  
 COMMERCIAL USES IN PARKING  
 REQUIREMENT CATEGORY B1

Parking Spaces Required Per Number of Square Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar space*, except *cellar space used* for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for a UG 4 ambulatory diagnostic or treatment facility at the subject site from one space per 300 square feet of floor area to one space per 600 square feet of floor area provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the Board finds that the proposed UG 4 ambulatory diagnostic or treatment facility use at the subject site is contemplated in good faith; and

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

WHEREAS, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces

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will impact the surrounding community; and

WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand for parking generated by the proposed UG 4 use at the site will be 29 spaces on weekdays from 10 a.m. to 11 a.m. and that such demand can be accommodated by the proposed 29 spaces on site, consisting of nine two-car stackers in the cellar (18 spaces), four two-car stackers and two grade parking spaces at the rear of the first floor (10 spaces) and one ambulette parking space at the front of the lot (1 space); and

WHEREAS, the parking study also presents an on-street parking survey concluding that during the weekday peak demand hour (from 10 a.m. to 11 a.m.), there are 32 parking spaces available within a ¼ mile radius of the project site, for a utilization rate of 86 percent within the parking study area; and

WHEREAS, the applicant notes that the parking will be facilitated by attendants and that six reservoir spaces, three in the cellar and three on the first floor, are also provided on site to improve maneuverability; and

WHEREAS, in addition, the applicant provided an operational plan for the parking, representing that facility staff will drive down a ramp to the cellar level where they will be met by a parking attendant; visitors and patients will be met by a second valet at the first floor; that the first floor attendant will coordinate with drivers to determine the duration of their visits to the premises so as to most efficiently place their cars in the stackers; and that the two attendants will be in constant communication in order to effectively control the safe movement of vehicles on the site; and

WHEREAS, finally, the applicant notes that there are no residential uses directly adjacent to the subject site and proposes a variety of safety and nuisance attenuation measures on site, including steel fencing along the rear and western lot lines, landscaping along and perpendicular to the front lot line, and signage, flashing lights and audible noise alerts to ensure that parking occurs in a safe and efficient manner onsite without disruption to car or pedestrian traffic on the nearby sidewalks or streets; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16BSA045Q, dated June 7, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-03 and 73-44 to permit, on a site located partially within an R5 (C1-2) zoning district, the reduction in the required number of accessory parking spaces for a Use Group 4 ambulatory diagnostic or treatment facility from 50 spaces to 29 spaces, contrary to ZR § 36-21; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received January 31, 2017”– Eighteen (18) sheets, and on further condition:

THAT parking at the site shall be facilitated by two attendants at all times;

THAT the parking attendants shall ensure that neither patrons nor staff of the facility double park on Barclay Street;

THAT all maneuvering for parking on-site shall occur on-site and that neither Barclay Street nor the sidewalk adjacent to the site shall be used to achieve such on-site parking;

THAT a minimum of 29 parking spaces shall be provided at the site;

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

THAT no certificate of occupancy shall be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

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

THAT a certificate of occupancy shall be obtained within four (4) years, by January 31, 2021;

THAT substantial construction shall be completed in accordance with ZR § 73-70;

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;

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and

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

Adopted by the Board of Standards and Appeals, January 31, 2017.

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## 2016-1209-BZ

APPLICANT – Law Office of Jay Goldstein, for Yechezkel Reichman, owner.

SUBJECT – Application January 14, 2016 – Special Permit (§73-622) & Variance (§72-21) for the enlargement of an existing single family home. R2 zoning district.

PREMISES AFFECTED – 2701 Avenue K (1085 East 27<sup>th</sup> Street), Block 7609, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application for variance withdrawn without prejudice; Application for special permit 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 Brooklyn Borough Commissioner, dated December 23, 2015, acting on Department of Buildings (“DOB”) Application No. 321120568, reads in pertinent part:

1. Proposed plans are contrary to Z.R. 23-141... in that the proposed Floor Area Ratio (FAR) exceeds the permitted 50%;
2. Proposed plans are contrary to Z.R. 23-141... in that the proposed Open Space Ratio (OSR) is less than the required 150%;
3. Plans are contrary to Z.R. 23-461(a) in that the existing minimum side yard is less than the required minimum 5’-0”;
4. Proposed plans are contrary to Z.R. 23-45(a) front yard is less than the required 15’-0”;

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

WHEREAS, because a special permit pursuant to ZR § 73-622 does not permit waivers of applicable front yard requirements, the applicant additionally seeks a variance, pursuant to ZR § 72-21, to permit a front yard contrary to ZR § 23-45(a); and

WHEREAS, a public hearing was held on this application on August 16, 2016, after due notice by publication in *The City Record*, with continued hearings on November 1, 2016 and November 15, 2016, and then to

decision on January 31, 2017, and

WHEREAS, prior to the close of the hearing, the applicant asked to withdraw their request for a variance and the Board voted to grant such request without prejudice; accordingly, the applicant has proceeded only with an application for the special permit pursuant to ZR § 73-622, seeking waivers of ZR §§ 23-141 and 23-461(a); 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, by letter dated November 14, 2016, Chaim Deutsch, New York City Council Member for the 48th District, expressed approval of the subject application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of Avenue K and East 27<sup>th</sup> Street, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 35 feet of frontage along Avenue K, 100 feet of frontage along East 27<sup>th</sup> Street and 3,450 square feet of lot area; and

WHEREAS, the site is occupied by a two-story plus attic single-family detached residence with 2,768 square feet of floor area, a floor area ratio (“FAR”) of 0.80, an open space ratio of 84, side yards measuring 29’-10” and 4’-1” and front yards measuring 9’-4” and 10’-10”;

WHEREAS, at the subject site, the maximum floor area permitted is 1,725 square feet of floor area (0.5 FAR) and the minimum open space ratio of 150 is required pursuant to ZR § 23-141; two side yards with widths of at least 5 feet and 20 feet are required pursuant to ZR § 23-461 and two front yards measuring 15 feet are required pursuant to ZR § 23-45(a); and

WHEREAS, with regards to the existing front yards, which do not comply with the 15 feet minimum required by ZR § 23-45(a), the applicant submitted certified Sanborn maps of the premises and surrounding area with dates ranging from 1930 to 2007 illustrating that the non-compliant front yard conditions pre-date the 1961 Zoning Resolution and are, thus, legal non-compliances; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-

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BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

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 detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing residence to 3,218 square feet of floor area (0.93 FAR), reduce the open space ratio to 66, reduce the 29'-10" side yard to 20'-5" and maintain the existing 4'-1" side yard; specifically, the enlargement consists of a two-story straight-line addition along the building's eastern side at the rear of the residence and an extension to the second floor at the front of the residence, both of which increase the degree to which the existing 4'-1" side yard does not comply with applicable regulations; and

WHEREAS, the applicant represents that the proposed enlargement is consistent with the character of the neighborhood and notes, in particular, that the rear lot line of the subject lot abuts the district boundary of an R4 zoning district, wherein a maximum 0.75 FAR is permitted as-of-right; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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, accepts the withdrawal of the application pursuant to ZR § 72-21, without prejudice, and makes the required findings under ZR § 73-622, to permit, in an R2 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area ratio, open space ratio and side yards, contrary to ZR §§ 23-141 and 23-461(a); *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 July 27, 2016"-Fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: maximum floor area of 3,218 square feet (0.93 FAR), minimum open space ratio of 66 and side yards with widths of at least 20'-5" and 4'-1", as illustrated on the BSA-approved plans;

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

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 special relief granted; and

THAT DOB shall ensure compliance with all other applicable provisions of the Zoning Resolution, the



# MINUTES

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, January 31, 2017.

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**2016-1216-BZ**

**CEQR #16-BSA-073K**

APPLICANT –Sheldon Lobel, P.C., for 1128 36<sup>th</sup> LLC, owner.

SUBJECT – Application February 5, 2016 – Special Permit (§73-19) to allow for a Use Group 3 school (*Yeshiva Ohr Yoseph*) on the basement to third floors of a new six-story building and Special Permit (§73-44) to permit a reduction in the number of accessory off-street parking spaces required pursuant to ZR 44-21 for commercial office use (UG 6B) on the fourth to sixth floors. M1-2 zoning district. PREMISES AFFECTED – 1128 36<sup>th</sup> Street, Block 5292, Lot 39, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

**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 Department of Buildings (“DOB”), dated September 6, 2016, acting on DOB Application No. 320916078, reads in pertinent part:

1. 42-00, 42-12: Proposed Use group 3A school is not a permitted use in Manufacturing District M1-2 as per Zoning Resolution section 42-00 and ZR 42-12;
2. 44-21: Proposed number of Required Off-Street Parking Spaces for proposed use group 6B PRC-B1, is contrary to Zoning Resolution section 44-21; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-44 to permit, on a site within an M1-2 zoning district, the operation of a Use Group (“UG”) 3A school at the premises and the reduction in the required number of accessory off-street parking spaces, contrary to ZR §§ 42-00, 42-12 and 44-21; and

WHEREAS, the application is filed on behalf of Yeshiva Ohr Yoseph (the “Yeshiva”); and

WHEREAS, a public hearing was held on this application on August 16, 2016, after due notice by publication in *The City Record*, with continued hearings on September 27, 2016, and December 13, 2016, and then to decision on January 31, 2017; and

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

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

WHEREAS, the subject site is located on the south side of 36th Street, between Fort Hamilton Parkway and 12th Avenue, in an M1-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 80 feet of frontage along 36th Street, 5,840 square feet of lot area and is currently under development; and

WHEREAS, the applicant proposes to construct a six-story mixed-use community facility and commercial building containing 19,900 square feet of floor area in the basement and on the first, second and third floors dedicated to the Yeshiva and 7,811 square feet of floor area on the fourth, fifth and sixth floors for UG 6B commercial offices (the “Proposed Building”); and

WHEREAS, the applicant represents that the Proposed Building will comply with applicable bulk regulations and seeks a special permit, pursuant to ZR § 73-19, to permit the proposed UG 3 use and a reduction in the number of required off-street parking spaces for the proposed office use from 27 to 18; and

WHEREAS, ZR § 73-19 provides as follows:

In C8 or M1 Districts, the Board of Standards and Appeals may permit *schools* which have no *residential* accommodations except *accessory* accommodations for a caretaker, provided that the following findings are made:

- (a) that within the neighborhood to be served by the proposed *school* there is no practical possibility of obtaining a site of adequate size located in a district wherein it is permitted as of right, because appropriate sites in such districts are occupied by substantial improvements;
- (b) that such *school* is located not more than 400 feet from the boundary of a district wherein such *school* is permitted as-of-right;
- (c) that an adequate separation from noise, traffic and other adverse effects of the surrounding *non-Residential Districts* is achieved through the use of sound-attenuating exterior wall and window construction or by the provision of adequate open areas along *lot lines* of the *zoning lot*; and
- (d) that the movement of traffic through the *streets* on which the *school* is located can be controlled so as to protect children going to and from the *school*. The Board shall refer the application to the Department of Traffic for its report with respect to vehicular hazards to the safety of children within the block and in the immediate vicinity of the proposed site.

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and

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guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that the site is located in a zoning district in which a special permit pursuant to ZR § 73-19 is available and the applicant represents that the Yeshiva meets the ZR § 12-10 definition of “school” that the subject special permit is intended to permit because it provides full-time day instruction and a course of study that meets the requirements of Sections 3204, 3205 and 3210 of the New York State Education Law; and

WHEREAS, the Yeshiva has been located in a three-story building located at 4404 14th Avenue, in an R6 zoning district in Brooklyn since it began operations in 2014 with a ninth grade class; the Yeshiva now provides both ninth and tenth grade class instruction, has reached capacity at its current location, which contains only two classrooms, and does not have sufficient room to accommodate new incoming classes as the Yeshiva expands to provide instruction to eleventh and twelfth grade classes; and

WHEREAS, an enlargement of the Yeshiva’s current location to accommodate a projected enrollment of 166 students being infeasible, the applicant seeks the subject relief; and

WHEREAS, with regards to ZR § 73-19(a), the applicant submits that there is no practical possibility of obtaining a site of adequate size in the neighborhood to be served—specifically the R5 or R6 zoning districts adjacent to the subject M1-2 zoning district—because most of the sites within those zoning districts are occupied by single- and multi-family residences; the applicant further states that the Yeshiva identified three available sites in its year-long search for an appropriate site within its catchment area of Borough Park, Brooklyn, but one site, though adequately sized, was too expensive to rent and required extensive and costly renovations, a second site was too small and consisted of several buildings, which would have caused operational and safety issues for the Yeshiva, and the third site was too small for the Yeshiva’s needs absent significant renovations; and

WHEREAS, in light of the foregoing, the Board finds that the requirements of ZR § 73-19(a) are met; and

WHEREAS, as for the finding required pursuant to ZR § 73-19(b), the applicant states that the Proposed Building is adjacent to the district boundary line of an R5 zoning district, which permits UG 3A schools as-of-right, and that the entire site is, thus, within 400 feet of a district where a school is permitted as-of-right; and

WHEREAS, the applicant also submitted to the Board a radius map showing that the subject site is less than 200 feet from an R5 zoning district; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(b) are met; and

WHEREAS, in response to the findings set forth in ZR § 73-19(c), the applicant has provided the Board with a noise study that examined both mobile and stationary noise sources and concluded that noise levels at the premises fall within an acceptable range; accordingly, the applicant does not propose additional window or wall attenuation in the Proposed Building for the proposed UG 3A use; and

WHEREAS, the Board credits the conclusion of the

submitted noise study that no sound-attenuating exterior wall and/or window construction is necessary at the subject site and finds that the requirements of ZR § 73-19(c) have been satisfied; and

WHEREAS, the applicant makes the following recommendations in pursuit of meeting the findings of ZR § 73-19(d): the addition of high-visibility crosswalks at Fort Hamilton Parkway, 12th Avenue and Minna Street where standard crosswalks currently exist; curb extensions at the intersection of Minna Street and 36th Street and the intersection of 12th Avenue and 36th Street; land-use signs for the southbound approach at the intersection of Fort Hamilton Parkway and 37th Street, pedestrian countdown signals and relocation of the easterly pedestrian ramp located at the intersection of Fort Hamilton Parkway and 36th Street; the creation of a 50-foot long No Standing zone along the south side of 36th Street, at Minna Street, on school days between the hours of 6:00 a.m. and 6:30 a.m. and 8:00 p.m. to 8:30 p.m.; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the New York City Department of Transportation (“DOT”); and

WHEREAS, by letter dated August 15, 2016, DOT states that they reviewed the plans associated with this application, found them to be acceptable, and suggested that a final assessment regarding a school loading zone be performed once construction of the Proposed Building is complete; and

WHEREAS, the Board finds that the applicant’s recommendations will control traffic so as to protect children going to and from the proposed school and, therefore, finds that the requirements of ZR § 73-19(d) are met; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the applicant additionally seeks a special permit, pursuant to ZR § 73-44, permitting a reduction of the 27 off-street parking spaces required for the Proposed Building, which was calculated as follows: pursuant to ZR § 44-21, within an M1-2 zoning district, one accessory parking space for every 300 square feet of floor area is required, thus, the 7,811 square feet of UG 6B floor area in the Proposed Building requires the provision of 27 off-street parking spaces; and

WHEREAS, the applicant originally proposed to provide 13 parking spaces, but at the Board’s request increased the number of parking spaces provided on-site to 18, the combined parking demand for the UG 3A and UG 6B uses at the site set forth in the traffic demand study conducted as part of the environmental review for this application, and, thus, decreased the degree of the requested parking reduction from 14 to 9 spaces; and

WHEREAS, ZR § 73-44 provides as follows:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic

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or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
PARKING SPACES REQUIRED FOR  
AMBULATORY DIAGNOSTIC  
OR TREATMENT FACILITIES LISTED IN  
USE GROUP 4 AND  
COMMERCIAL USES IN PARKING  
REQUIREMENT CATEGORY B1

Parking Spaces Required

Per Number of Square

Feet on *Floor Area*\*

Districts

1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar* space, except *cellar* space used for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for a commercial use in parking requirement category B1 to one space per 600 square feet of floor area provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant has submitted an affidavit, sworn to by the owner of the premises on April 1, 2016, stating that the UG 6B office use in parking category B1 proposed on the fourth, fifth and sixth floors of the Proposed Building is contemplated in good faith; and

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

WHEREAS, in reference to ZR § 73-03(a) and the application sought under ZR § 73-19, the Board acknowledges that the Yeshiva, as an educational institution, is entitled to deference under the law of the State of New York as to zoning; specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), an education institution's zoning application is to be granted 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 a denial; and

WHEREAS, the Board nevertheless inquired, in the interest of the Yeshiva students' safety, as to how the applicant proposed to keep the UG 3A use separate and distinct from the UG 6B use in the Proposed Building; and

WHEREAS, in response, the applicant provided a security protocol for the Proposed Building—including separate lobby entrances for the Yeshiva (southern lobby) and the UG 6B office (northern lobby) uses; locking the Yeshiva's southern lobby to prevent unauthorized entry; utilizing an intercom system and Yeshiva staff to oversee the daily arrival and departure of students; separate stairs for the two uses with no access to the fourth, fifth and sixth floors from the Yeshiva's southern stairs and no access to the Yeshiva stairs from the office floors; alarmed push bar devices on the UG 6B office doors leading into the Yeshiva's southern stair cases and on the Yeshiva doors leading to the UG 6B northern stair cases; restrictions on students' use of the elevator absent adult supervision; elevator access to the first, second and third floors secured by a key or card system; and security cameras throughout the buildings with monitoring screens in the Yeshiva's administrative offices; and

WHEREAS, in light of the operational protocol provided, along with the applicant's agreement to amend the application to satisfy all of the parking demand for the Proposed Building on-site, the Board finds that, under the conditions and safeguard imposed, any hazard or disadvantage to the community at large due to the proposed special permit UG 3A use and parking reduction is outweighed by the advantages to be derived by the community; and

WHEREAS, with regards to ZR § 73-03(b), the applicant represented that the proposed special permit UG 3A use and parking reduction will not interfere with any pending public improvement project; and

WHEREAS, the applicant submits that ZR § 73-03 subsections (c), (d), (f) and (g) are inapplicable to both of its special permit applications herein, states that, in reference to ZR § 73-03(e), neither ZR § 73-19 nor ZR § 73-44 specify a term of years and proposes that a term on either special permit is inappropriate; and

WHEREAS, in light of the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03 for the special permits requested herein pursuant to ZR §§ 73-19 and 73-44; and

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

WHEREAS, the Board has conducted an environmental review of the project in the Final Environmental Assessment Statement ("EAS"), CEQR No. 16BSA073K, dated 11/22/2016; and

WHEREAS, the EAS documents that the project as proposed will not have significant adverse impacts on Land

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Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for noise, air quality and hazmat; and

WHEREAS, DEP reviewed and accepted the Noise Chapter in the EAS and backup materials and concluded that the proposed project would not result in any potential for significant adverse impacts in regards to noise; and

WHEREAS, DEP reviewed the Air Quality Chapter in the EAS, the Air Quality Memorandum and backup materials and, likewise, concluded that the potential for significant air quality impact from the proposed project are not anticipated; and

WHEREAS, with regards to hazmat, DEP reviewed the August 2016 Phase II Subsurface Investigation and recommended that (1) the applicant submit a site-specific Construction Health and Safety Plan ("CHASP") on the basis of possible exposure of workers and/or community to contaminants from the proposed project delineating the requirements for Health and Safety personnel, personal protective equipment, dust control, air monitoring and emergency response procedures and (2) a minimum of two feet of DEP approved certified clean fill material be placed in all landscape/grass covered areas not capped with concrete or asphalt; and

WHEREAS, subsequently, DEP reviewed the September 2016 CHASP and found it acceptable on condition that: (1) the names and phone numbers of the Site Supervisor and an Alternate Site Health and Safety Office is incorporated in the CHASP and (2) upon the completion of the project, indoor air sampling using a photoionization detector ("PID") be conducted in the on-site building and the results incorporated in an indoor air sampling report submitted to DEP for review and approval; and

WHEREAS, the Board notes that the DEP-requested additions were made to the CHASP and an amended CHASP was submitted into the record; and

WHEREAS, the New York City Landmarks Preservation Commission ("LPC") reviewed the project for historic and cultural resources and concluded that though the subject site is of no architectural or archaeological significance, it is within the radius of several LPC-designated New York City landmarks and in the radius of a National Register of Historic Places listing, specifically Greenwood Cemetery, which itself contains individually designated LPC properties, but that no adverse direct or indirect shadow impacts to the cemetery are anticipated as a result of this action; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-19, 73-44 and 73-03 and grants a special permit to allow, on a site located within an M1-2 zoning district, the operation of a Use Group 3A school on the basement, first, second and third floors of a six-story building, contrary to ZR §§ 42-00 and 42-12, and a special permit to permit a reduction in the required off-street parking spaces from 27 parking spaces to 18 parking spaces, contrary to ZR § 44-21; *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 January 11, 2017"-Fourteen (14) sheets and letter from "Yeshiva Ohr Yoseph"-Seven (7) pages; and *on further condition*:

THAT Yeshiva students shall not be allowed access to the elevator unless accompanied by an adult;

THAT the primary access for Yeshiva students shall be the stair lobby of the building and not the elevator lobby;

THAT the applicant shall comply with the following school safety operational protocol:

Secure Yeshiva Entrance: The Yeshiva and offices will have separate lobby entrances. The Yeshiva will have exclusive use of the southern lobby, which will be locked to prevent unauthorized entry. Yeshiva staff will be present in the lobby to oversee student arrival and departure. An intercom system will be installed at the Yeshiva lobby entrance, which will be monitored by Yeshiva staff. Outside of student arrival and departure periods, access to the Yeshiva lobby will require a key or use of the intercom system.

Separate Lobbies & Stairs: As noted above, the Yeshiva and offices will have separate lobby entrances and will also have separate stairs. Signage will direct building tenants and visitors to the appropriate entrance. The Yeshiva will have exclusive use of the southern lobby and southern stairs (the "Yeshiva stairs"). The Yeshiva stairs will permit students to move freely between the basement, first, second and third floors. Students will not have access to the fourth, fifth and sixth floors from the Yeshiva stairs. Doors from the Yeshiva stairs to the office floors will be secured to prevent unauthorized access by students. Additionally, entry from the office floors to the Yeshiva stairs will also be secured to prevent unauthorized access to the Yeshiva. Access from the office floors to the Yeshiva stairs will be limited to emergencies. The doors of the office

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floors leading into the Yeshiva stairs will be equipped with alarmed push bar devices.

The northern lobby is ADA-compliant and will be dedicated for office use and limited Yeshiva use. The offices will have exclusive use of the northern stairs (the "Office stairs"). Entry from the Office stairs to the first, second and third Yeshiva floors will be secured to prevent unauthorized access to the Yeshiva. Access from the Office stairs to the Yeshiva floors will be limited to emergencies. Signage will indicate which floors are secure (i.e., no exit from stairs from until basement level). In addition, the doors on the first, second and third Yeshiva floors leading into the Office stairs will be equipped with alarmed push bar devices to prevent unauthorized access from the Yeshiva floors into the Office stairs.

Elevator Restrictions: Yeshiva student elevator use will only be permitted in limited circumstances under adult supervision, such as for students with mobility issues. Adult Yeshiva staff will accompany all students using the elevator. Elevator access to the first, second and third Yeshiva floors would be secured by a key or card system to prevent unauthorized elevator access.

Security Cameras: Security cameras would be installed throughout the building, including the stairwells and on all Yeshiva floors. The security cameras would be linked to monitoring screens in two of the Yeshiva's administrative offices. Yeshiva staff will monitor the security cameras and the alarmed doors will alert Yeshiva staff to unauthorized or emergency access to secured areas in the building.

Students and parents will be notified of all of the Yeshiva's security policies. Yeshiva staff will monitor and enforce student compliances with these policies.

THAT a copy of the school safety operational protocol, and the associated drawings, shall be incorporated into the approved plan set and submitted to DOB;

THAT, upon the completion of construction at the site, an indoor air sampling using a photoionization detector ("PID") shall be conducted inside the on-site building and the results shall be incorporated in an indoor air sampling report submitted to DEP for review and approval;

THAT, in accordance with the DEP-approved CHASP and prior to occupancy of the building and/or acquiring a Temporary Certificate of Occupancy, whichever comes first, the applicant shall conduct any and all remedial action(s) set forth in the CHASP as required based on detected PID levels;

THAT a minimum of two feet of DEP approved certified clean fill material be placed in all landscape/grass covered areas not capped with concrete or asphalt;

THAT upon completion of construction, the applicant shall contact DOT for a final assessment regarding the

necessity of a school loading zone;

THAT no Certificate of Occupancy shall be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT substantial construction shall be completed in accordance with ZR § 73-07;

THAT a Certificate of Occupancy shall be obtained within four (4) years;

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

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

Adopted by the Board of Standards and Appeals, January 31, 2017.

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## **6-14-BZ**

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application January 9, 2014 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2525 Victory Boulevard, Block 1521, Lot 1, Borough of Staten Island.

## **COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to February 28, 2017, at 10 A.M., for deferred hearing.

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## **30-14-BZ**

APPLICANT – Eli Katz of Binyan Expediting, for Cong. Machine Chaim, owner; Yeshiva Bais Sorah, lessee.

SUBJECT – Application February 11, 2014 – Variance (§72-21) proposed enlargement to an existing school (Use Group 3) is contrary to §§42-00 & 43-43. M1-1 zoning district.

PREMISES AFFECTED – 6101 16<sup>th</sup> Avenue aka 1602 61<sup>st</sup> Street aka 1601 62<sup>nd</sup> Street, north east corner of 62nd Street and south east side of 16th Avenue, Block 5524, Lot 1, Borough of Brooklyn.

## **COMMUNITY BOARD #11BK**

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for deferred hearing.

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## 54-14-BZ

APPLICANT – Moshe M. Friedman, P.E., for 11-01 Irving Avenue, LLC, owner.

SUBJECT – Application April 3, 2014 – Variance (§72-21) to permit development of a three story and penthouse residential building, contrary to use regulations (§42-00). M1-4 zoning district.

PREMISES AFFECTED – 1506 Decatur Street aka 11-01 Irving Avenue aka 1504 Decatur Street, Block 3542, Lot 12, Borough of Queens.

### COMMUNITY BOARD #5Q

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 February 14, 2017, at 10 A.M., for decision, hearing closed.

## 2016-4152-BZ

APPLICANT – Law Office of Jay Goldstein, for Midyan Gate Realty No. 3 LLC, owner.

SUBJECT – Application March 28, 2016 – Special Permit (§73-19) to allow a school (UG 3) (*Yeshiva Darche Eres*) to occupy a portion of the first floor and the entirety of the second, third and fourth floors of the Premises, contrary to use regulation (§42-10). M1-1 (OP) zoning district.

PREMISES AFFECTED – 325 Avenue Y, Block 7192, Lot 45, 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 .....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to March 7, 2017, at 10 A.M., for decision, hearing closed.

## 2016-4165-BZ

APPLICANT – Glen V. Cutrona, for Shore to Shore Foster, LLC, owner.

SUBJECT – Application April 6, 2016 – Variance (§72-21) to permit the construction of an eating and drinking establishment (UG 6) (*Tim Horton's*) with an accessory drive thru contrary to ZR §22-10. R3X (SRD) zoning district.

PREMISES AFFECTED – 5801 Amboy Road, Block 6896, Lot 53, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for continued hearing.

## 2016-4166-BZ

APPLICANT – Eric Palatnik, P.C., for 2577 East 17<sup>th</sup> Street, LLC, owner.

SUBJECT – Application April 6, 2016 – Special Permit (§73-44) to reduce the required number of accessory parking spaces contrary to §36-21 for ambulatory diagnostic or treatment facility use and Use Group 6 uses with Parking Requirement Category B1. C8-1 zoning district.

PREMISES AFFECTED – 2579 East 17<sup>th</sup> Street, Block 7438, Lot 46, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for continued hearing.

## REGULAR MEETING

TUESDAY AFTERNOON, JANUARY 31, 2017

1:00 P.M.

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

## ZONING CALENDAR

### 263-14-BZ

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application October 24, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141(b); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 1601 Oriental Boulevard, Block 8757, Lot 23, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.

### 2016-4126-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 670 Broadway Owner LP, owner; Equinox 670 Broadway, Inc., lessee.

SUBJECT – Application February 24, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Equinox*) within an existing building. M1-5B zoning district.

PREMISES AFFECTED – 670 Broadway, Block 530, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

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**ACTION OF THE BOARD** – Laid over to February 28, 2017, at 10 A.M., for decision, hearing closed.

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**2016-4249-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP for Margaret Lee, Youngwoo & Associates LLC, owner.

SUBJECT – Application September 8, 2016 – Variance (§72-21) to allow the development of a commercial building contrary to ZR §22-10 (to allow commercial use (UG 5 & 6) within a R7-2 zoning district, ZR §33-122 (exceed the maximum permitted commercial floor area within a C8-3 zoning district, ZR §§33-432 & 33-442 (C8-3 sky exposure plane regulations) and ZR §36-683 (Location of the entry/exit of an accessory loading berth with a C8-3 zoning district). C8-3 & R7-2 zoning district.

PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot(s) 77 & 83, Borough of Manhattan.

**COMMUNITY BOARD #12M**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.

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*Ryan Singer, Executive Director*

**\*CORRECTION**

**This resolution adopted on June 7, 2005, under Calendar No. 1129-64-BZ and printed in Volume 90, Bulletin Nos. 25-26, is hereby corrected to read as follows:**

**1129-64-BZ**

APPLICANT - Sheldon Lobel P.C., for 147-36 Brookville Boulevard Corp., owner.

SUBJECT - Application November 10, 2004 - Extension of term filed pursuant to sections 72-01 and 72-22, which was originally granted March 2, 1965, to permit the erection of a one story enlargement to an existing building used for the sale of auto supplies in an R3-2 zoning district.

PREMISES AFFECTED – 147-36 Brookville Boulevard, southwest corner of 147th Road and Brookville Boulevard, Block 13729, Lots 30 and 33, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES -

For Applicant: Jordan Most.

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

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Miele and Commissioner Chin.....3

Negative:.....0

Absent: Vice-Chair Babbar.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and, pursuant to Z.R. §§ 72-01 and 72-22, an extension of the term of the variance, which will expire on June 10, 2005; and

WHEREAS, a public hearing was held on this application on May 17, 2005 after due notice by publication in *The City Record*, and then to decision on June 7, 2005; and

WHEREAS, Community Board 13, Queens, and the Queens Borough President recommend approval of this application subject to certain conditions listed below; and

WHEREAS, on March 2, 1965, under the above referenced calendar number, the Board granted an application to permit, in an R3-2 district, the erection of a one-story enlargement to an existing building to be used for the sale of auto supplies for a term of ten years; and

WHEREAS, since the original grant, the applicant has obtained subsequent extensions of the term of the variance, the most recent extension being granted on October 16, 1996; and

WHEREAS, the subject building is located on the southwest corner of 14<sup>th</sup> Road; and

WHEREAS, in a letter dated January 13, 2005 to the Queens Borough President, and in a subsequent letter to the Board dated May 17, 2005, the owner, Melvin Gallub of Rosedale Auto Parts, Inc., agreed to comply with certain conditions requested by the Queens Borough President and Community Board 13, including: posting signs and taking other necessary action to discourage clientele from replacing auto parts or doing mechanical work on the street outside the

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establishment; removing and permanently banning abandoned vehicles from the parking lot; performing general maintenance and improvements to the property; performing a general clean-up of the property and continuing to maintain the property free of litter; maintaining bushes and shrubs; discouraging motorists from using the parking lot as a public street by keeping one gate closed except when actually in use; and updating, removing and replacing signage affixed to the building in accordance with the Building Code; and

WHEREAS, therefore, the Board finds that this application for an extension of term is appropriate to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals, *reopens and amends* the resolution, said resolution having been adopted on March 2, 1965, and subsequently amended and extended, and extends the term of the variance, which will expire on June 10, 2005 so that, as amended, this portion of the resolution shall read: "to permit the extension of the term of the variance for an additional ten years from June 10, 2005 expiring on June 10, 2015; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received May 25, 2005"-(3) sheets; *and on further condition*:

THAT all mechanical work and replacement of auto parts shall take place on the site and no work shall be done on the streets surrounding the site; signs shall be posted to that effect;

THAT any and all abandoned vehicles shall be removed from the parking lot;

THAT general maintenance and improvements shall be performed on the property, including trim painting, litter removal, and the clean-up of bushes and shrubs;

THAT the gates to the parking area shall be closed at all times except when in actual use;

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

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

THAT the signs affixed to the building shall be updated, removed and replaced in compliance with the Building Code;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (DOB Application #402017571)

Adopted by the Board of Standards and Appeals, June 7, 2005.

**PREMISES AFFECTED Adding Lot 30.  
Corrected in Bulletin No. 6, Vol. 102, dated February 10, 2017.**

**\*The resolution has been amended to correct the**



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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 102, Nos. 7-8

February 17, 2017

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### DIRECTORY

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DARA OTTLEY-BROWN

EILEEN MONTANEZ

SHAMPA CHANDA

*Commissioners*

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704-59-BZ	53 East 177 <sup>th</sup> Street (fka 53-57 East 177 <sup>th</sup> Street), Bronx
528-64-BZ	240-02 Northern Boulevard, Queens
1122-81-BZ	105-14 Astoria Boulevard, Queens
30-00-BZ	465-469 West 165 <sup>th</sup> Street and 458-464 West 166 <sup>th</sup> Street, Manhattan
227-02-BZ	527 East 233 <sup>rd</sup> Street, Bronx
163-04-BZ	671/99 Fulton Street, Brooklyn
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160-15-BZ	186 Montague Street, Brooklyn
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New Case Filed Up to February 14, 2017  
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## 2017-33-BZ

398 Lenevar Avenue, located on the west side of Lenevar Avenue on the corner formed by Lenevar Avenue and Drumgoole Road East., Block 06949, Lot(s) 26, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to permit construction of a single family detached home contrary to ZR §23-142 (Minimum Yards), ZR §107-251 (Setback), ZR §107-42 (Lot Area and Lot Width) and ZR §107-462 (Side Yard). R3X zoning district. (South Richmond Special District) (Special Area LL) (Lower Density Growth Management Area). R3X (SRD) district.  
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## 2017-34-BZ

311 Adams Avenue, located on the northeast corner fo the intersection formed by Adams and Haven Avenues, Block 03679, Lot(s) 29, Borough of **Staten Island, Community Board: 2**. Variance (§72-21) to permit construction of a three-story, single family residence contrary to ZR §23-45 (Front Yard), ZR § 23-461(a) (Side Yards on Corner Lots), ZR §25-622 (Parking Spaces between the street wall line and street line) and ZR §23-451 (Plantains on Corner Lots). R3-1 zoning district. R3-1 district.  
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## 2017-35-BZ

580 Columbus Avenue, located on Columbus Avenue between West 88th and West 89th Streets, Block 01219, Lot(s) 7501, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (the Fitting Room) on the first floor of an existing building. C1-9 and R7-2 zoning district. C1-9/R7-2 district.  
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## 2017-36-BZ

55 Prospect Street, located on the north side of Prospect Street between Adams and Pearl Streets, Block 00063, Lot(s) 1, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Shadowbox) located on the first floor of an existing building contrary to ZR §42-10. M1-6 zoning district. M1-6 district.  
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## 2017-37-BZ

142 West 23rd Street, located on the west side of West 23rd Street between 6th and 7th Avenues, Block 00798, Lot(s) 66, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the legalization of the operation of a Physical Cultural Establishment (Rumble Fitness) located in a portion of the first floor and cellar of an existing building contrary to ZR ZR §32-10. C6-3X zoning district. C6-3X district.  
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## 2017-38-BZ

1155 East 28th Street, located on East 28th Street between Avenues K and L., Block 07628, Lot(s) 23, 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 §23-142); side yard (ZR §23-461(a)) and less than the required rear yard (ZR §23-47). R2 zoning district. R2 district.  
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## 2017-39-BZ

271 Church Street, located on the east side of Church Street between Franklin and White Streets, Block 00175, Lot(s) 7504, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the legalization of the operation of a Physical Culture Establishment (The Tracy Anderson Method) to be operated within the cellar and ground floor with mezzanine of an existing building contrary to ZR §32-10. C6-2A (Tribeca East Historic District. C6-2A district.  
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## 2017-40-BZ

420 Park Avenue South, located on the southwest corner of Park Avenue South and East 29th Street, Block 00858, Lot(s) 45, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Flywheel) in a portion of the first floor and first floor mezzanine of an existing building contrary to ZR §32-10. C5-2 & C6-4A zoning district. C5-2 & C6-4A district.  
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## 2017-41-BZ

67 Mapleton Avenue, located on Mapleton Avenue between Colony Avenue and Baden Place, Block 03806, Lot(s) 7, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R3-1 district.  
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## 2017-42-BZ

15 Hett Avenue, located on Hett Avenue between Beacon Place and New Dorp Lane, Block 04064, Lot(s) 40, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. C1-1/R3-1 zoning district. C1-1/R3-1 district.  
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# DOCKETS

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## **2017-43-BZ**

140 Hendricks Avenue, located on Hendricks Avenue between Bismark Avenue and Jersey Street, Block 00044, Lot(s) 19, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to permit the construction of a single family, detached home contrary to ZR §23-461c (Side Yard and Open Area). R3A (Special Hillside Preservation District (SHPD) Lower Density Growth Management Area (LDGMA) zoning district. R3A district.

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## **2017-44-BZ**

123 West 20th Street, located on the north side of West 20th Street between 6th & 7th Avenues., Block 00796, Lot(s) 23, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to operate a physical culture establishment (F45 Training Flatiron) in the cellar and ground floors of an existing building contrary to ZR §32-31. C6-3A zoning district. C6-3A 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 MARCH 21, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 21, 2017, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

-----

## SPECIAL ORDER CALENDAR

### 1289-80-BZ

APPLICANT – Troutman Sanders LLP, for Evelyn L. Wells, as surviving Trustee and Steven R. Straus, owner; Bally Total Fitness, lessee.

SUBJECT – Application July 15, 2016 – Extension of Term of a variance allowing the operation of a Physical Culture Establishment (*24 Hour Fitness*) which expired on July 21, 2016. C1-3/R6 zoning district.

PREMISES AFFECTED – 298 West 231<sup>st</sup> Street, Block 5711, Lot 29, Borough of Bronx.

**COMMUNITY BOARD #8BX**

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### 1016-84-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Livia Liberace Trust, owner; Raja Auto Sales & Auto Repair & Body Shop, Inc., lessee.

SUBJECT – Application August 18, 2016 – Extension of Term (§11-411) of a previously approved Variance for the operation of an auto repair shop (UG16B) with accessory uses which expired on July 30, 2015; Waiver of the Rules. C8-2 & R5 (Special Ocean Parkway District) zoning district.

PREMISES AFFECTED – 790 Coney Island Avenue a/k/a 790-798 Coney Island Avenue, Block 5393, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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### 574-85-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 125 East 39<sup>th</sup> Street Realty LLC, owner.

SUBJECT – Application September 26, 2016 – Extension of term for a previously granted Variance (§72-21) permitting an eating and drinking establishment (UG6) located in the cellar, basement and first floor of a five story building which expired on June 17, 2016. C1-5(R-10) zoning district.

PREMISES AFFECTED – 125 East 39<sup>th</sup> Street, Block 895, Lot 18, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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### 377-88-BZ

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Application – Compliance Hearing of a previously approved Variance (§72-21) which permitted the legalization of a one (1) story enlargement to a one (1) story blacksmith and welding shop (UG 16) which increased the degree on non-conformance contrary to ZR §52-22 in a then R4 zoning district. C2-4/R6A zoning district.

PREMISES AFFECTED – 145-64 Liberty Avenue, southwest corner of Liverpool Street. Block 10049, Lot 11. Borough of Queens.

**COMMUNITY BOARD #12Q**

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### 180-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TCAM Core Property Fund Operating LP, owner; Equinox 85<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application February 4, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (Equinox) which expires on February 28, 2016. C2-8A/R8B zoning district.

PREMISES AFFECTED – 1511 Third Avenue (a/k/a 201 East 85<sup>th</sup> Street) Block 1531, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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## APPEALS CALENDAR

### 2016-4329-A

APPLICANT – Richard G. Leland, for Baychester Retail III LLC, owner.

SUBJECT – Application November 10, 2016 – Administrative appeal challenging the Department of Buildings' final determination dated October 25, 2016, to permit the installation of 54 individual signs at the subject property. C7 zoning district.

PREMISES AFFECTED – 2001 Bartow Avenue, Block 5141, Lot 101, Borough of Bronx.

**COMMUNITY BOARD #10BX**

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# CALENDAR

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## REGULAR MEETING MARCH 21, 2017, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 21, 2017, 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

#### 105-15-BZ

APPLICANT – Eric Palatnik, P.C., for Aleksandr Finkelshtein, Contract Vendee.

SUBJECT – Application May 12, 2015 – Variance (§72-21) to permit the development of a four (4) story building consisting of Use Group 6 commercial offices on the first and second floor and community facility uses on the third and fourth floors. R4 zoning district.

PREMISES AFFECTED – 2102-2124 Avenue Z, Block 7441, Lot 371, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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#### 179-15-BZ

APPLICANT – Moshe M. Friedman, P.E., for 127 Taaffe LLC, owner.

SUBJECT – Application August 10, 2015 – Variance (§72-21) to permit the development of a four-story, multifamily residential building (UG2) contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 129 Taaffe Place, Block 1897, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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#### 2016-4163-BZ

APPLICANT – Sheldon Lobel, P.C., for George Arsoff, owner.

SUBJECT – Application April 1, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space ZR 23-141. R2 zoning district.

PREMISES AFFECTED – 8120 Colonial Road, Block 5994, Lot 45, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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#### 2016-4229-BZ

APPLICANT – Eric Palatnik, P.C., for Loffcoff Properties LLC, owner.

SUBJECT – Application July 21, 2016 – Variance (§72-21) to permit the construction of a two (2) family detached home contrary to rear yard requirements (ZR §23-47). R3X (SSRD) zoning district.

PREMISES AFFECTED – 1452 Drumgoole Road West, Block 6333, Lot 201, Borough of Staten Island.

## COMMUNITY BOARD #3SI

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#### 2016-4244-BZ

APPLICANT – Law Office of Lyra J. Altman, for Havemeyer Owner LLC, owner.

SUBJECT – Application September 1, 2016 – Special Permit (§73-44) for the reduction in parking for commercial office (UG 6) uses in Parking Requirement Category B1. C4-3 zoning district.

PREMISES AFFECTED – 263-279 South 5<sup>th</sup> Street, Block 2447, Lot(s) 13, 19, 35, 36, 41 & 135, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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#### 2017-63-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation (“HRO”)

SUBJECT – Application March 16, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 9 Post Court, Block 8856, Lot 1882, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Ryan Singer, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, FEBRUARY 14, 2017  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**7-95-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Redmont Realty Company, LLC, owner; TSI Whitestone, LLC dba New York Sports Club, lessee.

SUBJECT – Application August 30, 2016 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on August 8, 2016; Amendment to permit a change in hours of operation. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 153-37 Cross Island Parkway, Block 4717, Lot 16, Borough of Queens.

**COMMUNITY BOARD #7Q**

**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 term and amendment to a variance, previously granted by the Board, which expired on April 25, 2006; and

WHEREAS, a public hearing was held on this application on February 14, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, Community Board 7, Queens, recommends approval of this application on condition that an elevator violation at the location be cured first; and

WHEREAS, the subject site is located on the north side of the Cross Island Parkway between Clintonville Street and 154th Street, in an R3-2 (C1-2) zoning district, in Queens; and

WHEREAS, the site has approximately 295 feet of frontage along the Cross Island Parkway, 156 feet of frontage along Clintonville Street, 726 feet of frontage along 14th Road, 403,415 square feet of lot area and is occupied by shopping center; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 8, 1995, when, under the same calendar number, the Board granted a variance to permit the

establishment of a physical cultural establishment (“PCE”) in a two-story plus cellar building located within the larger shopping center development for a term of ten (10) years, expiring August 8, 2005; and

WHEREAS, on April 25, 2006, under the same calendar number, the Board extended the term of the variance for an additional ten (10) years, expiring August 8, 2015, and amended the variance to reflect a change in the PCE operator on condition, *inter alia*, that the hours of the PCE be limited to weekdays, 5:30 a.m. to 11:00 p.m., and weekends, 8:00 a.m. to 10:00 p.m.; and

WHEREAS, a typo in the conditions to the 2006 Resolution misstates that the term expired on August 8, 2016; and

WHEREAS, this application was timely filed with reference to the misstated August 8, 2016 date of the expiration of the previous term, but the Board notes that this extension will run from the actual date of expiration, August 8, 2015; and

WHEREAS, the most recent term, thus, having expired, the applicant requests an extension of the term of the variance for an additional ten (10) years and an amendment to the variance reflecting a change in the PCE’s hours of operation: Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant states that there has been no change to the operator of the facility; and

WHEREAS, with regards to the Community Board’s recommendation, the applicant represents that the elevator in the building is operational and that the violation will be cured upon the issuance of the new Certificate of Occupancy; and

WHEREAS, at hearing, the Fire Department stated that the sprinkler and fire alarm systems at the premises have been approved, that the location receives routine inspections and that there are no outstanding violated; and

WHEREAS, the Board finds that the requested amendment and a ten (10) year extension of the term of the variance 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 8, 1995, as amended through April 25, 2006, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years from the expiration of the last grant, to expire on August 8, 2025, and amend the hours of operation; *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received October 6, 2016’—Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring August 8, 2025;

THAT the hours of operation shall be limited to Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 7:00 a.m. to 10:00 p.m.;

THAT there shall be no change in ownership or

# MINUTES

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

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

THAT a new Certificate of Occupancy shall be obtained within one (1) year, by February 14, 2018;

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

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;

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

THAT the Department of Buildings must ensure compliance with all 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, February 14, 2017.

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## 133-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Trinity Hudson Holdings, owner; TSI Varick Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application August 1, 2016 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (New York Sports Club) located on the second floor of an existing 12 story commercial building which expired on July 1, 2006. M1-5 Zoning District.

PREMISES AFFECTED – 225 Varick Street, Block 581, Lot 63, Borough of Manhattan.

### 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 for an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on July 1, 2016; and

WHEREAS, a public hearing was held on this application on February 14, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

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

WHEREAS, the subject site is located on the west side of Varick Street, between Clarkson Street and West Houston Street, within an M1-5 zoning district, in Manhattan; and

WHEREAS, the site has approximately 200 feet of frontage along Varick Street, 125 feet of frontage along Clarkson Street, 126 feet of frontage along West Houston Street, 25,000 square feet of lot area and is occupied by a 12-story, with cellar, commercial-and-industrial building; and

WHEREAS, the Board has exercised jurisdiction over the site since February 6, 2007, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, allowing the legalization of a PCE, operated as New York Sports Club, located on a portion of second floor of the subject building, with an entrance on the first floor, for a term of ten (10) years, expiring July 1, 2016; and

WHEREAS, the previous term of the special permit having expired, the applicant seeks an extension of term for an addition ten (10) years; and

WHEREAS, the facility remains in operation as New York Sports Club, and no modifications are proposed to the previously approved hours of operation: Monday through Thursday, 6 a.m. to 11 p.m.; Friday, 6 a.m. to 9 p.m.; and Saturday and Sunday, 9 a.m. to 7 p.m.; and

WHEREAS, the applicant notes that the PCE continues to occupy 16,741 square feet of total floor area in the building, 893 square feet of floor area on the first floor and 15,848 square feet of floor area on the second floor, as previously approved by the Board; and

WHEREAS, as conditioned in the prior approval, the applicant represents that an approved building-wide sprinkler system and an approved interior fire alarm system are installed in the entire PCE space—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm and sprinkler system to a Fire Department-approved central station—and subsequently approved and signed off by the Department of Buildings; and

WHEREAS, the Fire Department confirms that the building-wide sprinkler system and the fire alarm system have been installed at the premises; and

WHEREAS, the Board finds that a ten (10) 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 February 6, 2007, 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, expiring July 1, 2026, *on condition* that the site shall substantially conform to drawings as filed with this application, marked ‘August 1, 2016’ - Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years from July 1, 2016, expiring July 1, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT Local Law 58/87 compliance shall be as reviewed



# MINUTES

and approved by DOB;

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

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

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

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

Adopted by the Board of Standards and Appeals, February 14, 2017.

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## 528-64-BZ

APPLICANT – Gerald Caliendo, RA, AIA, for 240-02 Realty LLC/Tim Broliieb, owner.

SUBJECT – Application November 4, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the erection of a two story enlargement of an auto showroom (UG 16B). The amendment seeks to enlarge the existing automobile showroom and include an addition of a parking deck to the existing automobile dealership (*East Hills Chevrolet*). R1-2 zoning district.

PREMISES AFFECTED – 240-02 Northern Boulevard, southwest corner of Alameda Avenue and Northern Boulevard, Block 08167, Lot 1, Borough of Queens.

## COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for adjourned hearing.

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## 1122-81-BZ

APPLICANT – Eric Palatnik, P.C., for NCBP East Elmhurst LLC, owner.

SUBJECT – Application November 3, 2014 – Extension of Term of a previously approved Variance (§72-21) which permitted a one-story enlargement of a then existing metal supply establishment (UG 17) increasing the degree of non-conformity, which expired on November 9, 2012; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 105-14 Astoria Boulevard, southwest corner of 106<sup>th</sup> Street and Astoria Boulevard, Block 01692, Lot 3, Borough of Queens.

## COMMUNITY BOARD #4Q

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 February

28, 2017, at 10 A.M. for decision, hearing closed.

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## 30-00-BZ

APPLICANT – Fried, Frank, Harris Shriver & Jacobson LLP, for The Trustees of Columbia University in the City of New York, lessee.

SUBJECT – Application February 17, 2016 – Extension of term of a previously granted variance granted pursuant to §72-21 of the zoning resolution which permitted an open parking lot (Use Group 8) which expired on February 6, 2016. R7-2 zoning district.

PREMISES AFFECTED – 465-469 West 165<sup>th</sup> Street and 458-464 West 166<sup>th</sup> Street, Block 2111, Lot(s) 53, 54, 55, 57, 71, 72, 73, Borough of Manhattan.

## COMMUNITY BOARD #12M

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for adjourned hearing.

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## 227-02-BZ

APPLICANT – Stanley K. Schlein, Esq., for 4201 Webster Corp., owner.

SUBJECT – Application August 21, 2015 – Extension of Term (§§72-01 and 72-22) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with an accessory convenience store which expired on December 12, 2013; Amendment to the condition of term since the term expired in excess of 2 years but less than ten years; Extension of Time to Obtain a Certificate of Occupancy which expired on December 10, 2006; Waiver of the Board’s Rules. R7-A zoning district.

PREMISES AFFECTED – 527 East 233<sup>rd</sup> Street, Block 3395, Lot 80, Borough of Bronx.

## COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for adjourned hearing.

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## 80-05-BZ

APPLICANT – Aura Wellness Spa Corp., for Erol Devli, owner; Rockford Chun, lessee.

SUBJECT – Application December 15, 2015 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (Aura Wellness Spa Corp.) which expired on November 15, 2015.

C6-6 and C6-4.5 zoning district.  
PREMISES AFFECTED – 49 West 33<sup>rd</sup> Street, Block 835, Lot 9, Borough of Manhattan.

## COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for adjourned hearing.

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## 704-59-BZ

APPLICANT – Carl A. Sulfaro, Esq., for The Rand Properties Group, LLC, owner; Danes Parking Corp., lessee.

SUBJECT – Application May 9, 2016 – Extension of Term

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(§11-411) of a previously approved variance which permitted a parking lot (UG 8) which expired on June 3, 2010; Waiver of the Rules. R8 zoning district.

PREMISES AFFECTED – 53 East 177<sup>th</sup> Street (fka 53-57 East 177<sup>th</sup> Street), Block 2828, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #5BX

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for continued hearing.

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## 163-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee. SUBJECT – Application February 24, 2016 – Extension of time to obtain a certificate of occupancy for a previously granted physical culture establishment (Crunch Fitness) which expired on October 29, 2014; Waiver of the Rules. C2-4/R7A zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, Block 2096, Lot(s) 66, 69, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 108-15-A thru 110-15-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Glebe Partners LLC, owners.

SUBJECT – Application May 13, 2015 – Appeal seeking determination that property owner has acquired common law vested right to complete construction of three, three-family residential buildings commenced under prior zoning district regulations. R6A zoning district.

PREMISES AFFECTED – 2317, 2319, 2321 Glebe Avenue, Block 3971, Lot(s) 167, 166, 165, Borough of Bronx.

## COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for adjourned hearing.

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### 238-15-A thru 243-15-A

APPLICANT – Jeffrey Geary, for Ed Sze, owner.

SUBJECT – Application October 8, 2015 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – 102-04, 08, 12, 16, 20, 24 Dunton Court, Block 14240, Lot(s) 1306, 1307, 1308, 1309, 1310, 1311, Borough of Queens.

## COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for adjourned hearing.

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### 264-15-A thru 268-15-A

APPLICANT – Diffendale & Kubec, for Leonello Savo, owner.

SUBJECT – Application December 7, 2015 – Proposed construction of two family detached residence not fronting on a legally mapped street, contrary to General City Law 36. R3X (SSRD) zoning district

PREMISES AFFECTED – 5, 11, 17, 23 Herbert Street and 14 Holtein Avenue, Block 6681, Lot(s) 30, 31, 40, 41, 34, Borough of Staten Island.

## COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for adjourned hearing.

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### 2016-4232-A thru 2016-4235-A

APPLICANT – Eric Palatnik, P.C., for Anthony Gallo, owner.

SUBJECT – Application August 3, 2016 – Proposed three-story two and cellar residential development which is within the unbuilt portion of the mapped street, contrary to General City Law 35. R5 zoning district.

PREMISES AFFECTED – 139-12, 139-16, 139-19 and 139-22 Atlantic Avenue, aka 95<sup>th</sup> Avenue, Block 10006, Lot(s) 5, 7, 8, 9, Borough of Queens.

## COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 54-14-BZ

#### CEQR #14-BSA-135Q

APPLICANT – Moshe M. Friedman, P.E., for 11-01 Irving Avenue, LLC, owner.

SUBJECT – Application April 3, 2014 – Variance (§72-21) to permit development of a three story and penthouse residential building, contrary to use regulations (§42-00). M1-4 zoning district.

PREMISES AFFECTED – 1506 Decatur Street aka 11-01 Irving Avenue aka 1504 Decatur Street, Block 3542, Lot 12, 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, the decision of the Department of Buildings (“DOB”), dated March 6, 2014, acting on DOB Application No. 420650922, reads in pertinent part:

“Proposed UG 2 is not permitted in an M1-4

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zoning district; contrary to ZR 42-10”; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located within an M1-4 zoning district, the construction of three-story plus cellar multiple dwelling, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 16, 2016, after due notice by publication in *The City Record*, with a continued hearing on January 31, 2017, and then to decision on February 14, 2017; and

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

WHEREAS, Community Board 5, Queens, recommends disapproval of this application on the basis that, as part of an Industrial Business Zone, the site should be developed, instead, for industrial use and promote local industrial jobs; and

WHEREAS, a neighbor submitted a letter in support of the variance, stating that the lot has been vacant and an eyesore in the neighborhood for more than twenty-five years, that no one has yet come forward to develop the lot with a conforming use and that the proposed residential building is consistent with the residential use of the adjacent lots; and

WHEREAS, the subject site is located on the northeastern corner of the intersection of Decatur Street and Irving Avenue, in an M1-4 zoning district, in Queens; and

WHEREAS, the site has approximately 90 feet of frontage along Decatur Street, 25 feet of frontage along Irving Avenue, 2,257 square feet of lot area and is vacant; and

WHEREAS, the applicant submitted into the record a Certificate of Occupancy for the site, dated September 10, 1945, indicating that the site was previously developed with a two-story plus cellar mixed-use commercial and residential building having a restaurant and cabaret on the first floor and single-family dwelling on the second floor; and

WHEREAS, the applicant submits that such building occupied the site until 1971, when it was demolished, and that the site has been vacant since that time; and

WHEREAS, the subject application is for construction of a three-story plus cellar residential building with six residential units, two on each floor, having 4,500 square feet of floor area, a floor area ratio (“FAR”) of 1.99, 30 feet in height and with 66 percent lot coverage; and

WHEREAS, the applicant represents that the proposal complies with the zoning regulations applicable in an R6 zoning district, noting that an R6 zoning district is located directly across Irving Avenue from the subject site; and

WHEREAS, as residential use is not permitted in an M1-4 zoning district as of right, the applicant seeks the subject relief; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the history of development of the site with residential use, its location adjacent to other residential properties both on the subject block and across the street in an R6 zoning

district, as well as its narrow width, shallow depth and location on a narrow street create practical difficulties and unnecessary hardship in developing the subject site in conformance with the zoning regulations applicable in the underlying district; and

WHEREAS, specifically, the applicant represents that the small size of the site precludes the development of the lot with a building have a floorplate sufficient to support a viable conforming use; additionally, the narrowness of the lot prevents the inclusion of a loading dock and that the narrowness of the surrounding streets would frustrate truck access to the site for pick-ups and deliveries; and

WHEREAS, the applicant provided the Board with a uniqueness study of the area within 1,000 feet of the subject site located in manufacturing districts (M1-4, M1-1 and M1-4D zoning districts), excluding the areas to the north and south of the subject site located in R6, R5B and R6B and R4-1 zoning districts (the “Study Area”); such study supports the applicant’s assertion that narrow and shallow sites such as the subject lot are unsuitable for manufacturing uses in that it demonstrates that lots currently developed with conforming uses have multiple times the lot area of the subject site and lots of similar size to the subject lot, including those on the subject block, are developed with residential buildings; and

WHEREAS, the study additionally identifies all of the other lots in the Study Area with a width of 25 feet or less and demonstrates that of these 12 total properties, not including the subject site, 10 are used in conjunction with and/or held in common ownership with an adjacent lot, including two lots that are utilized for parking; one lot is subject to a Board variance permitting its development with a residential building; and one lot, which is ten feet deeper than the subject site, is vacant; and

WHEREAS, therefore, the study concludes that the subject site suffers from practical difficulties that are uniquely burdensome and meets the finding set forth in ZR § 72-21(a); and

WHEREAS, based on the foregoing, the Board finds that the aforementioned unique physical conditions create unnecessary hardship and practical difficulties in developing the site in conformance with applicable zoning regulations; and

WHEREAS, with regards to ZR § 72-21(b), the applicant submits that there is no reasonable possibility that a conforming development at the subject site will bring a reasonable return and, in support of that assertion, submitted a financial analysis of (1) a two-story plus cellar building consisting of artists spaces with an elevator, 4,513 square feet of floor area and 100 percent lot coverage (“the As-of-Right Development”) and (2) the subject proposal, demonstrating that only the subject proposal would provide a reasonable return; and

WHEREAS, to wit, the financial analysis concludes that the As-of-Right Development would generate a project loss of more than \$300,000, whereas the subject proposal would yield a return of approximately \$31,000; and

WHEREAS, the return for the subject proposal was

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analyzed based on its proposal of six two-bedroom residential units as follows: two two-bedroom, 1-1/2 bathroom duplexes on the first floor and cellar, having an average of 585 square feet of floor area on the first floor and an average of 487 square feet of floor space in the cellar; two two-bedroom, one bath units on each of the second and third floors, averaging 585 square feet of floor area each; and open access to the roof of the building by all residents; and

WHEREAS, upon review of the applicant's submissions, the Board finds that, due to the site's unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposal 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) because the proposal is consistent with the residential character of the subject block and the residential character of the blocks directly to the south of the subject site, located across Irving Avenue in an R6 zoning district, and the bulk of the proposed building complies with zoning regulations applicable in an R6 zoning district; and

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

WHEREAS, the Board finds that the hardship claimed as a ground for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant represents that the subject proposal is the minimum variance necessary to afford relief because it complies with the zoning regulations applicable in the residential zoning district located directly across the street, continues the historic use of the subject site and realizes only a modest return on investment; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief; 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 a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment (EAS) CEQR No. 14BSA135Q, received March 18, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse

Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, the New York City Landmarks Preservation Commission ("LPC") environmental review of the proposal indicates that the site has no architectural or archaeological significance; and

WHEREAS, the New York City Department of Environmental Protection ("DEP") reviewed the project for potential significant adverse noise and air quality impacts; and

WHEREAS, by letters dated May 2, 2016, and June 20, 2016, respectively, DEP states that it has determined that the proposal would not result in either potential significant adverse noise or air quality impacts; and

WHEREAS, DEP reviewed and accepted the Work Plan, Health and Safety Plan ("HASP") and, by letter dated July 17, 2015, requested the development and submission of a Remedial Action Plan ("RAP") and a site-specific Construction Health and Safety Plan ("CHASP"); and

WHEREAS, by letter dated January 25, 2017, DEP requested that, at a minimum, a vapor barrier be incorporated into the design plan of the proposal and the manufacturer's specification be included in the RAP and submitted to DEP for review and approval; that the name and phone number for an alternate Site Health and Safety Officer be included in the CHASP and that, provided that these edits were incorporated into the July 2015 RAP and CHASP and the manufacturer's specifications for the vapor barrier submitted to DEP, the July 2015 RAP and CHASP were acceptable; and

WHEREAS, by letter dated January 30, 2017, DEP accepted the revised January 2017 RAP—which, as requested, incorporated a proposal to install a vapor barrier system below the slab of the mechanical and storage areas of the building and behind foundation walls—and the July 2015 CHASP and additionally requested that, upon the completion of the project, a Remedial Closure Report, certified by a Professional Engineer and indicating that all remedial requirements as set forth in the January 2017 RAP and July 2015 CHASP have been properly implemented, be submitted to DEP for review and approval; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site within an M1-4 zoning district, the construction of three-story plus cellar multiple dwelling, contrary to ZR § 42-10, *on condition* that all work will

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substantially conform to drawings filed with this application marked "Received February 2, 2017"- Thirteen (13) sheets; and *on further condition:*

THAT upon completion of the project, a Remedial Closure Report, certified by a Professional Engineer and indicating that all remedial requirements as set forth in the January 2017 Remedial Action Plan and July 2015 Construction Health and Safety Plan have been properly implemented, be submitted to DEP for review and approval;

THAT such Remedial Closure Report shall be submitted prior to the receipt of the Certificate of Occupancy;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a Certificate of Occupancy shall be obtained within four (4) years;

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

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

Adopted by the Board of Standards and Appeals, February 14, 2017.

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## 181-14-BZ

### CEQR #15-BSA-038K

APPLICANT – Sheldon Lobel, P.C., for The Greek School of Plato, LTD, owner.

SUBJECT – Application August 1, 2014 – Variance (§72-21) to permit the construction of an educational and cultural facility be located on the premises. R4B zoning district.

PREMISES AFFECTED – 670 92<sup>nd</sup> Street, between Battery Avenue and 7<sup>th</sup> Avenue, Block 6143, Lot 35, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

**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, by Department of Buildings ("DOB") Chief Plan Examiner, dated August 23, 2014, acting on DOB Application No. 320932871 reads in pertinent part:

1. Sec 24-10 Does not comply in that the building exceeds the permitted Lot Coverage;
2. Sec. 24-34 Does not comply in that the building does not provide the minimum Front Yard;

3. Sec. 24-37 Does not comply in that the building does not provide the minimum Rear Yard;

4. Sec. 24-521 Does not comply with the Sky Exposure and Set Back requirements;

5. Sec 24-551 Does Not comply in that the building does not provide the required side set back;

6. Sec. 24-35 Does Not Comply in that one yard is less than 8'-0";

7. [ . . . ]

8. Sec. 25-31 Does Not Comply in that the site does not provide the required parking; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an R4B zoning district, the construction of a three-story plus cellar Use Group ("UG") 4A, non-profit without sleeping accommodations, and UG 3 school that does not comply with lot coverage, front yard, rear yard, sky exposure plane, set back, side set back, side yard and parking requirements, contrary to ZR §§ 24-10, 24-34, 24-37, 24-521, 24-551, 24-35 and 25-31; and

WHEREAS, a public hearing was held on this application on April 12, 2016, after due notice by publication in *The City Record*, with continued hearings on June 14, 2016, September 20, 2016, and December 13, 2016, and then to decision on February 14, 2017; and

WHEREAS, this application has been filed on behalf of The Greek School (the "Applicant"), a not-for-profit organized under Section 501(c)(3) of the Internal Revenue Code founded in 1977 that currently provides afterschool and weekend instruction for pre-school to ninth grade students in Greek culture, language, literature, history and religion and plans to operate a Universal Pre-Kindergarten ("UPK") program as part of the subject proposal; and

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

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application on condition that the flat roofs on the two stair bulkheads at the fifth floor of the originally proposed building be revised to sloped roofs with "invisible"-type fencing around the roof level and that the plans be revised to include a 10 foot setback at the fourth floor at the southwest corner of the site abutting the adjacent residential property; and

WHEREAS, by letter dated September 20, 2016, New York State Senator Martin Golden expressed support for this application; and

WHEREAS, the subject site is located on the south side of 92nd Street, between Battery Avenue and Seventh Avenue, in an R4B zoning district, in Brooklyn, and

WHEREAS, the site has approximately 70 feet of frontage along 92nd Street, 4,532 square feet of lot area and is currently occupied with a one-story plus cellar UG 4 medical office, which will be demolished to effectuate the subject proposal; and

WHEREAS, the applicant originally proposed, and the

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Community Board based its recommendation on a review of, a four-story plus cellar building with a trellis containing solar panels atop a 10 foot high fence on the roof, 10,655 square feet of floor area, a floor area ratio (“FAR”) of 2.35, 64 percent lot coverage, no rear yard at floors two through four, no front yard, side yards measuring 8’-1/2” and 3’-3/4”, a total wall height of 59’-6” and no parking; and

WHEREAS, in the course of hearings, and in response to concerns raised by members of the surrounding community and the Board, the applicant modified the proposal to a three-story plus cellar building with a 10 foot high rooftop fence, 9,064 square feet of floor area, 2.0 FAR, 64 percent lot coverage, no rear yard at floors two and three, a front yard measuring 8 feet, no side yards, total wall height of 39’-3”, no parking, no front setback no side setbacks; and

WHEREAS, at the subject site, the maximum FAR permitted is 2.0 and the maximum floor area permitted is 9,064 square feet pursuant to ZR § 24-11, a maximum of 55 percent lot coverage is permitted pursuant to ZR § 24-11; a rear yard of at least 20 feet is required pursuant to ZR §§ 24-36 and 24-37; a front yard of at least 15 feet is required pursuant to ZR § 24-34; two side yards measuring at least 8 feet each are required pursuant to ZR § 24-35; a front setback is required 35 feet above the front yard line pursuant to ZR § 24-521; 27 parking spaces are required pursuant to ZR 25-31; and side setbacks are required 35 feet or more than three stories above the level of a side yard, whichever is lower, pursuant to ZR § 24-551; and

WHEREAS, the applicant seeks the subject variance to waive the bulk requirements of ZR §§ 24-10 (lot coverage), 24-34 (front yard), 24-37 (rear yard), 24-521 (sky exposure plane and set back), 24-551 (side setbacks), 24-35 (side yards) and 25-31 (parking); and

WHEREAS, the applicant states that, consistent with ZR § 72-21(a), the shallow depth of the lot creates a practical difficult and unnecessary hardship in developing the site in conformance with the underlying district regulations; specifically, a complying building on the lot, which has a depth of 60’-1” at its eastern end and a depth of 70’-1” at its western end, would have a functional depth of only 25 feet and be unable to accommodate sufficient classroom space for the Applicant’s operations; and

WHEREAS, the Applicant submitted a uniqueness study demonstrating that the subject lot is among the 25 most shallow lots of the 233 lots on the four tax blocks located at the intersection of Battery Avenue and 92nd Street and the second most shallow lot of the 42 lots within the same study area developed subsequent to the enactment of the 1961 Zoning Resolution; and

WHEREAS, the Applicant asserts that the depth of the lot was adversely affected by the widening of 92nd Street in 1959, which reduced its depth by 40 feet; and

WHEREAS, as a result of the shallow lot depth, the Applicant represents that strict compliance with applicable zoning regulations results in an inefficient building with the majority of the space on the upper floors dedicated to circulation space rather than classroom space; and

WHEREAS, the Board agrees that the aforementioned

unique physical conditions at the site create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, because the Applicant is a non-profit organization and the variance is requested to further its non-profit mission, the finding set forth in ZR § 72-21(b) is not required in order to grant the subject variance; and

WHEREAS, with regards to ZR § 72-21(c), the Applicant states that the variance, if granted, will not alter the character of the neighborhood, impair the appropriate use or development of adjacent property or be detrimental to the public welfare because the subject site is located on a wide street in an area comprised of residential and community facility uses and features a few larger institutions as well, including a school on nearly 26 acres located directly east and southeast of the premises, and two medical buildings, one six-stories and the other seven-stories, located diagonally across 92nd Street from the premises; and

WHEREAS, the Applicant additionally represents that a significant number of buildings in the area were developed prior to 1961 and do not comply with the applicable zoning regulations, vary in height and bulk parameters, and, thus, the subject proposal would not be out of character due to this lack of a consistent building typology; and

WHEREAS, at hearing, several members of the community (the “Opposition”) expressed opposition to the height and massing of the proposal as out of context with the character of the subject block, which they define as uniformly consisting of two-story single- and two-family residences, and, in response, the Applicant revised the proposed design—removing the originally proposed fourth floor, setting the roof top play area back from the front of the building, angling back the stair bulkheads to reduce their visibility from the street, removing a solar panel trellis proposed over the roof, reducing the amount of space dedicated for office and administrative use, relocating the stairwells in the side yards and reducing the degree to which the building entrance encroaches into the front yard; and

WHEREAS, in response to the Board’s requests, the Applicant also revised the proposal to reduce the size of a sidewalk vault in the cellar, thereby facilitating the retention of a large tree located in front of the site; and

WHEREAS, there was discussion at hearing regarding the material proposed for the exterior of the building, which members of the Board expressed a familiarity with and a concern that such material was sufficiently durable and/or would be properly maintained so as to not make the building a blight on the surrounding community; and the Applicant agreed to conditions regarding this material, including that it be maintained, repaired and replaced as needed to main the building’s appearance in a first class condition, which have been included herein; and

WHEREAS, the Opposition additionally objected generally to the subject proposal, raising questions about the applicant’s status as a “school” for zoning purposes and entitlement to deference in zoning applications, as well as issues emanating from the operation of this facility at the

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subject premises, including the safety of students, especially pre-Kindergarten students, traveling to and from the facility; the lack of on-site parking and the current deficiency of on-street parking in the area; the additional strain the use will place on existing neighborhood utilities; concerns of increased noise associated with the proposed use; and the additional traffic congestion anticipated to be created by the proposal and the inability of the surrounding area to accommodate it; and

WHEREAS, the Board first notes that the Applicant has not received the deference afforded to education and religious institutions pursuant to the New York Court of Appeals' holding in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986); and

WHEREAS, with regards to traffic and parking, the Applicant represents that the parking requirement for the proposal is driven by the UG 4A non-profit without sleeping accommodations use (that is, the provision of afterschool and weekend instruction in Greek culture, language, literature, history and religion); that the facility's heaviest hours of operation—weekday afternoons and Saturdays—are outside of the typical rush hours; that while there are approximately 175 students currently enrolled in the Applicant's programming, they are from 98 families and many families transport more than one child to the facility at a time, thereby reducing the number of vehicle trips; that families will often participate in car pools, further limiting the number of cars that drop-off or pick-up at the site; that 30 percent of students live within 1 mile of the site and 78 percent of students live within 2 miles of the site, meaning that their parents will likely drop them off at the site and return home, rather than utilize on-street parking nearby; that classes are staggered throughout the week such that the entire student body does not attend each day; that large events in the proposed multi-purpose room will only occur two to three times a year and bring up to 50 cars into the neighborhood and any larger events will occur offsite; that under ZR § 25-31, as applied to the projected number of staff persons onsite, the UG 4A use yields a parking requirement of only 3 spaces, a number low enough to be waived pursuant to ZR § 25-33; and a majority of the current teachers and staff (7 out of 12) travel to the site via public transportation; and

WHEREAS, the Applicant provided a traffic and parking study concluding that there is, indeed, sufficient on-street parking to accommodate the peak parking demand created by the proposed uses at the site, projected to be seven to eight vehicles on weekday evenings and four to five vehicles on Saturday mornings; and

WHEREAS, the Applicant additionally obtained a 55 foot long "No Standing" zone in front of the site from the New York City Department of Transportation ("DOT"), effective from 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, which would allow pick-ups and drop-offs to occur without disturbing street traffic; and

WHEREAS, DOT reinstated five parking spaces in the vicinity to mitigate the loss of parking spaces due to the installation of the "No Standing" zone; and

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

WHEREAS, the applicant state that, per ZR § 72-21(d), the hardship was not self-created; and

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

WHEREAS, to demonstrate that the subject proposal is the least variance necessary to accommodate its programming, the Applicant provided an analysis of three alternative proposals: (1) a building that extended further into the side yards (the "Wider Building Scenario"), (2) a building made shorter by lowering the existing slab to the bottom of the footings (the "Lower Slab Scenario") and (3) a building that complies with all applicable zoning regulations (the "As-of-Right Scenario"); and

WHEREAS, the Applicant represents that the three alternatives are fiscally impracticable and/or do not meet the needs of the Applicant's current programming—to wit, the Wider Building Scenario, in going beyond the bounds of the existing foundation walls and requiring additional demolition, excavation, shoring, bracing, underpinning and footings, would cost nearly 15 percent more than subject proposal and, thus, pose a financial hardship; the Lower Slab Scenario would similarly require additional foundation costs and be prohibitively expensive; finally, the As-of-Right Scenario could accommodate only four classrooms, which would accommodate only 48 of the Applicant's 175 students simultaneously and, thus, would be inadequate for both the Applicant's current and future enrollment; and

WHEREAS, the Applicant currently rents space in several neighborhood locations for its administrative office, classroom and storage needs and the subject proposal is intended to unite all of these functions within a single structure easily accessed by the Applicant's currently enrolled students as well as the large Greek populations located in Bay Ridge, Dyker Heights and Staten Island; and

WHEREAS, the Applicant anticipates that its current enrollment will increase by approximately 15 students annually and projects a total enrollment numbering 325 students in ten years, a number the Applicant notes is not without precedent in its operational history and likely in light of the construction of the dedicated facility proposed herein; and

WHEREAS, accordingly, the subject proposal provides 11 small classrooms, with an approximate size of 300 square feet each, dedicated to use for Greek language, history, religion, culture, dance, art, theater, philosophy and ancient Green mythology instruction on weekday afternoons and Saturdays, and two classrooms for a UPK program, to be established and operated by the Applicant, which will be utilized non-simultaneously, specifically from 8:30 a.m. to 3:00 p.m., Monday through Friday; and

WHEREAS, the Applicant additionally proposes to establish a nursery program at the premises, operating from 12:00 p.m. to 2:15 p.m., Tuesday and Thursday; and

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WHEREAS, the building will also be utilized for special activities related to the Greek language and culture instruction occurring onsite—including theatrical productions and art exhibitions; accordingly, the proposal includes a multipurpose room in the cellar with a capacity for approximately 225 people, as well as laundry facilities to enable the maintenance of specialty costumes, utilized in said productions, onsite; and

WHEREAS, the As-of-Right Scenario would provide nine fewer classrooms and only 40 percent of the floor area provided in the subject proposal in a building the Applicant identifies as highly inefficient in that a majority of floor area on the second and third floors would be dedicated to circulation space and less than 25 percent of the floor area would be usable for the Applicant's programming; and

WHEREAS, the Board again notes the significant modifications made to the subject proposal in light of Board comments, including revisions to the building envelope and the addition of a daytime UPK program in response to Board concerns regarding the apparent under-utilization of the building, and the attendant decrease in the number and degree of waivers herein requested; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) Short Form CEQR No. 15-BSA-038K, dated March 11, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; [Public Health;]Neighborhood Character; or Construction; and

WHEREAS, by letter dated December 27, 2016, the New York City Department of Environmental Protection ("DEP") states that, upon review of a study of the potential noise effects of the rooftop playground component of the subject proposal and backup materials, it was determined that the proposed rooftop playground will not result in any potential for significant adverse impacts with regards to noise; and

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

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

on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR, Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located in an R4B zoning district, the construction of a three-story plus cellar UG 4A non-profit without sleeping accommodations, and UG 3 school that does not comply with lot coverage, front yard, rear yard, sky exposure plane, set back, side set back, side yard and parking requirements, contrary to ZR §§ 24-10, 24-34, 24-37, 24-521, 24-551, 24-35 and 25-31; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 10, 2017"- Ten (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 64 percent lot coverage, a front yard measuring at least 8 feet, no rear yard at the second and third floors, a maximum height of 39'-3", no front setbacks, no side setbacks, no side yards and 0 parking spaces, as reflected on the BSA-approved plans;

THAT the rooftop playground shall not be utilized for play prior to 9:00 a.m. or after 7:00 p.m.;

THAT the EIFS façade material shall be maintained, repaired and replaced as needed to maintain the building's appearance in a first class condition and shall be installed with thermal barriers to prevent interior fire spread in accordance with the International Building Code requirements for EIFS and foam plastic insulation and shall comply with special inspection requirements EIFS, if applicable to installation method;

THAT other non-foam plastic insulation materials may be substituted for EIFS;

THAT the school shall provide monitors to prevent double parking in front of the school loading zone and to ensure that crowds disperse before and after instructional sessions and events at the premises;

THAT the building shall not be used for catering or commercial purposes;

THAT any increase to the number of classrooms utilized for the Universal Pre-Kindergarten program shall require prior approval by the Board;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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

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



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

Adopted by the Board of Standards and Appeals, February 14, 2017.

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**259-14-BZ**

**CEQR #15-BSA-089K**

APPLICANT – Fried, Frank, Harris, Shriver & Jacobson LLP, for The Rector, Church-Wardens and Vestrymen of Trinity Church in the City of New York, owner.

SUBJECT – Application October 17, 2014 – Variance (§72-21) to permit the proposed structure in rear yard of the interior lot portion of the site contrary to (ZR 33-23 and ZR 33-26) of the zoning resolution. C5-5 (SLMD) zoning district.

PREMISES AFFECTED – 68-74 Trinity Place aka 103-109 Greenwich Street, Block 51, Lot 7, 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 a Department of Building (“DOB”) Zoning Specialist, dated July 21, 2016, acting on DOB Application No. 121186885 reads in pertinent part:

“ZR 33-23, ZR 33-26: Proposed structure, 101’3” in height at the rear of the interior lot portion of the site along Greenwich Street, and 115’0” in height at the rear of the interior lot portion of the site along Trinity Place, is not a permitted obstruction in the rear yard, contrary to ZR 33-23 and ZR 33-26; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in a C5-5 zoning district and the Special Lower Manhattan District, the construction of a 27-story mixed-use community facility and commercial building that does not comply with the rear yard requirements set forth in ZR §§ 33-23 and 33-26; and

WHEREAS, this application is filed on behalf of The Rector, Church-Wardens and Vestrymen of Trinity Church (the “Applicant” or “Trinity”), a non-profit Episcopal parish based in Lower Manhattan; and

WHEREAS, a public hearing was held on this application on October 18, 2016, after due notice by publication in *The City Record*, with a continued hearing on January 24, 2017, and then to decision on February 14, 2017; and

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

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

WHEREAS, by letter dated October 18, 2016, Manhattan Borough President Gale Brewer expressed support for the approval of this application and lauded Trinity’s efforts in engaging the local community on the development of the subject site; and

WHEREAS, at hearing, New York City Council Member Margaret Chin expressed her support of this application and appreciation of the Applicant’s efforts in integrating community interests in the proposed design; and

WHEREAS, the subject site is located on the west side of Trinity Place, between Rector Street and Thames Street, in a C5-5 zoning district and the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the site is comprised of a through lot and two interior lots, having approximately 133 feet of frontage along Trinity Place, 108 feet of frontage along Greenwich Street and 16,733 square feet of lot area; and

WHEREAS, the site is currently vacant, but was formerly occupied by a 26-story building and four-story building; the former buildings were partially joined on their interiors and utilized in part by Trinity for programming with the remainder rented to third parties, but Trinity submits that they were inadequately configured to accommodate the totality of Trinity’s programming needs; and

WHEREAS, the Applicant now proposes to develop the site with a 27-story mixed use building containing 109,346 square feet of community facility floor area on the cellar level through eighth floors and 141,470 square feet of commercial space on floors 10 through 26, with mechanical equipment on floors nine and 27 (the “Proposed Building”); and

WHEREAS, , a rear yard with a depth of not less than 20 feet must be provided at each of the rear lot lines of the two interior lot portions of the subject site, pursuant to ZR § 33-26, and only obstructions identified in ZR § 33-23 are permitted within those required yards; and

WHEREAS, as no rear yards are proposed at the interior lot portions of the site and the obstructions proposed therein are not permitted obstructions as set forth in ZR § 33-23, the Applicant requests the subject variance; and

WHEREAS, the applicant notes, and the Board confirms, that the waivers requested relate only to the community facility portion of the Proposed Building and waivers are neither requested nor required for the commercial floors of the Proposed Building; and

WHEREAS, the Proposed Building is located across the street from Trinity Church, the Applicant’s primary sanctuary, and will be connected to Trinity Church by an existing pedestrian bridge over Trinity Place; and

WHEREAS, the community facility portion of the Proposed Building, the Parish Center, is intended to provide sufficient space for the Applicant’s programming and associated support services; among those spaces is the Parish Hall, which, with a capacity of 280 congregants, will serve as the hub of the Parish Center and be the central gathering space for, among other uses, worship services and a Coffee Hour following religious services held at Trinity

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Church; and

WHEREAS, Trinity states that the irregular shape and composition of the lot creates practical difficulties or unnecessary hardship in strictly complying with the bulk provisions of the Zoning Resolution; specifically, the site has two narrow interior lot portions—one on the northern end of the site measuring approximately 48 feet wide with a depth ranging from 48 feet to 52 feet and a second on the southern end of the site measuring approximately 4 feet wide by 101 feet deep—that would result in an irregularly shaped conforming building, and the site decreases in elevation from east to west such that the street level of Trinity Place is more than 9 feet higher than Greenwich Street; and

WHEREAS, the Applicant submits that the practical difficulties resulting from the aforementioned unique conditions of the subject site include an inability for Trinity to effectively accommodate its wealth of programming or rationally lay out core building services, including stairs, elevators, restrooms and egress corridors; strict compliance with the rear yard regulations applicable to the interior lot portions of the site would additionally result in a loss of more than 10,000 square feet of interior program and outdoor space; and

WHEREAS, in addition, the Applicant notes, and the Board recognizes, that Trinity, as a religious institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance application; specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), an educational or religious institution's zoning application is to be granted unless it can be shown to have an adverse effect on 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 such application; and

WHEREAS, based on the above, the Board finds that the Applicant is entitled to deference on this application and satisfaction of the (a) finding is not required; and

WHEREAS, because Trinity is a non-profit organization and the variance is requested to further its non-profit mission, the finding set forth in ZR § 72-21(b) is not required in order to grant the subject variance; and

WHEREAS, with regards to ZR § 72-21(c), the Applicant represents that the variance, if granted, will not alter the character of the neighborhood, impair the appropriate use or development of adjacent property or be detrimental to the public welfare because the Proposed Building is surrounded by institutional, commercial and residential buildings of similar or greater scale; the 27-story Proposed Building will replace the recently demolished 26-story mixed-use community facility and commercial building constructed at the subject site in the early 20th Century that encroached upon a, now required, rear yard area on the interior portion of the lot; and, with the exception of the rear yard waivers herein requested, the Proposed Building will comply with all applicable zoning regulations relating to height, setback and floor area; and

WHEREAS, in addition, Trinity states that the absence of rear yards at the subject site will not adversely affect the two buildings located adjacent to those areas in which such rear yards would be required because neither building has operable windows in the areas in which the rear yards are required and, therefore, neither building relies on the existence of rear yards at the subject site for light and/or air; and

WHEREAS, with regards to the New York Curb Exchange building (later known as the American Stock Exchange building), an individual landmark designated by the New York City Landmark Preservation Commission, located directly north of the subject site and flush against the rear yard required at the northern end of the subject site, the Applicant states that the building will be protected during construction of the Parish Center and that a landmark protection plan is being prepared in accordance with DOB Technical Policy and Procedure Notice # 10/88; and

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

WHEREAS, the Applicant states and the Board finds that, per ZR § 72-21(d), the hardship was not self-created; and

WHEREAS, finally, the Applicant submits that, consistent with ZR § 72-21(e), the requested waivers are the minimum necessary to allow Trinity to fulfill its programmatic needs; and

WHEREAS, the Applicant states that the Parish Center is proposed to accommodate the anticipated future growth of Trinity's congregation in light of the rapidly growing residential population of Lower Manhattan; Trinity's current membership totals 900 congregants, 1,500 congregants are anticipated by 2020, when the Parish Center is projected to open, and an additional 50 percent increase in the congregation is anticipated upon the opening of the Parish Center; and

WHEREAS, in planning the Parish Center, the Applicant both looked at its existing programming and engaged the local community through charrettes, interviews of community leaders and surveys sent to residents of Lower Manhattan to determine how the Proposed Building could serve Trinity congregants as well as the greater community through additional program offerings; and

WHEREAS, as evidence of the extent of their existing programming, the Applicant submitted a recent Weekly Bulletin to serve as an example of Trinity's offerings in a given week, which include religious services held six days a week; youth Sunday School; a variety of adult education sessions and lectures; evening prayer sessions; the Brown Bag Lunch Ministry, a charitable food program that provides lunch to approximately 100 people daily; poetry workshops; meetings for various church groups, including Trinity Women and an Environmental Justice Group, as well as community service and grassroots organizations; silent meditation sessions; a ministry for Trinity's senior

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congregants; spiritual journaling sessions; bible study; information sessions for various service opportunities; a film series; Trinity Institute Dialogue conferences; youth overnights; art workshops; dramatic readings and performances; and Congregational Council Committee meetings; and

WHEREAS, the Applicant submits that in addition to providing adequate space for these programs, the Parish Center must additionally accommodate Eucharist services for families with children, English language classes, community open hours sessions, marriage counseling, parenting groups, sessions dedicated to the provision of job and housing assistance, and rehearsal and performance space for Trinity's adult and children's choirs and orchestras, including the Movement Choir, Youth Chorus and Youth Orchestra; and

WHEREAS, the Parish Hall, a double-height column-less room, is the central programmatic element of the Parish Center purposefully located on the second level to facilitate a direct connection from the Trinity Church via the existing footbridge that traverses Trinity Place and, thus, was identified by Trinity as the primary driver of the layout for the entirety of the Parish Center; and

WHEREAS, the size of the Parish Hall was nevertheless constrained and reduced in size from its ideal capacity of 300 congregants to a capacity of 280 congregants in response to the following considerations: proper horizontal circulation from Trinity Church to the Parish Hall and from the Parish Hall to seminar rooms on the same level; adequate egress from the Parish Hall to grade-level entrances; adequate vertical circulation throughout the Parish Center, accomplished with a dedicated elevator banks of four elevators in order to meet industry standards for timing and capacity; locating restrooms in the same location on each level in order to assist in wayfinding, facilitate the efficient layout of plumbing throughout the Parish Center and advance Trinity's historic objective, through its "Restroom Ministry," of providing publically accessible restrooms; and the preference for locating adult education seminar rooms on the same level and in close proximity to the Parish Hall; and

WHEREAS, the Applicant represents that the resulting layout of Level 2 of the Parish Center, in demanding the particular locating of core building functions such as elevators and staircases, constrained the layouts of the Parish Center's remaining floors, but that in the design of these remaining floors, Trinity was guided by the following design principals and programming objectives: transparency and connection to Trinity Church; provision of space for programming with specific needs, including social space for junior high school and high school students—a demographic with which Trinity struggles to maintain a connection—and art spaces for expanded religious art and music programming; flexible multi-function spaces for worship as well as sports opportunities, identified as integral in achieving Trinity's mission of supporting young families; and the accommodation of all Sunday programming in a layout that is both efficient and intuitive; and

WHEREAS, Trinity identified, in particular, the consolidation of its Sunday School programming into a single facility as of particular import for the Parish Center, citing the current absence of nearly 100 percent of its Sunday School attendees from church services due to the Sunday School being located five blocks away from Trinity Church; and

WHEREAS, in light of those considerations, Sunday School classrooms and their attendant support spaces are located one floor away from the Parish Hall, on both Level 3 and the Mezzanine (1M) Level, to maximize the benefits of a direct adjacency to the Parish Hall and, by traversing the Trinity Place footbridge, Trinity Church; Level 3 contains Sunday School classrooms for children in grades 3 through 12 while Level 1M contains Sunday School classrooms for children in second grade and younger; and

WHEREAS, the Applicant represents that the construction methods and spans needed to accommodate the Parish Hall permitted the inclusion of a multi-function gymnasium located directly above the Parish Hall, on Level 4, and designed consistent with YMCA standards for a variety of sports activities, which the Applicant represents will be used for family-friendly worship-in-the-round services on those Sunday morning when both Trinity Church and the Parish Hall itself are filled to capacity, as well as after school programming; and

WHEREAS, Level 4 is proposed to feature spaces for Trinity's visual arts programming, including an art studio, art workshop and a rehearsal studio for Trinity's Movement Choir, Youth Orchestra and kinetic arts programs; and

WHEREAS, Level 5 of the Parish Center is dedicated to social spaces for junior high school and high school-aged congregants for purposes of meeting Trinity's mission of providing a supportive environment to young people in the throes of their spiritual development; the spaces include gathering spaces to be used to host a variety of educational events—including tutoring, mentoring and discussion groups, a community kitchen in which to host food-related programming and group-bonding opportunities, and an outdoor terrace space; and

WHEREAS, in response to Board questions regarding the monitoring of activities on Level 5 of the Proposed Building, the Applicant submitted that there is space on the floor allocated for a staff member to monitor and administer the youth programming and, with regards to use of the community kitchen, assured the Board that where the kitchen is hosting an intergenerational event, adequate supervision would be provided to ensure that such events remain separate and distinct from any contemporaneous youth-only activities on the floor; and

WHEREAS, Levels 6, 7 and 8 will be dedicated to consolidating all clergy and administrative offices, currently housed in multiple buildings throughout Lower Manhattan, and will accommodate both existing clergy and staff members as well as permit modest staff increases associated with the anticipated growth in Trinity's programming offerings; administrative teams are proposed to be located in clusters on the three floors to facilitate communication,

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collaboration and coordination; and

WHEREAS, to wit, Level 6 is proposed to include Trinity's program divisions, including Pastoral Care and Community, Community Engagement and Social Justice, and Congregational Life and the Arts; Level 7 will combine Trinity's support departments necessary for the day-to-day administration of Trinity's programming, including human resources, information technology, creative services, media production and the general counsel's office; and Level 8 will house offices for Trinity's church leadership, including the Rector, and additionally provide an outdoor terrace overlooking Trinity Place; and

WHEREAS, as an alternative to the Proposed Building, and to demonstrate that the Proposed Building is the least variance necessary to accommodate the Applicant's program, the Applicant submitted an as-of-right community facility scenario in which rear yards were provided in accordance with applicable zoning regulations (the "As-of-Right Scenario"); and

WHEREAS, Trinity submits that the As-of-Right Scenario results in the loss of 7,700 square feet of interior space and 3,070 square feet of outdoor spaces, a reduction that would result in modifications to the Proposed Building including the removal of one elevator from the proposed bank of four elevators; reductions in the size and number of necessary programming and programming support spaces; relocation of bathrooms on each of the floors, frustrating way finding and causing restrooms to occupy some of the limited transparent frontage of the Proposed Building otherwise preferred for programming space because of the access to natural light; the removal of several collaborative spaces on Levels 6, 7 and 8, frustrating the proposed adjacencies on those floors; and the elimination of the outdoor terrace space on Level 8; and

WHEREAS, in response to inquiries from the Board regarding whether it was necessary for the elevator bank to contain four, rather than three, elevators, the Applicant provided a vertical transportation system study for the subject site concluding that, based on a minimum acceptable full simultaneous exiting time of 25 minutes, four elevators are required to allow full exit for peak Sunday programming and that three elevators would provide "very poor quality service" and be unable to fully exit the population in even 30 minutes; additionally, with regards to regular daily use, the calculated interval for three elevators is more than 50 percent greater than the calculated interval for four elevators, and a reduction to three elevators would result in longer queuing times, significant congestion and fall far below acceptable operation standards for a new building; and

WHEREAS, in response to Board inquiries regarding the utility of the outdoor terrace space on Level 8, the Applicant explained that the terrace is necessary to meet Trinity's high demand for outdoor events—including welcome receptions for invited guests and speakers, receptions and fundraisers for Trinity's growing pre-school parents association, and morning community fellowship events—which Trinity is currently only able to

accommodate in the churchyard/graveyard of Trinity Church and St. Paul's Chapel, Trinity's second church site located at Broadway and Fulton Street; and

WHEREAS, the Applicant also offers that the required rear yards, if provided, would serve no practical purpose for the Proposed Building as they would be too narrow for outdoor recreational use (particularly the southern rear yard, which would measure only 4'-5.5" by 20 feet) and surrounded on all sides by windowless brick walls; further, the rear yards would be inaccessible from the street and, therefore, have no effect on the character of the surrounding neighborhood; and

WHEREAS, in light of the foregoing, the Board finds that this proposal is the minimum necessary to allow Trinity to fulfill its programmatic needs; and

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

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 15-BSA-089K, dated October 17, 2014; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes each and every one of the required findings under § 72-21, and grants a variance to permit, on a site located in a C5-5 zoning district and the Special Lower Manhattan District, the construction of a 27-story mixed use community facility and commercial building that does not comply with the rear yard regulations of ZR §§ 33-23 and 33-26; *on condition* that all work will substantially conform to drawings filed with this application marked "Received January 31, 2017"-Twenty-Two (22) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: no rear yards in the interior lot portions of the zoning lot, as illustrated on the Board-approved plans;

THAT the Parish Hall shall not be utilized as a for-profit commercial banquet or catering hall and shall only be used accessory to Trinity Church;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a Certificate of Occupancy shall be obtained within four (4) years, by February 14, 2021;

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 shall be considered approved only for the portion 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.

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Adopted by the Board of Standards and Appeals,  
February 14, 2017.

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**71-15-BZ**

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

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

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

**COMMUNITY BOARD #4M**

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

Adopted by the Board of Standards and Appeals,  
February 14, 2017.

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**92-15-BZ**

**CEQR #16-BSA-124K**

APPLICANT – Eric Palatnik, P.C., for Buffalo Avenue Realty Associates, LLC, owner.

SUBJECT – Application April 23, 2015 – Variance (§72-21) proposed redevelopment of existing Use group hospital with the use of USG3 nursing home and sky exposure plain. R6 zoning district.

PREMISES AFFECTED – 170 Buffalo Avenue, between St. Marks Avenue and Prospect Place, Block 1362, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

**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 Department of Buildings (“DOB”), dated December 7, 2016, acting on Department of Buildings (“DOB”) Application Nos. 321482418, reads in pertinent part:

Proposed redevelopment of existing Use Group 4 hospital with proposed Use Group 3 nursing home is contrary to ZR Section 24-552 (sky exposure plane) and therefore must be referred to the NYC Board of Standards and Appeals; and

WHEREAS, this is an application under ZR § 72-21, to authorize, on a site located within an R6 zoning district, the maintenance of non-complying setbacks which were constructed pursuant to a special permit previously-issued by the Board; the owner of the subject property has discontinued the use for which the special permit was issued and, as such,

the setbacks do not comply with ZR § 24-522; this application also seeks to legalize the configuration of the subject zoning lot, which is not in compliance with the BSA-approved plans; and

WHEREAS, a public hearing was held on this application on June 21, 2016, after due notice by publication in the *City Record*, with a continued hearing on August 16, 2016, and then to decision on August 23, 2016; and

WHEREAS, the record was re-opened on February 14, 2017, to accept a revised objection from DOB, closed and voted again on the same date; and

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

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

WHEREAS, the subject site is located in an R6 zoning district, in Brooklyn; the site has approximately 700 feet of frontage along the north side of Prospect Place, 256 feet of frontage along the west side of Buffalo Avenue, and 307 feet of frontage along the south side of St. Marks Avenue; a 59 foot wide portion of the site has a depth of approximately 934 feet running west from Buffalo Avenue; the site contains approximately 101,888 sq. ft. of lot area; and

WHEREAS, the applicant states that the existing seven-story with penthouse building (the “Subject Building”) was constructed in 1979 pursuant to a special permit issued by the Board under BSA Cal. No. 600-75-BZ (the “Special Permit”); the Special Permit authorized the construction of the Subject Building contrary to ZR § 24-522, which requires a front wall height of 60 feet or six-stories, whichever is less; the front wall height of the Subject Building at the street lines along Prospect Place and St. Marks Avenue reaches a height of eight stories (approximately 85’-8” feet) before setting back; and

WHEREAS, the applicant states that the Subject Building, which has a penthouse, cellar, and two sub-cellars, contains approximately 176,321 sq. ft. of floor area (1.73 FAR); as per the Special Permit, the Subject Building was used as a Use Group 4 hospital, with 241 beds; the applicant states that the Use Group 4 hospital use was discontinued in 2005 after its parent company filed for bankruptcy; the applicant states that the Subject Building has been vacant since that time; and

WHEREAS, the applicant maintains that the 2005 closure of the Use Group 4 hospital is consistent with a trend identified in the “Commission on Health Care facilities in the 21<sup>st</sup> Century, Final Report,” issued by the New York State Department of Health in 2006 (the “Berger Report,” which was submitted by the applicant and reviewed by the Board); the applicant notes that the Berger Report concluded, *inter alia*, that “health care services are migrating rapidly out of large institutional settings into ambulatory, home and community-based settings”; and

WHEREAS, the applicant also submitted an Outpatient Facility Analysis, dated July 5, 2016 (the “Outpatient Facility Analysis,” which was reviewed by the Board); the applicant represents that, as stated in the Outpatient Facility Analysis ,

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the trend identified in the Berger Report has created an excess of 1,235 inpatient hospital beds in Brooklyn, notwithstanding the closure of a number of hospitals in the last decade; the Outpatient Facility Analysis concludes that restoring a hospital use at the subject site is not feasible and is also in contravention of public policy and, therefore, that the Subject Building is functionally obsolete for the purpose for which it was constructed in 1979; and

WHEREAS, the applicant proposes to convert the Subject Building into a Use Group 3 Long Term Care Facility with 281 beds and 38 parking spaces (the “Proposed Conversion”); the applicant states that the Proposed Conversion is as-of-right in the subject zoning district and that the Subject Building is complying with the exception of the non-complying setbacks which are the subject of this application; and

WHEREAS, specifically, the applicant proposes to upgrade the Subject Building as follows: in the sub-cellars, the applicant proposes to upgrade the Subject Building’s mechanical equipment and spaces; in the cellar, the applicant proposes to create an “amenity zone” for residents and their families, and also upgrade the kitchen and dining facilities located therein; at the first floor of the Subject Building, the applicant proposes to construct a physical/occupational therapy suite, as well as 28 beds, a resident lounge, a dining room, kitchens, and storage; on each of the second through seventh floors of the Subject Building, the applicant proposes to construct bedrooms, lounge space, staff stations, dining/recreation areas, kitchens, and a service/staging corridor, as well as storage space; specifically, the applicant proposes to locate 60 beds on the second floor of the Subject Building, 33 beds on the third floor of the Subject Building, and 40 beds on each of the fourth, fifth, sixth, and seventh floors of the Subject Building; and

WHEREAS, the applicant will provide 34 parking spaces in an open space parking lot on the site and an additional four parking spaces enclosed within an existing garage which is located along Prospect Place; and

WHEREAS, in order to effect the Proposed Conversion, the applicant seeks a waiver of ZR § 24-522; as noted, the Subject Building has setbacks which do not comply with ZR § 24-522, pursuant to the Special Permit; the applicant also seeks the Board’s authorization of the current configuration of the subject zoning lot, which does not comply with the BSA-approved plans filed in connection with the Special Permit; and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(a), the unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations are the history of the development of the site and the obsolescence of the Subject Building, which was purpose-built for inpatient hospital use, for either that use or another as-of-right use; and

WHEREAS, the applicant argues that the Subject Building was designed for a Use Group 4 hospital use which, as evidenced by the ten year vacancy of the Subject Building upon the closure and bankruptcy of the hospital for which the Special Permit was issued, cannot be maintained at the site; the applicant refers to the Berger Report and the Outpatient

Facility Analysis and maintains that in addition to the institutional obsolescence of inpatient hospitals, outpatient facilities, another use to which the Subject Building might otherwise be put, must be sited in connection with larger inpatient facilities, but that the subject site is not located in close enough proximity to, and does not share a relationship with, any such hospital, thus, the applicant argues, the Subject Building is obsolete not only for the inpatient hospital use for which the Special Permit was issued and for which it was built, but also for an outpatient facility; and

WHEREAS, the applicant cites to the Berger Report in support of its application, and notes that since the Berger Commission formed to study the problem of excess inpatient hospital capacity, 18 hospitals in New York State have closed, including twelve in New York City (including the hospital for which the Subject Building was constructed); and

WHEREAS, at hearing, the Board asked the applicant to discuss the viability of the Subject Building for an outpatient hospital facility; and

WHEREAS, the applicant states that the Subject Building is not suitable for outpatient hospital services, nor could it provide the parking required therefor; in support of this statement, the applicant provided an analysis of an as-of-right outpatient facility; the analysis shows that such facility could accommodate only 106 parking spaces, less than the required 220; the applicant refers to the Outpatient Facility Analysis for the proposition that because of Brooklyn’s excess of inpatient beds and a lack of inter-hospital planning for the site, the Subject Building would not be authorized by the State of New York as an outpatient hospital center as it is unaffiliated with local hospital systems; and

WHEREAS, based upon the foregoing, the Board finds that the history of the development of the site and the obsolescence of the Subject Building for an as-of-right use create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

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

WHEREAS, as a threshold matter, the applicant reasserts the Use Group 4 Hospital Use for which the Subject Building was constructed, and for which the Special Permit was granted, is not feasible for the reasons set forth in the Berger Report and as evidenced by the closure of the hospital which was located at the site, and the bankruptcy of that hospital’s parent entity; and

WHEREAS, in order to demonstrate that there is no reasonable possibility of earning a reasonable return at the subject site by using the property in strict compliance with Zoning Resolution, or upon the issuance of a lesser variance, the applicant provided the Board with a financial analysis of the following development scenarios: (1) an As-of-Right Residential Development (the “Residential Development Scenario”); (2) an As-of-Right Long Term Care Facility Development (the “Long Term Care Development Scenario”); and (3) the Proposed Conversion; and

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WHEREAS, with respect to the Residential Development Scenario, the applicant states that such development cannot provide a reasonable return; specifically, the applicant states that using the capitalization of income method, the capitalized value of the Residential Development Scenario is \$24,550,000, and the total development cost for the Residential Development Scenario, including estimated property value, hard construction costs and soft costs, is estimated to be \$108,012,000; thus, the applicant concludes, the Residential Development Scenario contains \$83,462,000 less value than its total development costs; and

WHEREAS, with the respect to the Long Term Care Development Scenario, the applicant states that such development cannot provide a reasonable return; specifically, the applicant states that a complying setback on the seventh floor of the Subject Building will result in a loss of 860 sq. ft. of floor area from both sides of the Subject Building, resulting in the loss of two beds; the applicant states further that the removal of the non-complying setbacks which were authorized by the Special Permit would cost \$644,994, and would also result in an annual \$43,285 loss in revenue, which is the amount that would otherwise be generated by use of the two beds which would be forfeited in order to comply with the applicable setback regulations; upon making modifications to its analysis based on comments from the Board, the applicant states that, using the capitalization of income method, the capitalized value for the Long Term Care Development Scenario is \$86,257,000, and the total development cost for the Long Term Care Development Scenario, including estimated property value, hard construction costs and soft costs, is estimated to be \$87,987,000; thus, the applicant concludes, the Long Term Care Development Scenarios contains \$1,730,000 less value than its total development costs; and

WHEREAS, with respect to the Proposed Conversion, the applicant states that it is the only use of the property by which a reasonable return can be made; upon making modifications to its analysis based on comments from the Board, the applicant states that, using the capitalization of income method, the capitalized value of the Proposed Conversion is \$86,886,000, and the total development cost, including estimated property value, hard construction costs and soft costs, is estimated to be \$86,203,000; thus, the applicant concludes, the Proposed Conversion yields a return of \$683,000 which, the applicant states, is a minimally feasible investment opportunity; and

WHEREAS, the foregoing financial analyses were supported by a Financial Report dated April 9, 2015, and updated in response to concerns articulated by the Board and Board staff by letters dated March 28, 2016 and July 27, 2016; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that because of the site's unique physical conditions there is no reasonable possibility of development of the site in strict compliance with the Zoning Resolution; and

WHEREAS, the applicant represents that the Proposed Conversion 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 notes that the Proposed Conversion does not result in an increase in the floor area of the Subject Building, which, the applicant also notes, was constructed in 1979; and

WHEREAS, the applicant also maintains that the neighborhood is characterized, in part, by large community facilities like the Subject Building; and

WHEREAS, the applicant submitted a land use study, which the Board reviewed, which shows that in the neighborhood surrounding the subject site there are three public schools and the Brooklyn Campus of the New York Children's Center; the applicant also notes that the closure of the hospital which previously occupied the Subject Building had a negative impact on the neighborhood, which would benefit from its proposed community facility use; and

WHEREAS, the applicant notes that the difference between the use authorized in conjunction with the Special Permit, that of a Use Group 4 hospital, is not dissimilar to the proposed Use Group 3 Long Term Care Facility; and

WHEREAS, the applicant shall improve the landscaping on the subject site and proposes to landscape and maintain the 59 foot wide strip of land that extends west down the center of the subject block in order to screen adjacent properties from the use of the Subject Building upon the completion of the work associated with the Proposed Conversion; and

WHEREAS, the applicant states that it will record a permanent easement for the benefit of ProMark Condominiums, its neighbor on the subject block, which will consist of two 5'-0" wide pathways across the 59 foot wide strip of land extending west down the center of the subject block; and

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) Short Form CEQR No. 16BSA124K, dated August 1, 2016; and

WHEREAS, the 2014 CEQR Technical Manual Table 19-2 contains noise exposure guidelines and recommends for a

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residential use such as the propose, an L10 of between 65 and 70 dB(A) is identified as marginally acceptable external exposure, while levels between 70 and 75 dB(A) are identified as marginally acceptable; and

WHEREAS, the applicant conducted a noise analysis showing that the highest recorded L10 at the St. Marks Avenue frontage of the subject property was 66.5 dB(A) during the late mid-day period, the highest recorded L10 at the Buffalo Avenue frontage of the subject property was 71.0 dB(A) during the late-midday period and the highest recorded L10 at the Prospect Place frontage of the subject property was 65.9 dB(A) during the morning period; and

WHEREAS, accordingly, the building façade fronting Buffalo Avenue is recommended to provide composite window-wall attenuation achieving a 28 dB reduction in noise levels and maintain a closed window condition to ensure an acceptable indoor noise environment; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located within an R6 zoning district, the configuration of the subject zoning lot and the maintenance of non-complying setbacks contrary to ZR § 24-522; *on condition* that any and all work will substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received August 19, 2016”– Twenty-One (21) sheets; and *on further condition*:

THAT the following will be the parameters of the proposed building: a Use Group 3 Long Term Care Facility with 281 Beds containing 176,321 sq. ft. of floor area (1.72 FAR) with a wall height of 85’-8”, all as reflected on the BSA-approved plans;

THAT the configuration of the zoning lot shall be as shown on the BSA-approved plans and any change in such configuration shall require authorization from the BSA;

THAT the applicant shall maintain landscaping as shown on the BSA-approved plan;

THAT the applicant shall record a permanent easement for the benefit of ProMark Condominiums, its neighbor on the subject block, consisting of two 5’-0” wide pathways across the

59 foot wide strip of land extending west down the center of the subject block, which is owned by the applicant, prior to the issuance of the Certificate of Occupancy;

THAT the building façade fronting Buffalo Avenue must provide composite window-wall attenuation achieving a 28 dB reduction in noise levels, maintain a closed window condition and provide an alternate means of ventilation, means of which include, but are not limited to, central air conditioning; and

THAT the above conditions shall be listed on the Certificate of Occupancy;

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

THAT a Certificate of Occupancy shall be obtained within four (4) years, by February 14, 2021;

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

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

THAT 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, February 14, 2017.

## 2016-4141-BZ

### CEQR #16-BSA-094M

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 30 Park Place Hotel LLC, owner; Four Seasons Hotel New York Downtown, lessee.

SUBJECT – Application March 17, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Four Seasons Hotel Spa*) on a portion of the third floor of a mixed-use hotel and residential building. C5-3 (LM) zoning district.

PREMISES AFFECTED – 99 Church Street (aka 27 Barclay Street, Block 123, Lot(s) 1101-1260 (fka 10), 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 Department of Buildings (“DOB”) Manhattan Borough Commissioner, dated January 12, 2017, acting on DOB Application No. 110089779, reads in pertinent part:

“ZR 32-10: The proposed physical culture establishment is not permitted, as of right, and requires BSA special permit pursuant to ZR 73-36”; and



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WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located in a C5-3 zoning district, within the Special Lower Manhattan District, the operation of a physical culture establishment (“PCE”) on portions of the first and third floors of a 70-story, with cellar, mixed-use hotel-and-residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in *The City Record*, and then to decision on February 14, 2017; 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 site is located on the eastern side of Church Street, between Park Place and Barclay Street, in a C5-3 zoning district and within the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the site is comprised of three tax lots: (1) Lot 7502 has approximately 148 feet of frontage along Church Street, 197 feet of frontage on Park Place, 201 feet of frontage on Barclay Street, 29,125 square feet of lot area and is occupied by a 70-story, with cellar, mixed-use hotel-and-residential building (the “PCE Site”); (2) Lot 18 has approximately 28 feet of frontage along Park Place, 2,106 square feet of lot area and is occupied by a five-story commercial building; and (3) Lot 3 has approximately 25 feet of frontage along Barclay Street, 1,880 square feet of lot area and is occupied by a three-story commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such use is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such use contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [sic] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts:

- (1) that such *use* shall be an incidental part of a permitted *physical culture or health establishment* located within the same *commercial or mixed building*;
- (2) that such *use* shall be open and unobstructed to the sky;
- (3) that such use shall be located on a roof not less than 23 feet above *curb level*;
- (4) that the application for such *use* shall be made jointly by the owner of the *building* and the operator of such *physical culture or health establishment*; and
- (5) that the Board shall prescribe appropriate controls to minimize adverse impacts on the surrounding area, including but not limited to, requirements for the location, size and types of signs, limitations on the manner and/or hours of operation, shielding of floodlights, adequate screening, and the control of undue noise including the amplification of sound, music or voices; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or

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revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE will occupy a total of 6,542 square feet of floor area in the 70-story building located on the PCE site: 2,971 square feet of floor area on the first floor and 3,571 square feet of floor area on the third floor; and

WHEREAS, the PCE will be operated by the Four Seasons Hotel New York Downtown; and

WHEREAS, the applicant represents that the first floor portion of the PCE will contain a lobby, elevator and stairs and that the third floor will include a reception area, locker rooms with changing areas, bathrooms, showers, saunas and steam rooms, waiting rooms, treatment rooms and an outdoor terrace; and

WHEREAS, the applicant states that a gym and pool, also located on the third floor of the PCE Site, are accessory to the hotel use and not part of the subject PCE; and

WHEREAS, the PCE's hours of operation will be 8:00 a.m. to 8:00 p.m. daily, seven days per week; and

WHEREAS, the applicant states that the surrounding neighborhood is a vibrant, thriving region replete with offices, stores, residences as well as academic cultural institutions and that, therefore, the PCE would not impair the future use and development of the surrounding mixed-use area; and

WHEREAS, with regards to sound attention in the PCE, the applicant represents that sound-attenuation blankets within partition walls will be used to absorb noise, echoes and reverberation, if any, created by the PCE; and

WHEREAS, the applicant also represents that no sound issues associated with the proposed PCE use are anticipated because the PCE will not provide exercise classes, play loud music or contain exercise equipment; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to use of the premises, the applicant represents that the PCE will provide a variety of massage treatments by New York State licensed massage therapists; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; and

WHEREAS, the applicant represents that, because the PCE's outdoor terrace will have 651 square feet of floor area, will be used minimally and will be located within the same building as the PCE, the outdoor PCE use will be incidental to the incidental to the proposed PCE; and

WHEREAS, the Board finds that outdoor use of the rooftop terrace will be incidental to the PCE located within the same building; and

WHEREAS, the applicant represents and the Board finds that the proposed terrace is open and unobstructed to the sky; and

WHEREAS, the applicant represents that the outdoor terrace is located on a roof 78 feet in elevation; and

WHEREAS, the Board finds that the outdoor terrace will be located on a roof more than 23 feet above curb level; and

WHEREAS, the applicant represents that the application has been made by the PCE operator with the authorization of the owner of the building and that the subject proposal is effectively a joint application; and

WHEREAS, the Board finds that the subject application has been made jointly by the owner of the building and the PCE operator; 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 applicant has submitted plans to the Board indicating that an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to a Fire Department-approved central station—shall be installed in the entire PCE space; and

WHEREAS, by letter dated January 3, 2017, the Fire Department states that, based on its review of the drawings and supporting documentation for the proposed PCE, it has no objection to this application; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant states that the PCE will not interfere with any pending or approved public improvement project; and

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

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-094M, dated March 17, 2016; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.3 and 617.5, §§ 5-02(a) and 5-02(b)(2) 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 C5-3 zoning district, within the Special Lower Manhattan District, the operation of a physical culture establishment ("PCE") on a portion of the third floor of a 70-story, with cellar, mixed-use hotel-and-residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received September 16, 2016"—Four (4) sheets; and *on further*

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condition:

THAT the term of this grant shall be for ten (10) years, expiring February 14, 2027;

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

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space;

THAT Local Law 58/87 shall be complied with as approved by DOB;

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

THAT a Certificate of Occupancy shall be obtained within four (4) years, by February 14, 2021;

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, February 14, 2017.

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## 2016-4219-BZ

APPLICANT – Eric Palatnik, P.C., for Sergey Rybak, owner.

SUBJECT – Application June 17, 2016 – Special Permit (§73-622) to permit the enlargement of a single-family residence, contrary to floor area requirements (ZR §23-142). R3-1 zoning district.

PREMISES AFFECTED – 239 Beaumont Street, Block 8740, Lot 84, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

**THE VOTE TO GRANT** –

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

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 16, 2016, acting on Department of Buildings (“DOB”) Application No. 321373562, reads in pertinent part:

“Proposed floor area ratio is contrary to ZR 23-

142”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the proposed enlargement of a single-family residence that does not comply with the zoning requirements for floor area, contrary to ZR § 23-142; and

WHEREAS, a public hearing was held on this application on December 13, 2016, after due notice by publication in *The City Record*, and then to decision on February 14, 2017; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Beaumont Street, between Oriental Boulevard and the Manhattan Beach esplanade, in an R3-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 60 feet of frontage along Beaumont Street, a depth of 100 feet and 6,000 square feet of lot area; and

WHEREAS, the site is also located in Zone AE, an area of special flood hazard, on FEMA’s Preliminary Flood Insurance Rate Map (“FIRM”) and the application was referred to the Technical Affairs and Code Development Unit of DOB for review; and

WHEREAS, the site is occupied by an existing one-story, single-family detached residence with 2,200 square feet of floor area, a floor area ratio (“FAR”) of 0.37, lot coverage of 37 percent, 63 percent of open space, side yards measuring 7 feet and 3 feet and a rear yard of 19’-4”; and

WHEREAS, at the subject site, the maximum floor area permitted is 3,000 square feet (0.5 FAR) pursuant to ZR § 23-142; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit

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Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

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 detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to add a second floor and attic, thereby increasing the floor area from 2,200 square feet (0.37 FAR) to 5,449 square feet (0.91 FAR), as well as remedy the existing residence's non-compliances with regards to lot coverage, open space, side yards and rear yards; and

WHEREAS, the applicant represents that the proposed enlargement complies with all applicable flood regulations, including but not limited to Appendix G of the Building Code and, among other things, proposes to elevate the first floor of the existing dwelling to an elevation of 16.02', more than five feet above the 11 foot Base Flood Elevation; by email dated January 6, 2017, DOB's Technical Affairs and Code Development confirmed review of the plans and deemed them to be satisfactory; and

WHEREAS, the applicant represents that the proposed enlargement is consistent with the character of the neighborhood; and

WHEREAS, in support of that contention, the applicant surveyed properties within 400 feet of the subject site and, of the 96 other one-and-two-family residences, 70 residences (73 percent) have an FAR greater than 0.50 and 20 residences (21 percent) have an FAR of 0.75 or greater; and

WHEREAS, the applicant also submitted, among other evidence, a photographic streetscape study illustrating that the proposed enlargement is in context with surrounding properties; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family residence that does not comply with the zoning requirements for floor area, contrary to ZR § 23-142; *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 January 20, 2017"-Twenty (20) sheets; and *on further condition*:

THAT the maximum floor area of the building shall be 5,449 square feet (0.91 FAR), as illustrated on the BSA-approved plans;

THAT all existing exterior walls indicated to remain on the BSA-approved plans shall remain or the special permit is void;

THAT removal of more than the total existing floor area, as illustrated on the BSA-approved plans, will void the

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special permit;

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 special 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 14, 2017.

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## **56-02-BZ**

APPLICANT – NYC Board of Standards and Appeals.  
SUBJECT – Application June 21, 2016 – Compliance Hearing of a previously approved Variance (§72-21) which permitted the construction of a four-story plus cellar school, which created non-compliances with respect to floor area ratio, lot coverage, side, front and rear yards, and which is contrary to ZR §24-11, §24-34, §24-35, §24-36 and §24-521. R5 zoning district.

PREMISES AFFECTED – 317 Dahill Road, Block 5369, Lot(s) 82, 83, 84 and 85 (tentative Lot 82), Borough of Brooklyn.

## **COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for continued hearing.

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## **1-96-BZ**

APPLICANT – New York City Board of Standards and Appeals.

SUBJECT – Application August 2, 2016 – Amendment for an extension of an existing school building to add 3<sup>rd</sup> and 4<sup>th</sup> floors. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue, southwest corner of Avenue “C”, Block 5369, Lot 6, Borough of Brooklyn.

## **COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for continued hearing.

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## **91-14-BZ**

APPLICANT – Law Office of Lyra J. Altman, for 3428 Bedford LLC by Jeffrey Mehl, owner.

SUBJECT – Application May 2, 2014 – 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 required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 3420 Bedford Avenue, southwest corner of Bedford Avenue and Avenue M, Block 7660, Lot (tentative) 45, Borough of Brooklyn.

## **COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.

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## **174-14-BZ**

APPLICANT – Jim Kusi, for Robert Calcano, owner.

SUBJECT – Application July 23, 2014 – Re-instatement (§11-411) of a previously approved variance permitting the operation an Automotive Service Station (UG 16B) with accessory uses which expired November 6, 1994; Waiver of the Rules. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 820 East 182<sup>nd</sup> Street aka 2165-75 Southern Boulevard, Block 3111, Lot 59, Borough of Bronx.

## **COMMUNITY BOARD #2BX**

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for adjourned hearing.

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## **168-15-BZ**

APPLICANT – Sheldon Lobel, P.C., for Bushwack 7 LLC, owner.

SUBJECT – Application July 28, 2015 – Variance (§72-21) to permit the development of a four-story commercial building contrary to height, setback and parking requirements. M1-1 zoning district.

PREMISES AFFECTED – 58 Grattan Street, Block 3008, Lot 15, Borough of Brooklyn.

## **COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.

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## **2016-1217-BZ**

APPLICANT – Law Office of Jay Goldstein, for 839-45 Realty LLC, owner.

SUBJECT – Application February 8, 2016 – Variance (§72-21) to allow for the enlargement of an existing two-family home contrary to ZR Sections 23-141(c) (Open Space (“OS”)/Open Space Ratio (“OSR”)/Lot Coverage (“LC”)), 23-45(a) (Front Yard), 23-461(b) (Side Yard), 23-841(Narrow Outer Court) and 25-621(b) (parking). R4 zoning district.

PREMISES AFFECTED – 45 Southgate Court (2344-2354 West 1<sup>st</sup> Street), Block 7174, Lot 49, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.

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## **2016-4210-BZ**

APPLICANT – Law Office of Steven Simicich, for James De Francesco, owner.

SUBJECT – Application May 26, 2016 – Variance (§72-21) to permit the construction of a single family detached home contrary to ZR §107-42 (Lot Area) and ZR §23-47 (Rear Yard) regulations. R3-1 (SRD) zoning district.

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PREMISES AFFECTED – 19 Robinson Avenue, Block 5315, Lot 62, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.  
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**REGULAR MEETING**  
**TUESDAY AFTERNOON, FEBRUARY 14, 2017**  
**1:00 P.M.**

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

**ZONING CALENDAR**

**2017-32-BZ**

**CEQR #17-BSA-077R**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Rosemary Grasso, owner.

SUBJECT – Application January 30, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. C1-1/R3X zoning district.

PREMISES AFFECTED – 62 Milbank Road, Block 4092, Lot 72, Borough of Staten Island.

**COMMUNITY BOARD #2S.I.**

**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 Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3X (C1-1) zoning district, the alteration of an existing two-story detached two-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for rear yards, pursuant to ZR §§ 23-47 and 23-52; and

WHEREAS, a public hearing was held on this application on February 14, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-05.3 (Filing Period), (3) 2 RCNY § 1-05.4 (Application Referral), (4) 2 RCNY § 1-05.6 (Hearing Notice), (5) 2 RCNY § 1-05.7 (List of Affected Property Owners), (6) 2 RCNY § 1-09.4 (Owner’s Authorization), and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

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WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of Milbank Road, approximately 87 feet from the intersection of Milbank Road and Cedar Grove Avenue, in an R3X (C1-1) zoning district, on Staten Island; and

WHEREAS, the site has approximately 60 feet of frontage along Milbank Road, 60 feet of depth, 3,600 square feet of lot area and is occupied by detached two-story detached two-family dwelling; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-1069-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a two-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leaving to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the alteration of an existing two-story detached two-family dwelling to eliminate a portion of a one-story addition at the rear of the building that extends 1’-10” beyond the rear lot line of the subject property; and

WHEREAS, the applicant represents that the dwelling will be elevated by approximately 9 feet in its current footprint with the exception of portions of the rear one-story addition, including the portion that that extends beyond the property line, which will be removed, and an increase of approximately 3 square feet of floor area to square off the one-story addition, and that the resulting dwelling will have no rear yard; and

WHEREAS, at the subject site, a rear yard of at least 20 feet is required pursuant to ZR §§ 23-47 and 23-52; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-

COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant states that the shallowness of the lot, the substandard size of the existing dwelling in relation to modern living standards and the composition of the dwelling on the subject lot create practical difficulties in complying with flood-resistant construction standards without the modification of the rear yard requirements and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR §64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the neighborhood is characterized by single- and two-family detached homes and that the proposed alteration and elevation of the home, while necessitating a bulk waiver, will reduce the degree of non-compliance at the rear yard and improve existing conditions; and

WHEREAS, by letter dated February 7, 2017, the Fire Department states that the proposal complies with all Fire Department requirements established by the Build it Back Task Force; and

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WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-077R, dated January 30, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R3X (C1-1) zoning district, the alteration and elevation of a two-story detached two-family dwelling, which does not comply with zoning requirements for rear yards, pursuant to ZR §§ 23-47 and 23-52; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received January 30, 2017”—Seven (7) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: no rear yard, as illustrated on the BSA-approved plans;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by February 14, 2021;

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

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

Adopted by the Board of Standards and Appeals, February 14, 2017.

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## 2017-41-BZ

### CEQR #17-BSA-086R

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application February 9, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged / destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 67 Mapleton Avenue. Block 3806, Lot 7. Borough of Staten Island.

### COMMUNITY BOARD #2SI

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the alteration and elevation of an existing detached two-story single-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side yards, rear yards and open area required between buildings containing residences,, pursuant to ZR §§ 23-461(a), 23-461(c) and 23-47; and

WHEREAS, a public hearing was held on this application on February 14, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-05.3 (Filing Period), (3) 2 RCNY § 1-05.4 (Application Referral), (4) 2 RCNY § 1-05.6 (Hearing Notice), (5) 2 RCNY § 1-05.7 (List of Affected Property Owners), (6) 2 RCNY § 1-09.4 (Owner’s Authorization), and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the north side of Mapleton Avenue, between Baden Place and Colony Avenue, in an R3-1 zoning district, on Staten Island; and

WHEREAS, the site has approximately 20 feet of frontage along Mapleton Avenue, a depth of 100 feet, 2,000 square feet of lot area and is occupied by a detached two-story single-family dwelling; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 2016, when, under BSA Cal. No. 2016-2569-A, the Board granted a waiver of General City Law (“GCL”) § 35 to permit the elevation of the existing single-family home on a portion of a site that lies within the bed of a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon no building or other structure being constructed over an existing DEP-managed water or sewer main; no building or other structure being within 5 feet of a DEP-managed existing water or sewer main; any new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building not being within 5 feet of a DEP-managed existing water or sewer main; if the curb-to-curb



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width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line, the building having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, the provision of an interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 or the New York City Building Code, the underside of the building having an exterior assembly with a 2-hour fire resistance rating where the foundation is not completely closed, and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the alteration and elevation of the existing detached two-story single-family dwelling with a front yard measuring 4'-1", a rear yard measuring 34'-1", side yards measuring 1'-8" and 2'-6" and less than 8 feet from the residential building on the adjacent zoning lot; and

WHEREAS, at the subject site, a front yard of at least 15 feet is required pursuant to ZR § 23-45, a rear yard of at least 30 feet is required pursuant to ZR § 23-47, side yards with a combined width of at least 13 feet, each at least 5 feet wide, are required pursuant to ZR § 23-461(a) and an open area with a minimum total width of 8 feet is required between buildings containing residences on adjacent zoning lots pursuant to ZR § 23-461(c); and

WHEREAS, in addition to elevating the existing dwelling, the applicant proposes to shift the building footprint towards to the rear of the lot, expand the front yard to a zoning compliant depth of 15 feet in order to accommodate front stairs with a chair lift, and decrease the depth of the rear yard to 24'-6"; the existing side yards will also be slightly enlarged to widths of 2'-3" and 3'-5"; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

(a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;

- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant states that the narrowness of the lot and the need to provide a chair lift in the front yard and maintain the existing floor area create practical difficulties in complying with flood-resistant construction standards without the modification of the side and rear yard requirements and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the neighborhood is characterized by single and two-family detached and semi-detached homes placed perpendicular to the street and that the proposed alteration and elevation includes flood mitigating elements, including landscaping, that will contribute positively to the existing neighborhood fabric; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA086R, dated February 9, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on

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a site within an R3-1 zoning district, the alteration and elevation of an existing detached two-story single-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side yards, rear yards and open area required between buildings containing residences, pursuant to ZR §§ 23-461(a), 23-461(c) and 23-47; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received February 14, 2017”—four (4) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a rear yard of at least 24’-6”, side yards with a minimum width of 2’-3” and 3’-5” and an open area with a width of less than 8 feet between the subject building and the residential building on the adjacent zoning lot, as illustrated on the BSA-approved plans;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by February 14, 2021;

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

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

Adopted by the Board of Standards and Appeals, February 14, 2017.

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## 2017-42-BZ

### CEQR #17-BSA-087R

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations

SUBJECT – Application September 9, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged / destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. C1-1/R3-1 zoning district.

PREMISES AFFECTED – 15 Hett Avenue. Block 4064, Lot 40. Borough of Staten Island.

### COMMUNITY BOARD #2SI

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 (C1-1) zoning district, the alteration and elevation

of an existing detached two-story two-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, pursuant to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on February 14, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-05.3 (Filing Period), (3) 2 RCNY § 1-05.4 (Application Referral), (4) 2 RCNY § 1-05.6 (Hearing Notice), (5) 2 RCNY § 1-05.7 (List of Affected Property Owners), (6) 2 RCNY § 1-09.4 (Owner’s Authorization), and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Hett Avenue, between New Dorp Lane and Beacon Place, in an R3-1 (C1-1) zoning district, on Staten Island; and

WHEREAS, the site has approximately 60 feet of frontage along Hett Avenue, a depth of 100 feet, 6,000 square feet of lot area and is occupied by a detached two-story two-family dwelling; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 2016, when, under BSA Cal. No. 2016-4078-A, the Board granted a waiver of General City Law (“GCL”) § 35 to permit the elevation of the existing two-family home on a portion of a site that lies within the bed of a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon no building or other structure being constructed over an existing DEP-managed water or sewer main; no building or other structure being within 5 feet of a DEP-managed existing water or sewer main; any new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building not being within 5 feet of a DEP-managed existing water or sewer main; if the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line, the building having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, the provision of an interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 or the New York City Building Code, the underside of the building having an exterior assembly with a 2-hour fire resistance rating where the foundation is not completely closed, and the height from grade plane to the highest window-sill leading to a habitable space not

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exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the alteration and elevation of the existing detached two-story two-family dwelling with a front yard measuring approximately 7 inches and side yards measuring 7 inches and 41'7"; and

WHEREAS, at the subject site, a front yard of at least 15 feet is required pursuant to ZR § 23-45 and side yards with a combined width of at least 13 feet, each with a width of at least 5 feet, are required pursuant to ZR § 23-461; and

WHEREAS, in addition to elevating the existing dwelling, the applicant proposes to shift the building footprint enlarging the non-compliant 7" side yard to a complying width of 5 feet, but maintain the approximately 7 inch deep front yard; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the composition of the existing dwelling on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of the front

yard requirements and that a waiver of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes that the lateral shifting of the dwelling on the lot reduces the degree to which the dwelling does not comply with applicable bulk regulations, specifically, it facilitates the provision of two compliant side yards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the neighborhood is characterized by single- and two-family detached and semi-detached dwellings and that the proposal improves the existing side yard condition thus, makes a positive contribution to the existing neighborhood fabric; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA087R, dated February 9, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R3-1 (C1-1) zoning district, the alteration and elevation of an existing detached two-story two-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, pursuant to ZR § 23-45; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received February 9<sup>th</sup>, 2017"-Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard of at least 7", as illustrated on the BSA-approved plans;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by February 14, 2021;

THAT the approved plans shall be considered

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approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, February 14, 2017.

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## **252-12-BZ**

APPLICANT – Richard Bowers of Akerman Senterfitt, LLP, for Mia & 223<sup>rd</sup> Street Management Corp., owner.

SUBJECT – Application August 15, 2012 – Variance (§72-21) to legalize four single family homes which do not comply with the rear yard requirements, ZR §23-47. R1-2 zoning district.

PREMISES AFFECTED – 39-39 223<sup>rd</sup> Street & 223-01/15/19 Mia Drive, Block 36343, Lot(s) 154-157, Borough of Queens.

### **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for continued hearing.

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## **273-15-BZ**

APPLICANT – Michio Sanga, for Seucharran Sewdat, owner.

SUBJECT – Application December 15, 2015 – Variance (§72-21) to permit the construction of a 2-story two-family residence contrary to ZR §23-461c (open area between buildings containing residences). R3A zoning district.

PREMISES AFFECTED – 110-43 160<sup>th</sup> Street, Block 12164, Lot 4, Borough of Queens.

### **COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for continued hearing.

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## **274-15-BZ**

APPLICANT – Michio Sanga, for Nohar Sumasar, owner.

SUBJECT – Application December 15, 2015– Variance (§72-21) to permit the construction of a 2-story two-family residence contrary to ZR §23-461c (open area between buildings containing residences) and ZR §23-141 (Lot Coverage) R4-1 zoning district.

PREMISES AFFECTED – 144-29 South Road aka Tuskegee Airmen Way, Block 10045, Lot 18, Borough of Queens.

### **COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for continued hearing.

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## **2016-4178-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 350 Lafayette Owner LP, owner.

SUBJECT – Application April 25, 2016 – Variance (§72-21) to allow retail (Use Groups 6 and 10) below the floor level of the second story contrary to ZR §42-14(D)(2)(b), and Use Group 10 retail use, contrary to ZR §42-12. M1-5B zoning district.

PREMISES AFFECTED – 11-13 Bond Street, aka 348-354 Lafayette Street, Block 529, Lot 15, Borough of Manhattan.

### **COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for continued hearing.

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*Ryan Singer, Executive Director*

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## \*CORRECTION

**This resolution adopted on January 24, 2017, under Calendar No. 160-15-BZ and printed in Volume 102, Bulletin Nos. 4-5, is hereby corrected to read as follows:**

### 160-15-BZ

#### CEQR #16-BSA-006K

APPLICANT – Sheldon Lobel, P.C., for 186 Montague Street, LLC, owner.

SUBJECT – Application July 16, 2015 – Special Permit (73-36) to permit the operation of a Physical Culture Establishment (*Orangetheory Fitness*). C5-2A zoning district.

PREMISES AFFECTED – 186 Montague Street, Block 250, Lot 34, Borough of Brooklyn.

#### COMMUNITY BOARD #2BK

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

#### THE VOTE TO GRANT –

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

Negative: .....0

Absent: Commissioner Otley-Brown.....1

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 15, 2016, acting on DOB Application No. 320625463, reads in pertinent part:

“Proposed use, ‘physical culture or health establishment’, is not permitted as-of-right in C5-2A, DB district and a BSA special permit is required”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C5-2A zoning district, within the Special Downtown Brooklyn District and the Borough Hall Skyscraper Historic District, the operation of a physical culture establishment (“PCE”) on a portion of the second floor of a four-story, with cellar, commercial building, contrary to ZR § 32-10;

WHEREAS, a public hearing was held on this application on December 13, 2016, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

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

WHEREAS, the subject site is located on the south side of Montague Street, between Clinton Street and Court Street, in a C5-2A zoning district, within the Special Downtown Brooklyn District and the Borough Hall Skyscraper Historic District, in Brooklyn; and

WHEREAS, the site has approximately 50 feet of frontage along Montague Street, 100 feet of depth, 5,000 square feet of lot area, and is occupied by a four-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such use is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such use contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [sic] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-

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04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 3,950 square feet of floor area on the second floor; and

WHEREAS, the PCE has operated as Orangetheory Fitness since March 5, 2016; and

WHEREAS, the applicant represents that the PCE uses the main entrance, lobby and elevator on the first floor and that the second floor contains areas for treadmills, elliptical machines, stationary bicycles, rowers and weights as well as a reception area, locker rooms with restrooms and showers, an office and retail; and

WHEREAS, the PCE's hours of operation are Monday through Thursday, 5 a.m. to 9 p.m., Fridays, 5 a.m. to 8 p.m., Saturdays, 7 a.m. to 1 p.m., Sundays, 8 a.m. to 2 p.m.; and

WHEREAS, the applicant states that Montague Street is a frequently traveled commercial corridor with numerous commercial and mixed-use buildings; that nearby restaurants and retail stores are compatible with the PCE; and that, therefore, the PCE will not alter the essential character, future use or development of the surrounding area; and

WHEREAS, with regards to sound attenuation in the PCE, the applicant states that the PCE has installed a gypsum ceiling, a wood floating-floor system beneath the treadmills and Pliteq GenieMat FIT 70 rubber flooring material in the weights area; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to the use of the premises, the applicant states that the PCE contains facilities for physical-improvement, body-building, weight-reduction and aerobics programs; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant has submitted plans to the Board indicating that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and

connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space; and

WHEREAS, by letter dated December 9, 2016, the Fire Department states that, based on its review of the drawings and supporting documentation for the subject PCE, as well as the fact that on-site operational testing of the interior fire alarm has already been scheduled, it has no objections to this application; and

WHEREAS, the Landmarks Preservation Commission (“LPC”) issued Certificate of No Effect No. 17-433 dated July 20, 2015, and expiring July 22, 2019, for interior alterations on the second floor associated with the subject PCE application, finding that the work will have no effect on significant protected features of the building; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant states that the PCE will not interfere with any pending or approved public improvement project; and

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

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-006K, dated July 16, 2015; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.3 and 617.5, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C5-2A zoning district, within the Special Downtown Brooklyn District and the Borough Hall Skyscraper Historic District, the operation of a physical culture establishment (PCE) on the second floor of a four-story, with cellar, commercial building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked “Received January 4, 2017”- Five (5) sheets; and on further condition:

THAT the term of this grant shall be for ten (10) years, expiring March 5, 2026;

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

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

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THAT an approved interior fire alarm system shall be maintained in the entire PCE space and that such system shall include: area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and connection of the interior fire alarm to an FDNY-approved central station;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT noise abatement measures shall be provided and maintained within the PCE space—including a gypsum ceiling, a wood floating-floor system beneath the treadmills and rubber flooring in the weights area—as indicated on the BSA-approved plans;

THAT all exterior signage shall comply with applicable zoning district regulations and shall be subject to approval by the Landmarks Preservation Commission;

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

THAT a Certificate of Occupancy shall be obtained within one (1) year, by January 24, 2018;

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, January 24, 2017.

**\*The resolution has been amended.  
Corrected in Bulletin Nos. 7-8, Vol. 102, dated February 17, 2017.**

# 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.

Volume 102, Nos. 9-10

March 2, 2017

### DIRECTORY

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**2017-45-BZ**

3896 Tenth Avenue, located at the southwest intersection of Isham Street and Tenth Avenue, and the northwest corner of Post Avenue and Tenth Avenue, Block 02223, Lot(s) 16, Borough of **Manhattan, Community Board: 12**. Special Permit (§73-19) to allow for the operation of a school (Use Group 3) (Inwood Academy) contrary to ZR §32-12. C8-3 zoning district. C8-3 district.  
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**2017-46-BZ**

35 Nova Court, located on Nova Court between Madoc and Noel Avenues., Block 08866, Lot(s) 1398, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district. R4 district.  
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**2017-47-BZ**

1052 East 22nd Street, located on the west side of East 22nd Street between Avenues I and J., Block 07585, Lot(s) 77, 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 §23-142); side yard (ZR §23-461) and less than the required rear yard (ZR §23-47). R2 zoning district. R2 district.  
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**2017-48-A**

36 Hardy Street, located west Hardy Street, 100' ft north of the corner formed by the intersection of Hary Street and Irving Place, Block 00638, Lot(s) 44, 46, 47 & 49, Borough of **Staten Island, Community Board: 1**. Proposed construction, to be located within the bed of a mapped street, contrary to General City Law 35. R3A Zoning District. R3A district.  
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**2017-49-BZ**

243 West 124th Street, located on a through lot with frontage on West 124th and West 125th Streets between Frederick Douglass Boulevard and Adam Clayton Powell Jr. Boulevard., Block 01930, Lot(s) 53, Borough of **Manhattan, Community Board: 10**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (fitness center) on the second floor of an existing building contrary to ZR §32-10. C4-4D/C6-3 (Special 125th Purpose District) C4-4D/C6-3 (Special 125th District) district.  
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**2017-50-BZ**

458 5th Avenue, located on 5th Avenue between 9th and 10th Streets, Block 01010, Lot(s) 40, Borough of **Brooklyn, Community Board: 6**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Beast Fitness Evolved) in a portion of the cellar first floor of an existing building contrary to ZR §32-10. C4-3A zoning district. C4-3A district.  
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**2017-51-BZ**

51 Warren Street, located on Wareen Street between Church Street and West Broadway, Block 00133, Lot(s) 7506, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Dancebody) located in the cellar and first floor of an existing building contrary to ZR §32-10. C6-2A/C6-3A (Tribeca South Historic District Extension) C6-2A/C6-3A district.  
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**2017-52-A**

1109 Metropolitan Avenue, premises fronts on Metropolitan Avenue to the south and Newton Creek to the north and east., Block 02927, Lot(s) 25, Borough of **Brooklyn, Community Board: 1**. Interpretative Appeal challenging the Department of Buildings determination that a proposed caretaker's apartment for a proposed sign painting shop does not satisfy the ZR 12-10 definition of an "accessory use". M3-1 zoning district. M3-1 district.  
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**2017-53-BZ**

24 West 25th Street, located on the south side of West 25th Street between 5th and 6th Avenues, Block 00826, Lot(s) 57, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Mile High) located in the cellar and first floor of an existing building contrary to ZR §42-10. M1-6 zoning district M1-6 district.  
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**2017-54-BZ**

1215-1217 East 28th Street, located on the east side of East 28th Street between Avenues L and M., Block 07646, Lot(s) 39, 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 §23-142) and less than the required rear yard (ZR §23-47). R2 zoning district. R2 district.  
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# DOCKETS

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## **2017-55-BZ**

2916 Shell Road, located on Shell Road between West 6th Street and Neptune Avenue, Block 07247, Lot(s) 263 & 264, Borough of **Brooklyn, Community Board: 13**. Special Permit (§73-44) for the reduction in parking from 29 to 14 spaces to facilitate a Use Group 6A (professional offices) in parking category PRC B1 contrary to ZR §44-21. M1-2 zoning district. M1-2 district.

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## **2017-56-BZ**

1321 Richmond Road, located on the north side of Richmond Road, 562.79' ft to Vista Avenue, Block 00853, Lot(s) 91 & 93, Borough of **Staten Island, Community Board: 2**. Variance (§72-21) to permit construction of a cellar and three (3) story residential condominium with six (6) dwelling units and ten (10) off-street parking spaces contrary to ZR §22-11 (multi-family buildings not permitted in an R1-2 zoning district; ZR §§ 23-00 & 25-00 (no bulk or parking regulations for multi-family buildings located in an R1-2 zoning district. R1-2 Lower Density Growth Management Area. R1-2 (LDGMA) 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 MARCH 28, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, March 28, 2017, 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

#### 187-08-BZ

**APPLICANT** – Sheldon Lobel, P.C., for Congregation & Yeshiva Maschzikei Hadas, owner.  
**SUBJECT** – Application April 22, 2016 – Amendment to a variance (§72-21) to allow a five-story school (*Congregation & Yeshiva Maschzikei Hadas*). The application seeks to increase the zoning lot contrary to the previous Board approval. M1-2/R6B zoning district.  
**PREMISES AFFECTED** – 1247 38<sup>th</sup> Street, Block 5295, Lot(s) 52 & 109, Borough of Brooklyn.  
**COMMUNITY BOARD #12BK**

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#### 301-13-BZ

**APPLICANT** – Eric Palatnik, P.C., for Rabbi Mordechai Jofen, owner.  
**SUBJECT** – Application September 6, 2016 – Amendment of a previously approved Variance (§72-21) permitting the addition of three floors to an existing one story and basement UG 4 synagogue for a religious-based college and post graduate (UG 3) with 10 dormitory rooms, contrary to sections 24-11, 24-521, 24-52,24-34(a),24-06. The amendment seeks a correction that the original DOB objection did not include a waiver of ZR §24-551 (side yard) and ZR §24-11 (Lot Coverage) R5B zoning district.  
**PREMISES AFFECTED** – 1502 Avenue N, Block 6753, Lot 1, Borough of Brooklyn.  
**COMMUNITY BOARD #14BK**

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### APPEALS CALENDAR

#### 2016-4170-A

**APPLICANT** – Juan D. Reyes of Seyfarth Shaw, for Cast Iron Corp., owner.  
**SUBJECT** – Application April 15, 2017 – Appeal to challenge the NYC Department of Buildings Permit Number 121236983-01-AL. C6-1 zoning district.  
**PREMISES AFFECTED** – 809-811 Broadway, Block 563, Lot 35, Borough of Manhattan  
**COMMUNITY BOARD #2M**

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## REGULAR MEETING MARCH 28, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, March 28, 2017, 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

#### 330-14-BZ

**APPLICANT** – Law Office of Lyra J. Altman, for Jack Guindi, owner.  
**SUBJECT** – Application December 30, 2014 – Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461); perimeter wall height (ZR 23-263) and less than the required minimum rear yard (ZR23-47); R3-2 zoning district.  
**PREMISES AFFECTED** – 1746 East 21<sup>st</sup> Street, Block 6783, Lot 18, Borough of Brooklyn.  
**COMMUNITY BOARD #15BK**

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#### 20-15-BZ

**APPLICANT** – Alexander Levkovich, for Steven Israel, owner; Mishkan Yerushalayim, lessee.  
**SUBJECT** – Application February 5, 2015 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship community facility at the premises contrary to floor area ratio, open space, lot coverage, wall height, front yard, side yards, rear yard, sky exposure plane, and parking regulations. R4 (OP) zoning district.  
**PREMISES AFFECTED** – 461 Avenue X, Block 7180, Lot 75, Borough of Brooklyn.  
**COMMUNITY BOARD #15BK**

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#### 2016-3-BZ

**APPLICANT** – Rothkrug Rothkrug & Spector LLP, for Seneca Clove Corp., owner.  
**SUBJECT** – Application January 4, 2016 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store (UG 16B). C2-1/R2 zoning district.  
**PREMISES AFFECTED** – 1212 Victory Boulevard, Block 651, Lot 1, Borough of Staten Island.  
**COMMUNITY BOARD #1SI**

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# CALENDAR

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**2016-4251-BZ**

APPLICANT – Jesse Masyr, Esq., Fox Rothschild LLP, for Neptune South Commercial LLC, owner.

SUBJECT – Application September 13, 2016 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for ambulatory diagnostic and treatment health care facility use (UG 4A) and office use (UG 6B). C8-2 (Special Ocean Parkway District) zoning district.

PREMISES AFFECTED – 626 Sheepshead Bay Road, Block 7279, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

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**2016-4266-BZ**

APPLICANT – Francis R. Angelino, Esq., for Brause 59 Co., owner; 330 East 59<sup>th</sup> Street Gym, LLC, lessee.

SUBJECT – Application October 6, 2016 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*ICE NYC*) in portions of the ground and cellar of an existing building. C2-5/R8 zoning district.

PREMISES AFFECTED – 330 East 59<sup>th</sup> Street, Block 1351, Lot 36, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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**2016-4277-BZ**

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Consolidated Edison Company of New York, Inc., owner.

SUBJECT – Application March 28, 2017 – Special Permit (§73-16) to permit the addition of a battery storage facility to an existing electric utility substation that was granted pursuant to BSA Calendar Number: 178-63-BZ. R4 zoning district.

PREMISES AFFECTED – 79-04 151<sup>st</sup> Avenue, Block 11426, Lot 2, Borough of Queens.

**COMMUNITY BOARD #10Q**

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*Ryan Singer, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, FEBRUARY 28, 2017 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 1122-81-BZ

APPLICANT – Eric Palatnik, P.C., for NCBP East Elmhurst LLC, owner.

SUBJECT – Application November 3, 2014 – Extension of Term of a previously approved Variance (§72-21) which permitted a one-story enlargement of a then existing metal supply establishment (UG 17) increasing the degree of non-conformity, which expired on November 9, 2012; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 105-14 Astoria Boulevard, southwest corner of 106<sup>th</sup> Street and Astoria Boulevard, Block 01692, Lot 3, Borough of Queens.

#### COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

#### THE VOTE TO GRANT –

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

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a variance, previously granted by the Board pursuant to ZR § 72-21, which expired on November 9, 2012; and

WHEREAS, a public hearing was held on this application on February 23, 2016, after due notice by publication in *The City Record*, with a continued hearing on February 14, 2017, and then to decision on February 28, 2017; and

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

WHEREAS, Community Board 3, Queens, recommends approval of this application on condition, *inter alia*, that the subject site be kept free of debris and graffiti, that graffiti be removed within 48 hours and that building supplies be kept below the height of the fence; and

WHEREAS, the subject site is located on the southwest corner of Astoria Boulevard and 106th Street, in an R6B (C2-3) zoning district, in Queens; and

WHEREAS, the site has approximately 171 feet of frontage along Astoria Boulevard, 71 feet of frontage along 106th Street, 14,233 square feet of lot area and is improved with a one-story industrial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 9, 1982, when, under the

subject calendar number, the Board granted a variance for a term of twenty (20) years, expiring November 9, 2002, to permit in a then R3-2 zoning district the erection of a one-story enlargement to expand an existing roofing and metal supply establishment that increased the degree of non-conformity on condition, *inter alia*, that the hours of operation be limited to 7:00 a.m. to 5:30 p.m. Monday through Friday and 8:00 a.m. to 1:00 p.m. on Saturday, closed Sunday, that trees be planted on Astoria Boulevard and 106th Street, that patrons’ vehicles not be double-parked while awaiting service, pick-up or delivery and that exterior lighting be placed on the front façade of the building, shielded and directed away from residential developments; and

WHEREAS, on October 21, 2003, under the subject calendar number, the Board extended the term of the variance for a term of ten (10) years, expiring November 9, 2012, and reopened and amended the resolution to allow the installation of a firewall on the east side of the building on condition that, among other things, the premises be maintained free of debris and graffiti, that graffiti be removed within 48 hours, that the hours of operation be limited to 7:00 a.m. to 5:30 p.m. Monday through Friday and 8:00 a.m. to 1:00 p.m. on Saturday, closed Sunday, and that landscaping be provided and maintained; and

WHEREAS, the term of the variance having expired, the instant application seeks a further extension of the term for an additional ten (10) year term; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing for an extension of term less than two (2) years after the expiration of the term; and

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

WHEREAS, the Board finds that a ten (10) year extension of the term of the variance is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and *reopens* and *amends* the resolution, dated November 9, 1982, as amended through October 21, 2003, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years from the expiration of the last grant, to expire November 9, 2022; *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received January 26, 2017’-Four (4) sheets and ‘February 23, 2017’-One (1) sheet and ; and *on further condition*:

THAT this grant shall expire November 9, 2022;

THAT no service or work of any kind shall be permitted on the street;

THAT a site safety manager shall accompany the forklift when it crosses the sidewalk and is in the street;

THAT trucks shall be monitored during loading and

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unloading;

THAT mirrors shall be mounted on both ends of the property so that pedestrian activity on sidewalks shall be visible to drivers;

THAT drivers shall honk the horns and be attentive to speed when entering and exiting the site;

THAT no equipment associated with the subject use shall be placed on the sidewalk of the subject site;

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

THAT any graffiti located on the premises shall be removed immediately;

THAT the hours of operation shall be limited to Monday through Friday, 7:00 a.m. to 5:30 p.m., Saturday, 8:00 a.m. to 1:00 p.m., and closed Sunday;

THAT landscaping shall be provided and maintained in accordance with BSA approved plans;

THAT street trees shall be maintained;

THAT building supplies and materials shall be kept below the height of the existing fence;

THAT the above conditions and all conditions from prior resolutions shall appear on the Certificate of Occupancy;

THAT an amended Certificate of Occupancy shall be obtained within one (1) year, by February 28, 2018;

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 Department of Buildings/other jurisdiction objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, February 28, 2017.

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## 74-07-BZ

APPLICANT – Fried, Frank, Harris, Shriver & Jacobson LLP, for Trustees of the Congregation Shearith Israel of the City of New York, owner.

SUBJECT – Application June 16, 2016 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting a nine (9) story residential/community facility building contrary to regulations for lot coverage (§24-11), rear yard (§24-36), base height, building height and setback (§23-633) and rear setback (§23-663) which expired on January 22, 2016; Amendment to the approved plans; Waiver of the Rules. R8B and R10A districts.

PREMISES AFFECTED – 6-10 West 70<sup>th</sup> Street, Block 1122, Lot(s) 36 & 37, Borough of Manhattan.

## COMMUNITY BOARD #7M

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure (the “Rules”), an amendment to a variance, previously approved by the Board, and an extension of time to complete construction under the same, which expired on January 22, 2016; and

WHEREAS, a public hearing was held on October 14, 2016, after due notice by publication in *The City Record*, with continued hearing on January 10, 2017, and then to decision on February 28, 2017; and

WHEREAS, by resolution dated September 6, 2016, Community Board 7, Manhattan, recommends disapproval of certain of the proposed plan changes but approval of the request for an extension of time to complete construction; and

WHEREAS, by resolution dated December 6, 2016, Community Board 7, Manhattan reiterated its disapproval of the request to amend the variance on the basis that the findings justifying the grant of the previously approved variance, specifically financial hardship and the minimum variance, were no longer met due to the passage of time; and

WHEREAS, New York Assembly Member Richard Gottfried provided oral testimony on behalf of both himself and New York State Senator Brad Hoylman in opposition to this application on the basis that, *inter alia*, the proposed amendments are not minor and the proposal would negatively impact the Central Park West Historic District; Assembly Member Gottfried also expressed doubt that the proposed community facility will, indeed, contain classrooms; and

WHEREAS, the Board received additional testimony in opposition to the subject application, the specifics of which are addressed below; and

WHEREAS, this application is filed on behalf of the Trustees of the Congregation Shearith Israel, a not-for-profit religious institution (the “Applicant” or “Congregation”); and

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

WHEREAS, Vice-Chair Hinkson recused herself from hearings and voting on the application; and

WHEREAS, the subject site is located on the southwestern corner of the intersection of West 70<sup>th</sup> Street and Central Park West, partially within an R8B zoning district and partially within an R10A zoning district, within the Upper West Side/Central Park West Historic District, in Manhattan; and

WHEREAS, the site has approximately 172 feet of frontage along West 70<sup>th</sup> Street, 100 feet of frontage along Central Park West, 17,272 square feet of lot area; Lot 37 is currently vacant and Lot 36 is occupied by the Congregation Shearith Israel synagogue building (the “Synagogue”), a landmark designated by the New York City Landmarks

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Preservation Commission (“LPC”), and a parsonage building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 26, 2008, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, permitting the construction of a nine-story, plus cellar, mixed-use community facility and residential building that does not comply with applicable lot coverage, rear yard, base height, building height, front setback and rear setback regulations, contrary to ZR §§ 24-11, 77-24, 24-36, 23-66 and 23-633 (the “Proposed Building”); and

WHEREAS, the variance grant was conditioned, *inter alia*, on the Proposed Building having a total of 42,406 square feet of floor area, 20,054 square feet of floor area dedicated to community facility use, 22,352 square feet of floor area dedicated to residential use, a base height of 95’-1”, a front setback of 12’-0”, total height of 105’-10”, a rear yard of 20’-0”, a rear setback of 6’-8” and an interior lot coverage of 80 percent; and

WHEREAS, pursuant to the variance grant and ZR § 72-23, construction on the proposed building was required to have been substantially completed by August 26, 2012; and

WHEREAS, the Board’s resolution on the variance was issued on August 29, 2008; on September 29, 2008, proceedings were filed in New York State Supreme Court to annul the Board’s decision and such appeals were exhausted on February 21, 2012, when the New York State Court of Appeals’ decision to deny leave to appeal was entered and the decision of the New York Supreme Court Appellate Division, First Department, dated June 23, 2011, upholding the Board’s resolution, was therefore rendered final; and

WHEREAS, ZR § 72-23 provides that, where judicial proceedings have been instituted to review the Board’s decision to grant a variance, the four year period after which a variance grant will lapse will commence upon the date of entry of the final order in such proceedings, including appeals; and

WHEREAS, accordingly, the time by which substantial construction was to have been completed at the subject site pursuant to the variance was tolled from September 29, 2008 to February 21, 2012, and the time by which the Applicant was required to substantially complete construction expired on January 22, 2016; and

WHEREAS, construction at the site having not been substantially completed by that time, the Applicant now seeks a four (4) year extension of time; and

WHEREAS, to permit the filing of this application less than two years after the expiration of the time to complete construction, the Applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules, of Rule § 1-07.3(c)(2); and

WHEREAS, the Applicant represents that upon resolution of the judicial proceedings, they diligently retained consultants to assist in obtaining construction financing, obtaining extensions of necessary approvals and developing an approvable set of plans for the New York City Department of Buildings (“DOB”), but faced unanticipated setbacks beyond their control and did not obtain a building permit until August 2015; and

WHEREAS, in addition, the Applicant states that its loan

documents were subject to approval by the New York State Attorney General (the “NYS AG”) and New York State courts, a process that was not completed until March 2016; and

WHEREAS, the Applicant submits that, with permits and financing in hand, they are now prepared to proceed with the construction of the Proposed Building; and

WHEREAS, in addition to an extension to time to complete construction, the Applicant seeks an amendment to the variance to update the BSA-approved plans to show different interior partitions required in response to changes in the New York City Building Code and reflect the now finalized location of structural elements and mechanical equipment (the “2016 Plans”); and

WHEREAS, the Applicant states that the previously approved plans were filed prior to July 1, 2008, the date that the 2008 Building Code became effective, but that, because of the delay in construction caused by litigation, the Proposed Building must now comply with the 2008 Building Code; and

WHEREAS, specifically, the Applicant states that the change in the Building Code definition of “lot line” turned the tax lot boundary between Lots 36 and 37 into a “lot line” along which glass is to be fire-rated, but the incorporation of such glass into the previously approved plans would have caused the Proposed Building to project into Lot 36; because the New York City Department of Buildings (“DOB”) would not permit a three-dimensional lot line, the Applicant opted to pull back the eastern wall of the seventh and eighth floors of the Proposed Building in order to provide the required fire-rated separation and not intrude into Lot 36; and

WHEREAS, in addition, the 2008 Building Code no longer permits scissor stairs in the Proposed Building, thus the 2016 Plans replace the scissor stairs provided in the previously approved plans with separately enclosed egress stairs for the community facility use on the first through fourth floors and shift interior partitions in order to accommodate the larger footprint of these stairs; and

WHEREAS, the Applicant submits that the 2016 Plans differ from the previously approved plans in the following respects: the elimination of a proposed connection between the Synagogue and the Proposed Building; a reduction of 1,900 square feet of total floor area; a reduction of 1,697 square feet of community facility floor area; a reduction of 203 square feet of residential floor area; reductions in the FAR of the community facility portion of the building from 2.77 FAR to 2.67 FAR, in the residential portion of the building from 1.29 FAR to 1.28 FAR and in the total FAR of the building from 4.06 FAR to 3.95 FAR; a reduction in the base height of the building; a reduction in the total height of the building; the addition of three vent enclosures on the first floor roof; a lowering of the first floor roof in order to accommodate the new vent enclosures without increasing the height of the first floor; the provision of a larger mechanical rooftop bulkhead to accommodate the elevator overrun and an emergency generator; and the addition of louvers for air intake and exhaust on the rear façade of the fourth floor; and

WHEREAS, the Applicant represents that, consistent with the originally approved plans, the 2016 Plans propose six toddler classrooms with en-suite bathrooms on the second floor



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with only minor changes to the interior partitions and a slight reduction in their total capacity from 63 to 58 toddlers; six youth classrooms on the third floor and one shared youth and adult classroom on the fourth floor programming with only minor changes to the interior partitions that reduce the total capacity of the seven classrooms from 81 children and 102 adults to 76 children and 99 adults; and three adult classrooms on the fourth floor, including the one classroom shared with youth, with minor changes to interior partitions that reduce their total capacity from 55 adults to 52 adults; and

WHEREAS, the Applicant notes that they no longer seek to enlarge the small synagogue on the first floor of the Proposed Building, which they now intend to maintain at its current size and configuration and leaving its historic character intact, but argues that the elimination of this aspect of building programming has no impact on the programmatic needs previously presented by the Applicant to the Board in the original application for a variance and does not affect any of the space for which zoning waivers were ultimately granted; and

WHEREAS, in response to Board questions about how the Applicant will compensate for the loss of space resulting from the elimination of the planned small synagogue expansion, the Applicant states that additional rows of chairs will be added to each section of the synagogue and larger services and events will be relocated to the main sanctuary and/or classrooms; and

WHEREAS, as for the residential floors of the Proposed Buildings, floors five through nine, the Applicant states that the only revisions contained in the 2016 Plans are an update to show the reconfiguration of stairs to meet the 2008 Building Code, the addition of separately enclosed egress stairs on the fifth floor and the addition of mechanical shafts; and

WHEREAS, finally, the Applicant notes that it submitted plans to DOB in August 2015 and to the Board in February 2016 (in connection with a request for a Letter of Substantial Compliance<sup>1</sup>) that varied from both the previously approved plans and the 2016 Plans submitted herein in that they did not reflect the Applicant's program (the "Intermediary Plans"), but asserts that the Applicant and its consultants have since identified solutions to the design issues that led to creation of the Intermediary Plans and the 2016 Plans fully meet the Applicant's programmatic needs as presented in the original variance application; and

WHEREAS, in sum, the Applicant asserts that the requested amendment reflects the same program reviewed and approved by the Board in 2008, seeks no additional waivers, and the space subject to the waivers granted continue to be utilized for the programming identified in the variance, thus, the subject application constitutes a minor amendment that is

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<sup>1</sup> Pursuant to § 1-12.11 of the Board's rules, certain minor amendments of or corrections to previously approved plans may be approved by the Chair by Letter of Substantial Compliance, provided that the amendments or corrections substantially comply with the Board's previous approval. The Applicant's February 2016 request was denied by Board staff.

has been properly filed on the Board's Special Order Calendar; and

WHEREAS, members of the community, some represented in blocs by counsel, testified at the hearing and provided testimony in opposition to the subject application (collectively, the "Opposition") contesting the Applicant's assertion that the subject amendment is minor and arguing that the subject application, particularly the 2016 Plans, evidence major changes to the Applicant's programming and, thus, constitute a major amendment that must be heard on the Board's Zoning Calendar with a re-consideration of the findings required for the variance pursuant to ZR § 72-21; and

WHEREAS, counsel for an owner of a townhouse located at 15 West 70th Street, across the street from the subject site ("Opposition Group 1"), raised concerns regarding the subject application including the following: the Intermediary Plans, on which spaces previously labeled as "classrooms" were labeled as "offices," contradict the Applicant's purported programmatic needs and are evidence of the Applicant's true intentions of operating commercial enterprises on the site; the originally proposed classrooms were eliminated and replaced with offices on the Intermediary Plans once the Applicant's intended occupant of that space, a Jewish school, ended its lease of the space, demonstrating that classroom spaces were not the true motivator of the variance; the true driver of the variance is the Applicant's desire for a commercial banquet hall and wedding venue; the elimination of a proposed enlargement of the small synagogue demonstrates that the expansion is not, in fact, necessary and undermines the Applicant's assertion that such an enlargement was necessary for their programming; the Applicant's true intention is to construct the largest building with as many commercial components as possible; the Applicant intentionally concealed all drawings and documents relating to the Intermediary Plans and omitted these plans from the subject filing; the Applicant's inactivity with regards to pursuing construction on the site between May 2015 and January 2016 is to blame for the lapse of the variance; the Applicant should have known that the Proposed Building would have had to comply with the 2008 Building Code; the subject site can accommodate all of the Applicant's programmatic needs without the subject variance; and the financial analyses submitted to support the 2008 variance are outdated and no longer relevant; and

WHEREAS, in response to Board questions regarding the labeling of spaces on the Intermediary Plans, the Applicant stated that the word "office" was intended to refer to the size of the rooms (i.e. "office-sized") because they were smaller than conventional classrooms, rather than their use; in response to Board questions regarding utilization of the classroom space proposed on the 2016 Plans, the Applicant submitted a programmatic analysis of how the Applicant intends to utilize the community facility portion of the Proposed Building and the Board found such study to be acceptable; and

WHEREAS, otherwise, the Board dismisses a substantial number of the concerns raised by Opposition Group 1 as speculative, extraneous to the relief requested in this application and/or unsupported by the record; particularly, in

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response to the allegation that the Applicant “concealed,” intentionally or otherwise, all drawings and documentation relating to the Intermediary Plans, the Board makes reference to Opposition Group 1’s own filing, which, as it argues that the Intermediary Plans were “systematically conceal[ed],” contradictorily presents a timeline of the Applicant’s publicly accessible filings of the Intermediary Plans with three New York City agencies, including the Board; in response to the allegation that the Applicant sat on its variance and did nothing to move forward with constructing the Proposed Building between May 2015 and the lapse of the variance, the Board points to statements made by the Applicant that the building formerly located on the subject site (the Community House) was demolished in or around May 2015 to make way for construction of the Proposed Building and that the Applicant corresponded with the NYS AG between December 2015 and March 2016 regarding the approval of loans for the project; and

WHEREAS, with regards to Opposition Group 1’s concern about the age and irrelevance of the financial analyses provided in connection with the 2008 variance application, the Board notes that, as a not-for-profit, the Applicant was not required to demonstrate that a development in strict conformity with the zoning requirements would yield a reasonable return for the community-facility portion of the Proposed Building, where the majority of the revisions to the previously approved plans are herein proposed, and the previously submitted financial analyses were related only to the residential floors, the revisions to which, the Board finds, do not warrant or require revisions to the previously provided financial analyses; and

WHEREAS, Opposition Group 1 also alleged that the Applicant misrepresented their activity at DOB to the Board by failing to acknowledge any of the events subsequent to DOB’s approval of the Applicant’s New Building application on May 5, 2015, most notably: a Zoning Challenge and Appeal filed at DOB objecting to, *inter alia*, the repurposing of classrooms for offices and increased height of the building, as shown on the Intermediary Plans, dated June 10, 2015; DOB’s acceptance of the zoning challenge, dated September 22, 2015; and DOB’s letter indicating an intention to revoke the approval and permits and order to stop all work at the premises, dated March 30, 2016; and

WHEREAS, with regards to these allegations, the Board clarifies that DOB accepted two out of the four challenges raised by Opposition Group 1—that the interior layouts had been substantially changed through all floors of the building and that the altered location of the caretaker’s apartment was not substantially consistent with the previously approved plans—yet stated that it was “unable to make a determination on the specific question of the validity of the BSA variance on the grounds that the underpinning for the ‘programmatic need’ argument has changed” and required the Applicant to return to the Board “for a modification of the previous approval, or other measure as deemed appropriate by the Board”; and

WHEREAS, in addition, the Board clarifies that the timeline provided by the Applicant, and identified by Opposition Group 1 as misleading by its omissions, was prepared to indicate the Applicant’s efforts to substantially complete construction at the site and justify the request for an

extension of time to complete construction; and

WHEREAS, Opposition Group 1 also questioned whether the 2008 variance was granted by the Board not solely to satisfy the applicant’s programmatic needs, but to also allow the Applicants to make a reasonable return on its investment in the subject property, and points to the Intermediary Plans as having undermined the Applicant’s claims so much as to vacate the variance and require the Applicant to, once again, make all of the variance findings set forth in ZR § 72-21; and

WHEREAS, the West Side Neighbors Association, a coalition of individuals who live in close proximity to the subject site and represented by separate counsel (“Opposition Group 2”), additionally raised the following concerns in their filings with the Board on this application: the proposed modification are significant, not minor the proposed modifications undermine the financial analysis completed in connection with the 2008 variance application, requiring disapproval of the subject application or the submission of revised financial analyses; the significant amount of time since the 2008 variance grant and the improvements in the real estate market that have resulted in, among other things, the value of the Proposed Building having doubled since 2008 (based on a 2015 appraisal submitted by the Applicant to the New York State Supreme Court), warrant a reevaluation of the basis for the 2008 variance; and the addition of mechanical bulkheads without an adequate study of their adverse environmental impacts; and

WHEREAS, the Board finds with the characterization of the proposed modifications as significant or material with respect to the original variance granted to be contradicted by the evidence and notes that Opposition Group 2’s list of modifications from the previously approved plans present on the 2016 Plans is somewhat misleading in that it includes the same alteration present on several floors (i.e. open stairs replaced with enclosed linear egress stairs and added perimeter columns) as discrete modifications; and

WHEREAS, the Board also distinguishes BSA Cal. No. 135-05-BZ (217 West 147th Street, Manhattan), a Board decision provided by Opposition Group 2 in advance of his argument that a revised financial analysis is required in connection with the subject variance amendment request because of the proposed plan changes, by the facts that, in that case, the proposed amendment included an additional waiver and increased the scope of a previously approved waiver, neither of which are requested in the subject application; and

WHEREAS, with regards to the 2015 appraisal, the Board notes that the appraisal’s purpose is to present the market value of the project according to its highest and best use in order to justify the loan for which the Applicant seeks approval and such purpose is separate and distinct from the purpose of the financial analyses submitted to and reviewed by the Board in connection with applications for a variance, therefore, the appraisal is irrelevant to the subject application; and

WHEREAS, as to Opposition Group 2’s citation to the Resolution issued for BSA Cal. No. 299-82-BZ (207 Chrystie Street, Manhattan), which states that the amendment sought therein was minor because “the waivers and conditions of the

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underlying grant are not implicated” and “the configuration of the other buildings on the zoning lot will remain the same,” the Board clarifies that those quotes were specifically identified in the Resolution as arguments made by the applicant in support of their position that the proposed amendment was appropriate, not a conclusion made by the Board; and

WHEREAS, Opposition Group 2 additionally cites Fisher v. Board of Standards and Appeals, 71 AD3d 487 (1st Dept 2010) aff'g 21 Misc3d 1134(A) (Sup Ct 2008), which held that an application to enlarge a zoning lot subject to a Board variance was a minor modification because it did not change any of the conditions of the prior variance pertinent to the waivers authorized by the variance and introduced no new non-compliances, to support his contention that the subject amendment is not minor; and

WHEREAS, the Board notes that its conclusion that the subject proposed amendment is minor is consistent with Fisher—the 2016 Plans constitute a minor amendment precisely because they do not change any of the conditions of the prior variance relevant to the waivers granted therein and do not request additional waivers; and

WHEREAS, the Board submits that, pursuant to § 1-07(a)(1), the determination of whether the scope of a requested amendment is minor is within its discretion, and if, upon further review of the application or during hearing, the Board determines that the request is, instead, major, the Board may request additional information, including financial analyses and the review of environmental impacts; and

WHEREAS, as previously stated, the Board finds that no additional financial analyses are required in connection with this application, but echoes Opposition Group 2’s concern regarding the potential, and heretofore unanalyzed, impacts of the various rooftop mechanicals added to the 2016 Plans and, accordingly, asked for additional review and information regarding their potential impacts on neighboring properties; and

WHEREAS, in response, the Applicant provided additional noise studies demonstrating that during evening hours, the noise levels emanating from the subject site would be less perceptible than they are during daytime hours and that if all the proposed mechanical equipment, including the kitchen exhaust and HVAP equipment, was running at the same time during a period when the ambient noise level was low, the resulting noise level would range from nearly imperceptible to marginally noticeable; and

WHEREAS, the Applicant also proposed additional noise attenuation measures to ensure that noise levels are no greater than 2 dBA above ambient daytime hours and no greater than 1 dBA above ambient levels during nighttime hours and incorporated those measures into the 2016 Plans; and

WHEREAS, counsel for Landmark West!, property owners and residents of the immediate vicinity of the subject site (“Opposition Group 3”), raised the following additional issues in opposition to this application: the Applicant’s failure to submit the 2016 Plans to DOB for review prior to filing with the Board is an attempt to “skip the line” and “put the cart before the horse”; the Applicant failed to provide notice of this application to affected property owners in accordance with the

Board’s Rules; the subject application is untimely; the Applicant failed to provide the Board with its March 2016 application to the Charities Registration Bureau of the NYS AG’s Office for approval of a mortgage loan, justifying denial of the application; and the Applicant failed to address the relocation of the caretaker’s apartment from the third floor to the fourth floor, contrary to the executed restrictive covenant previously; and

WHEREAS, the Board addresses, and dismisses, each of Opposition Group 3’s points as follows, in turn: it is not uncommon for sites under Board jurisdiction to seek Board approval of revised plans, whether by Letter of Substantial Compliance or a formal application, prior to submitting them to DOB; as previously stated, this application was filed on the Board’s Special Order Calendar, the procedures for which are set forth in § 1-07 et seq., and do not require notice to affected property owners; the subject application was, in fact, filed after the Applicant’s time to complete construction expired, but the Applicant requested a waiver of the Board’s Rules regarding the timing of the application, as permitted by Rule § 1-14.2, as required; the Board fails to understand why the absence of the Applicant’s mortgage loan to the NYS AG from the record requires denial of this application, which is for an extension of time, and clarifies that the record in this case does, in fact, reflect the Applicant’s correspondence with the NYS AG with regards to the approval of financing relating to the Proposed Building; and the Applicant agreed to amend the restrictive covenant to the extent required by DOB to reflect the relocation of the caretaker’s apartment to the fourth floor; and

WHEREAS, the Opposition has paid significant attention to the discrepancies between the Board’s previously approved plans for this site and the Intermediary Plans submitted by the Applicant to DOB, but the Board notes that, for this application, the 2016 Plans, not the Intermediary Plans, which were disapproved and are not before this Board for its approval, are the relevant comparator to the previously approved plans, and the Board finds that, as compared to the previously approved plans, the alterations present in the 2016 Plans are, in fact, minor in nature; and

WHEREAS, in sum, the Board finds that the Applicant has submitted sufficient evidence into the record regarding their actions, and the setbacks they experienced, from the time of the cessation of the litigation to the expiration of time to complete construction pursuant to the 2008 variance, as tolled by the same litigation, to warrant a grant of the requested extension of time to complete construction and that the requested amendment to the variance is appropriate with certain conditions, as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedures, *reopens* and *amends* the resolution, dated August 26, 2008, so that as amended this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction to January 22, 2020; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received November 16, 2016”—Four (4) sheets, “Received February 23, 2017”—One (1) sheet, “Received November 16, 2016”—Eight (8) sheets, “Received January

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24, 2017”—Two (2) sheets, “Received February 23, 2017”—One (1) sheet, “Received November 16, 2016”—Three (3) sheets, for a total of nineteen (19) sheets; and *on further condition*:

THAT construction shall be completed within four (4) years, by January 22, 2020;

THAT the applicant shall obtain an updated Certificate of Appropriateness from the Landmarks Preservation Commission prior to any building permit being issued by the Department of Buildings;

THAT refuse generated by the Synagogue shall be stored in a refrigerated vault within the building, as shown on the BSA-approved plans;

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

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

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

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

THAT 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, February 28, 2017.

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## 66-12-BZ

APPLICANT – Rosenberg & Estis, P.C., for Ladera LLC, owner.

SUBJECT – Application August 18, 2016 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a new mixed-use building containing a FRESH Program food store, a preschool and 164 residential units, contrary to use (§22-10), lot coverage (§24-11) and parking (§25-23) regulations which is set to expire October 23, 2016 . R7A, R8A/C2-4 zoning districts.

PREMISES AFFECTED – 223-237 St. Nicholas Avenue, 305 W. 121<sup>st</sup> Street, 300 W. 122<sup>nd</sup> Street, Block 1948, Lot(s) 30, 35, Borough of Manhattan.

## COMMUNITY BOARD #10M

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of time to complete construction pursuant to a variance, previously granted by the Board pursuant to ZR § 72-21, which expired on October 23, 2016; and

WHEREAS, a public hearing was held on February 28, 2017, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

WHEREAS, Lots 30 and 35 (the “Project Site”) on Block 1948, bounded by Saint Nicholas Avenue, West 122nd Street, West 121st Street and Manhattan Avenue, are part of a larger zoning lot that also includes Lots 24, 25, 26, 29 and 40 (also known as condominium lots 1001–1006) collectively (the “Zoning Lot”); and

WHEREAS, the subject application concerns proposed construction only on the Project Site; and

WHEREAS, the Project Site is located on the southwest corner of Saint Nicholas Avenue and West 122st Street, partially within an R7A zoning district and partially within an R8A (C2-4) zoning district, in Manhattan; and

WHEREAS, the Project Site has approximately 207 feet of frontage along Saint Nicholas Avenue, 66 feet of frontage along 122nd Street, 50 feet of frontage along West 121st Street, 20,606 square feet of lot area and is occupied by a two-story garage on Lot 30 and a gas station on Lot 35 that has been closed for a year; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 23, 2012, when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21 to permit a new 13-story mixed-use residential, commercial and community facility building containing a FRESH Program food store, a preschool and 164 residential units, contrary to use, lot coverage and parking regulations under ZR §§ 22-10, 23-145 and 25-23, on condition that, *inter alia*, a minimum of 30 accessory residential parking spaces be provided and maintained at 2280 Frederick Douglass Boulevard, in Manhattan; and

WHEREAS, on September 2, 2014, the Board granted the applicant’s request for a letter confirming that a reduction in the number of residential dwelling units from 164 to 127 and the resulting reduction in the number of parking spaces required at the site to 44 spaces-- less than the original requirement of 66 spaces but more than the 30 off-site parking spaces required by the Board’s prior approval—was in substantial compliance with the variance grant; and

WHEREAS, construction was to have been substantially completed by October 23, 2016, pursuant to ZR § 72-23; and

WHEREAS, the applicant represents that, though the structures existing on the Project Site at the time of the variance grant were demolished, construction has not been completed because of delays caused by: the length of time to obtain approvals from the City Planning Commission for participation in the FRESH Program, pursuant to ZR §§ 63-211 and 63-22; the complexity of engineering review required to obtain a permit from the Metropolitan Transit Authority for construction activity near a subway line; the unanticipated length of time in preparing and obtaining approval of plans for environment remediation under the New York State Brownfield Cleanup Program; litigation

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with a prior owner lasting for two years; and market conditions caused by the expiration of the 421-a tax exemption program; and

WHEREAS, the applicant represents that, with the abovementioned approvals now in place, it anticipates completing construction of the subject project in 24 to 30 months and seeks a four (4) year extension of time to complete construction; and

WHEREAS, the applicant asserts that there have been no substantial changes in the character and nature of the surrounding area since the grant of the variance; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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 October 23, 2012, so that as amended this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction and obtain a Certificate of Occupancy to October 23, 2020; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted; and *on further condition*:

THAT construction shall be completed and a Certificate of Occupancy shall be obtained within four (4) years, by October 23, 2020;

THAT a minimum of 30 accessory residential parking spaces shall be provided and maintained at 2280 Frederick Douglas Boulevard, Manhattan;

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

THAT prior to DOB’s issuance of any building permit, the New York City Office of Environmental Remediation (“OER”) must issue a Notice to Proceed pursuant to the site’s “E” designation and the NYS Brownfield Cleanup Agreement;

THAT prior to DOB’s issuance of a certificate of occupancy, OER must issue a Certificate of Completion and a Notice of Satisfaction;

THAT the parameters of the proposed building shall include the following: a maximum of 127 dwelling units and a total floor area of 168,837 square feet, as reflected on the BSA-approved plans stamped “September 2, 2014”—Twenty (20) sheets;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT the Board has not waived floor area or height regulations and notes that (1) the proposed floor area relies on certification by the City Planning Commission to allow a bonus of 16,190.97 square feet associated with the FRESH Program, pursuant to ZR § 63-211 and (2) the height relies on an authorization by the City Planning Commission to allow the proposed height associated with the FRESH Program, pursuant to ZR § 63-22; in the absence of such actions, the applicant must revise its plan and comply with underlying floor area and height regulations;

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

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

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, February 28, 2017.

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## **418-50-BZ**

APPLICANT – Law Office of Stuart Klein, for WOTC Tenants’ Corp., owner.

SUBJECT – Application November 21, 2014 – Amendment seek to modify the grant to allow for the addition of 98 parking spaces and the development of a clubhouses which will provide additional amenities and recreation space for the sole use and enjoyment of the residents at the premises, located in an R3-2 zoning district.

PREMISES AFFECTED – 73-69 217<sup>th</sup> Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74<sup>th</sup> Avenue (Block 7754, Lot 3); 73-10 220<sup>th</sup> Street (Block 7755, Lot 3), Borough of Queens.

## **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for postponed hearing.

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## **1255-80-BZ**

APPLICANT – Gerald J. Caliendo, RA. AIA, for Brett Morgan LLP, owner.

SUBJECT – Application November 23, 2014 – Extension of Term; Amendment and Waiver 72-01: request an extension of term for a previously expired variance that expired on 6/2/2011 and Amendment to change from the use (UG 17) to (UG6) and also require Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 35-33 31<sup>st</sup> Street, Block 00604, Lot 1, Borough of Queens.

## **COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for adjourned hearing.

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## **129-97-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Whitestone Plaza Associates Inc., owner.

SUBJECT – Application February 21, 2014 – Amendment to permit the proposed conversion of an existing lubricatorium to a commercial retail establishment (use group 6) and enlargement of the basement level. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 150-65 Cross Island Parkway, west side of Clintonville Street distant 176.60’ north of

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intersection of Cross Island Parkway and Clintonville Street, Block 04697, Lot 11, Borough of Queens.

## **COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for adjourned hearing.

## **169-98-BZ**

APPLICANT – Robert J. Stahl for Herbert D. Freeman, Albany Crescent Holding, LLC, owner.

SUBJECT – Application April 10, 2015 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on July 20, 2009; Amendment (§11-413) to permit a change of use to Automotive Repair Facility (UG 16B); Waiver of the Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 3141 Bailey Avenue, Block 3267, Lot 38, Borough of Bronx.

## **COMMUNITY BOARD #8BX**

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for adjourned hearing.

## **APPEALS CALENDAR**

## **2016-4139-A**

APPLICANT – Alexander Levkovich, for Zafar Mahmudov, owner.

SUBJECT – Application March 16, 2016 – Proposed construction of 2-story, 2-family semi-detached home not fronting on a legally mapped street contrary to General City Law 36, R3-1 zoning district.

PREMISES AFFECTED – 3737 Cypress Avenue, Block 6791, Lot 58, Borough of Brooklyn.

## **COMMUNITY BOARD #13BK**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.

## **2016-4186-A thru 2016-4207-A**

APPLICANT – Eric Palatnik, P.C., for Fulcrum Real Estate Advisors, LLC, owner.

SUBJECT – Application May 13, 2016 – Proposed construction for twenty-two single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law. R2 zoning district.

PREMISES AFFECTED – 150-11 / 15 / 19 / 23 / 27 / 31 / 35 / 37 / 43 / 49 / 53 / 12 / 18 / 22 / 26 / 32 / 36 / 42 / 50 / 56 / 60 / 66 Sullivan Drive, Block 4509, Lot(s) 16, 18, 20, 22, 24, 26, 28, 30, 34, 36, 78, 80, 82, 84, 86, 88, 90 92, 94, 06, and 98, Borough of Queens.

## **COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to March 7, 2017, at 10 A.M., for continued hearing.

## **2016-4253-A**

APPLICANT – Eric Palatnik, P.C., for Zev Johns, LLC, owner.

SUBJECT – Application September 14, 2016 – Appeal seeking a determination that the owner has acquired common law vested rights for a development commenced under the prior R7-1 district regulations. R3 Zoning district. PREMISES AFFECTED – 565 St. John’s Place, Block 1175, Lot 87, Borough of Brooklyn

## **COMMUNITY BOARD #8BK**

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for continued hearing.

## **2016-4256-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Stecher Street LLC, owner.

SUBJECT – Application September 20, 2016 – Proposed construction of a one family, two-story dwelling not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law. R1-2 (SRD) zoning district.

PREMISES AFFECTED – 147 Stecher Street, Block 6565, Lot 11, Borough of Staten Island.

## **COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.

## **ZONING CALENDAR**

## **6-14-BZ**

### **CEQR #14-BSA-099R**

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application January 9, 2014 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2525 Victory Boulevard, Block 1521, Lot 1, Borough of Staten Island.

## **COMMUNITY BOARD #1SI**

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Deputy Borough Commissioner, dated December 13, 2013, acting on Department of Buildings (“DOB”) Application No. 520146208, reads in pertinent part:

“ZR 73-01” “Per final CO 510027506F, dated 04/13/2010, BSA CAL 719-56 BZ shall expire on 04-27-2017. The proposed enlargement to the existing building used for automotive service station facility is contrary to previous approval

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under BSA calendar 719-56 BZ and therefore must be referred back to Board of Standards and Appeals”; and

WHEREAS, this is an application for a special permit pursuant to ZR §§ 73-211 and 73-03 to permit the expansion of an existing automotive service station (Use Group 16B) and conversion of the existing service bay to an accessory convenience store on a site located in an R3-2 (C2-1) zoning district; and

WHEREAS, a public hearing was held on this application on July 19, 2016, after due notice by publication in *The City Record*, with a continued hearing on December 6, 2016, the case was closed on that same date. On January 31, 2017 the case was reopened, and then to decision on February 28, 2017; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on condition that garbage pickup occur before 11:00 p.m.; 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 northwest corner of Victory Boulevard and Willowbrook Road, between Montauk Place and Wyona Avenue, in an R3-2 (C2-1) zoning district, on Staten Island; and

WHEREAS, the site has approximately 177 feet of frontage along Victory Boulevard, 103 feet of frontage along Willowbrook Road, 147 feet of frontage along Montauk Place, 24,945 of lot area, and is occupied by an existing automobile service station with an accessory one-story building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 25, 1957, when, under calendar number 719-56-BZ, the Board granted a variance to permit in a retail and residence use district the construction and maintenance of a gasoline service station with an accessory building and accessory uses including office, sales, a non-automatic car wash, minor repairs and lubritorium with curb cuts and a business entrance near a residence use district for a term of ten (10) years, expiring June 25, 1967; and

WHEREAS, on June 25, 1957, under calendar number 321-57-A, the Board granted an appeal pursuant to General City Law § 35 to permit the use of the portion of the site within the bed of Victory Boulevard to be used for entrance and exit to the site on condition that this portion of the site shall be paved, that no buildings or structures be erected thereon, and that when acquisition by the City of New York takes place, payment shall be determined by a court; and

WHEREAS, on April 21, 1987, under calendar number 1096-86-A, the Board granted an appeal to permit the use of self-service gasoline pumps contrary to Administrative Code § 27-4081(b) under certain safeguards for a term of five (5) years, which expired April 21, 1992; and

WHEREAS, the variance under calendar number 719-56-BZ was amended and extended from time to time; and

WHEREAS, most recently, on February 10, 2009, under calendar number 719-56-BZ, the Board granted an

application to waive of its rules, to reopen and extend the term of the variance to April 27, 2017, and to extend the time to obtain a certificate of occupancy to November 10, 2009; and

WHEREAS, the applicant proposes to enlarge the automotive service station’s existing 1,252-square-foot building by 1,175 square feet to a total floor area of 2,698 square feet and to convert the building to an accessory convenience store; and

WHEREAS, under ZR § 11-412, an amendment to the existing variance is not permitted because the applicant proposes an enlargement in excess of 50 percent of the building; and

WHEREAS, the applicant represents that, should the Board grant the special permit requested herein, the variance granted under calendar number 719-56-BZ would no longer be necessary; and

WHEREAS, ZR § 73-211 provides, in pertinent part: In any C2, C4, C6 or C7 District whose longer dimension is 375 feet or more (exclusive of land in *streets*), the Board of Standards and Appeals may permit *automotive service stations*, provided that the following findings are made:

- (a) that the site for such *use* has a minimum area of 7,500 square feet; and
- (b) that the site for any such *use* which is not located on an arterial highway or a major *street* has a maximum area of 15,000 square feet; and

WHEREAS, the Board confirms that the C2-1 zoning district in which the subject site is located has a length of more than 375 feet; the subject site has a minimum area of 7,500 square feet; and that the site is located on Victory Boulevard, a major street, rendering the maximum area provision of ZR § 73-211 inapplicable; and

WHEREAS, further pursuant to ZR § 73-211, the Board is required to prescribe the following conditions:

- (1) that any facilities for lubrication, minor repairs or washing are located within a *completely enclosed building*;
- (2) that the site is so designed as to provide reservoir space for five waiting automobiles within the *zoning lot* in addition to spaces available within an enclosed lubritorium or at the pumps;
- (3) that entrances and exits are so planned that, at maximum expected operation, vehicular movement into or from the *automotive service station* will cause a minimum of obstruction on *streets* or sidewalks;
- (4) that, along any *rear lot line* or *side lot line* adjoining a *Residence District*, the *zoning lot* is screened, as the Board may prescribe, by either of the following methods:
  - (i) a strip at least four feet wide, densely planted with shrubs or trees at least four feet high at the time of planting and which are of a type which may be

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- expected to form a year-round dense screen at least six feet high within three years; or
- (ii) a wall or barrier or uniformly painted fence of fire-resistant material at least six feet high, but not more than eight feet above finished grade. Such wall, barrier, or fence may be opaque or perforated, provided that not more than 50 percent of its face is open; and
- (5) that *signs*, other than *advertising signs*, shall be subject to the applicable district *sign* regulations, provided that:
- (i) in C2 Districts, the provisions of Sections 32-642 (Non-illuminated signs) and 32-643 (Illuminated non-flashing signs) shall be modified to permit non-*illuminated* or *illuminated non-flashing signs* with a total *surface area* not exceeding 150 square feet on any *zoning lot*; and
  - (ii) the provisions set forth in Section 32-652 (Permitted projection in all other Commercial Districts) may be modified in accordance with the provisions of Section 73-212 (Projection of accessory signs); and

WHEREAS, the applicant represents that the proposed automotive service station will not have facilities for lubrication, minor repairs or washing of automobiles outdoors and that the site provides seven (7) reservoir spaces, one (1) of which is an accessible space, on the zoning lot in addition to the spaces at the pumps; and

WHEREAS, in reference to vehicular movement on the site, the applicant provided a passenger-car circulation plan and traffic-assessment report and represents that existing access along Victory Boulevard and Willowbrook Road would be maintained; that the fueling island configuration would be modified to provide eight (8) fueling positions; that deliveries will not occur during peak periods of 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m.; that six (6) parking stalls are anticipated to be needed during peak demand; that, based on field observations at similar establishments, at most four (4) parking stalls are expected to be occupied during peak hours; that the site would effectively provide a total of 15 vehicle positions for the entire development at any given time; and that the on-site layout would provide efficient means of ingress and egress to not obstruct streets or sidewalks while also avoiding adversely affecting traffic or pedestrian conditions; and

WHEREAS, the applicant proposes a chain link fence with privacy slats along the Montauk Place frontage and the interior side lot line with planting and landscaping, including evergreen trees, along the perimeter of the site as a buffer between the site and residential property; and

WHEREAS, the applicant also proposes six (6) illuminated and three (3) non-illuminated signs, ranging in size from 12 square feet to 26 square feet, totaling 111

square feet along Willowbrook Road and 70 square feet along Victory Boulevard, none of which will face the nearby Residence District and none of which will project over the property line; and

WHEREAS, the applicant represents that the building will feature a full-height parapet along the building's rooftop perimeter to screen rooftop equipment and that such equipment has been located as far as possible from the edge of the building's roof to mitigate any potential audible or visual impacts on adjoining neighbors; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence that the findings set forth in ZR § 73-211 have been met; and

WHEREAS, the Board finds that the subject proposal will not interfere with an pending public improvement project; and

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-211 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS"), CEQR No. 14-BSA-099R, dated January 9, 2014; and

WHEREAS, the EAS documents that the proposed special permit for an automotive service station will not have significant adverse impacts on Land Use, Zoning and Public Policy, Socioeconomic Conditions, Community Facilities, Open Space, Shadows, Historic and Cultural Resources, Urban Design, Natural Resources, Hazardous Materials, Infrastructure, Solid Waste and Sanitation Services, Energy, Transportation, Air Quality, Greenhouse Gas Emissions, Noise, Public Health, Neighborhood Character or Construction Impacts; and

WHEREAS, the Board has determined that the operation of the automotive service station at the premises will not have a significant adverse impact on the environment.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-211 and 73-03 to permit the enlargement of an existing automotive service station (Use Group 16B) and conversion of the existing service bay to an accessory convenience store on a site located in an R3-2 (C2-1) zoning district; *on condition* that all work shall substantially conform to drawings filed with this application



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marked "Received February 17, 2017"- Eight (8) sheets"; and *on further condition*:

THAT all garbage pickup at the site shall occur before 11 p.m.;

THAT the remediation equipment enclosure currently on the site shall be removed from the site upon completion of the remedial work;

THAT the portion of the site within the bed of a mapped street shall be paved; no buildings or structures shall be erected thereon; and when acquisition by the City of New York takes place, payment shall be determined by the Court;

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

THAT a Certificate of Occupancy shall be obtained within four (4) years;

THAT substantial construction shall be completed in accordance with ZR § 73-70;

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

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

THAT the Department of Buildings must ensure compliance with all 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, February 28, 2017.

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## 2016-1211-BZ

APPLICANT – Eric Palatnik, P.C. for Albert Hasson, owner.

SUBJECT – Application January 19, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, lot coverage and open space (§23-141(b)). R3-1 zoning district.

PREMISES AFFECTED – 920 Shore Boulevard, Block 8746, Lot 107, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated December 29, 2015, acting on Application No. 321126483, reads in pertinent part:

"The proposed enlargement of one family dwelling, use group 1, Located within R3-1 zoning district is contrary to the following: Proposed floor area is contrary to ZR 23-141(b) . . ."; and

WHEREAS, the Board notes that since the time of this application, the Zoning Resolution has been amended and the text formerly found in ZR § 23-141(b), setting forth the maximum floor area ratio, open space and lot coverage permitted in an R3-1 zoning district, is now found at ZR § 23-142; thus, the Board treats the citation to ZR § 23-141(b) in DOB's objection as a citation to ZR § 23-142; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirement for floor area ratio ("FAR"), contrary to ZR § 23-142; and

WHEREAS, a public hearing was held on this application on September 20, 2016, after due notice by publication in *The City Record*, with a continued hearing on December 13, 2016, and then to decision on February 28, 2017; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, certain neighbors provided testimony in opposition to this application (the "Opposition") citing concerns regarding the proposal's compliance with the flood regulations contained in Appendix G of the 2014 New York City Building Code ("Appendix G") and that the proposal constituted a new building rather than an enlargement; and

WHEREAS, the subject site is located on the southwest corner of Shore Boulevard and Hastings Street, in an R3-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 85 feet of frontage along Hastings Street, 108 feet of frontage along Shore Boulevard and 11,367 square feet of lot area; and

WHEREAS, the site is occupied by a two-story, plus attic and cellar, single-family residence with 3,773 square feet of floor area, an FAR of 0.33, 15 percent lot coverage and 85 percent open space; and

WHEREAS, the site is also located in Zone AE, an area of special flood hazard, on FEMA's Preliminary Flood Insurance Rate Map ("FIRM") and, accordingly, the Board considered whether the proposal was required to comply with Appendix G; and

WHEREAS, the applicant was referred to DOB's Technical Affairs and Code Development Unit for further information regarding the subject proposal's compliance with Appendix G; and

WHEREAS, the applicant was advised that compliance with Appendix G required flood vents to be provided for the lowest floor and, as a result, revised the plans to include flood vents at the building's lowest level in addition to the applicant's existing proposal to dry flood proof the cellar and elevate the first floor of the residence to 13 feet NAVD88; and

WHEREAS, ZR § 73-622 provides that: The Board of Standards and Appeals may permit an *enlargement* of an existing *single-* or *two-*

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*family detached or semi-detached residence* within the following areas:

- (a) Community Districts 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, among other things, 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 detached residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant seeks to increase the floor area of the residence from 3,773 square feet (0.33 FAR) to 9,529 square feet (0.84 FAR); and

WHEREAS, the applicant originally proposed to increase the floor area to 10,281 square feet (0.90 FAR) and increase the lot coverage from 15 percent to 36 percent, but modified the proposed enlargement in response to the Board's concerns about its massing in the context of the existing neighborhood; and

WHEREAS, at the subject premises, the maximum FAR permitted is 0.50 (5,683 square feet of floor area) pursuant to ZR 23-142(a), which permits an increase of the otherwise 0.50 maximum FAR by up to 20 percent, provided that such increase is located directly under a sloping roof which rises at least 3.5 inches in vertical distance for each foot of horizontal distance and the structural headroom of such floor area is between five and eight feet; and

WHEREAS, the applicant represents that the enlarged building is consistent with the essential character of the neighborhood; and

WHEREAS, in support of this assertion, the applicant surveyed properties within the immediate area surrounding the subject site occupied by single- or two-family residences, finding that 12 have between 8,000 and 11,725 square feet of floor area with FARs ranging from 0.67 to 1.69, and a residence immediately adjacent to the subject site has 11,252 square feet of floor area (1.03 FAR); and

WHEREAS, in addition to the floor area study, the applicant also submitted a photographic streetscape diagram, lot coverage diagram, aerial photographs and a building width diagram to support that the enlarged building would not alter the neighborhood's eclectic character, particularly in light of the subject site's location on the corner of a wide street; and

WHEREAS, in response to questions posed by the Opposition and the Board regarding the true character of the proposal as an enlargement, rather than new construction, the applicant revised the plans to show the retention of 100

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percent of the existing foundation walls and 63 percent of the existing perimeter walls on the first and second floors; and

WHEREAS, based upon its review of the record, the Board finds that the enlarged residence proposed 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 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirement for floor area ratio, contrary to ZR § 23-142; *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 February 24, 2017”-Fourteen (14) sheets; and *on further condition*:

THAT the maximum floor area of the building shall be 9,529 square feet (0.84 FAR), as illustrated on the BSA-approved plans;

THAT the removal of any existing exterior walls indicated to remain on the BSA-approved plans shall void the special permit;

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 special 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 28, 2017.

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## 2016-4126-BZ

### CEQR #16-BSA-082M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 670 Broadway Owner LP, owner; Equinox 670 Broadway, Inc., lessee.

SUBJECT – Application February 24, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Equinox*) within an existing building. M1-5B zoning district.

PREMISES AFFECTED – 670 Broadway, Block 530, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #2M

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

condition.

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”) Manhattan Borough Commissioner, dated January 11, 2017, acting on DOB Application No. 122928788, reads in pertinent part:

“The proposed Physical Culture Establishment located in an M1-5B Zoning District is contrary to ZR 42-[10] and requires a special permit from the Board of Standards and Appeals”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located in an M1-5B zoning district and within the NoHo Historic District, the operation of a physical culture establishment (“PCE”) on portions of the sub-cellar, cellar, first, second, mezzanine and third floors of an existing five-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on January 31, 2017, after due notice by publication in The City Record, and then to decision on February 28, 2017; and

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

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

WHEREAS, the subject site is located on the northeast corner of Bond Street and Broadway, in an M1-5B zoning district within the NoHo Historic District, in Manhattan; and

WHEREAS, the site has approximately 130 feet of frontage along Bond Street, 86 feet of frontage along Broadway, 11,125 square feet of lot area and is occupied by a five-story, with cellar and sub-cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such use is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such use contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [sic] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction,

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- aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies a total of 22,293 square feet of floor area in the subject building: 1,035 square feet of floor space in the sub-cellar, 9,345 square feet of floor space in the cellar, 1,910 square feet of floor area on the first floor, 9,470 square feet of floor area on the second floor, 1,443 square feet of floor area on the second-floor mezzanine and 9,470 square feet of floor area

on the third floor; and

WHEREAS, the PCE has been in operation as Equinox since December 12, 2016; and

WHEREAS, the applicant represents that the sub-cellar contains mechanical space; the cellar contains locker rooms, steam and spa areas, a Pilates studio, laundry facilities, offices and storage; the first floor has an entry lobby, accessible from Bond Street, juice bar and retail shop; the second floor has a sales office as well as strength, cardiovascular equipment and cycling areas; the second-floor mezzanine contains employee areas and storage; and the third floor includes additional cardiovascular equipment areas, yoga space and areas dedicated to stretching and group fitness; and

WHEREAS, the applicant represents that all massages are performed by New York State licensed therapists and submitted licenses for three massage therapists who provide massages within the PCE; and

WHEREAS, the PCE's hours of operation are Monday through Friday, 5:00 a.m. to 11:30 p.m., Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant states that there is no foreseeable adverse effect on the privacy, quiet, light and air in the surrounding area and that, therefore, the proposed PCE will not impair the essential character or future use or development of the area; and

WHEREAS, with regards to sound attenuation in the PCE, the applicant represents that noise abatement measures shall be provided in the PCE space to ensure that sound levels in other portions of the building—including sound emanating from any sound system, if installed—do not exceed a maximum interior noise level of 45 dBA; and

WHEREAS, the applicant additionally represents that no sound issues associated with the proposed PCE use are anticipated as the PCE is located within a manufacturing district; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to the use of the premises, the applicant represents that the PCE contains facilities for physical-improvement, body-building, weight-reduction and aerobics programs; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant has submitted plans to the Board indicating that the PCE is fully sprinklered and that an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to a Fire Department-approved central station—is installed in the entire PCE space; and

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WHEREAS, the applicant has also provided documentation confirming that DOB has inspected and approved the sprinkler system installed at the premises and a fire alarm; and

WHEREAS, the Fire Department states that, based on its review of the drawings and supporting documentation for the PCE, it has no objection to this application; and

WHEREAS, the Landmarks Preservation Commission (“LPC”) issued Certificate of No Effect No. 17-7757, dated October 13, 2015, and expiring October 15, 2019; No. 18-7321 dated June 15, 2016, and expiring June 15, 2020, and No. 19-0793, dated July 15, 2016, and expiring July 15, 2020, for alterations associated with the subject PCE application, finding that the work will have no effect on significant protected features of the building; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant states that the PCE will not interfere with any pending or approved public improvement project; and

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

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16-BSA-082M, dated February 24, 2016; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; 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 Type I Negative Declaration 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 an M1-5B zoning district and the NoHo Historic District, the operation of a physical culture establishment (“PCE”) on portions of the sub-cellar, cellar, first, second, mezzanine and third floors of an existing five-story commercial building, contrary to ZR § 42-10; on condition that all work shall substantially conform to drawings filed with this application marked “September 27, 2016”-Seventeen (17) sheets; and on further condition:

THAT the term of this grant shall be for ten (10) years, expiring December 12, 2026;

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

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT the installed sprinklers and interior fire alarm systems shall be maintained;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT noise abatement provided in the PCE space shall ensure that sound levels in other portions of the building do not exceed the maximum interior noise level of 45 dBA—including sound emanating from any sound system, if installed;

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

THAT a Certificate of Occupancy shall be obtained within one (1) year, by February 28, 2018;

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, February 28, 2017.

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**322-13-BZ**

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

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

PREMISES AFFECTED – 42-01 Main Street, southeast corner of the intersection of Main Street and Maple Avenue,

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Block 5135, Lot 1, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for adjourned hearing.

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**302-14-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Stanfordville, LLC, owner.

SUBJECT – Application November 10, 2014 – Special Permit (§73-125) to allow proposed ambulatory diagnostic or treatment health care facility in excess of 1500 sq. ft. in a two-story mixed use building. R3X zoning district.

PREMISES AFFECTED – 45-05 Francis Lewis Boulevard, southeast corner of intersection of Francis Lewis Boulevard and 45<sup>th</sup> Avenue. Block 5538, Lot 30. Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for adjourned hearing.

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**104-15-BZ**

APPLICANT – Rosenberg & Estis, P.C. by Frank E. Chaney, Esq., for 4452 Broadway Mazal LLC, owner.

SUBJECT – Application May 12, 2015 – Variance (§72-21) to permit the development of a mixed-use residential building with retail contrary to underlying bulk and use regulations. R7-2 zoning district with C2-4 overlay.

PREMISES AFFECTED – 4452 Broadway aka 44-90 Fairview Avenue, Block 2170, Lot(s) 62, 400, Borough of Manhattan.

**COMMUNITY BOARD #12M**

**ACTION OF THE BOARD** – Off Calendar.

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**172-15-BZ**

APPLICANT – Eric Palatnik, P.C., for 146-45 22<sup>nd</sup> Avenue LLC, owner.

SUBJECT – Application July 31, 2015 – Variance (§72-21) to permit the development of a 1,796 square foot two-story with cellar two (2) family dwelling contrary to underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 146-45 22<sup>nd</sup> Avenue, Block 4637, Lot 47, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for adjourned hearing.

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**216-15-BZ**

APPLICANT – Eric Palatnik, P.C., for Gasteria Oil Corp., owner.

SUBJECT – Application September 2, 2015 – Special Permit (§73-211): to authorize the construction of an automotive service station and accessory convenience store on an irregularly shaped lot, located within an C2-4 zoning district.

PREMISES AFFECTED – 205 West Fordham Road, West

6 Frame Road bordering Sedgwick Avenue. Block 3236, Lot 0220. Borough of the Bronx.

**COMMUNITY BOARD #7BX**

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for continued hearing.

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**2016-4138-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 323 Sixth LLC, owner; IFC Center, lessee.

SUBJECT – Application March 16, 2016 – Variance (§72-21) for an enlargement of an existing motion picture theater (*IFC Center*) contrary to both use and bulk requirements. C1-5/R7-2 & R6 zoning district.

PREMISES AFFECTED – 323-27 Avenue of the Americas, Block 589, Lot(s) 19, 30, 31, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for continued hearing.

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**REGULAR MEETING**

**TUESDAY AFTERNOON, FEBRUARY 28, 2017**

**1:00 P.M.**

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

**ZONING CALENDAR**

**178-14-BZ**

APPLICANT – Sheldon Lobel, P.C., for NLO Holding Corp., owner.

SUBJECT – Application July 24, 2014 – Variance (§72-21) seek a waiver of Section 22-10 ZR to permit a Use Group 6 retail use on the ground floor with accessory cellar storage a proposed four-story, two unit building located with an R6A zoning district.

PREMISES AFFECTED – 263 McGuinness Boulevard aka 261 McGuinness Boulevard, Block 2559, Lot 32, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.

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**226-14-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Sharey Tefilah, owner.

SUBJECT – Application September 18, 2014 – Variance (§72-21) to permit the proposed three (3) story use group 4 Synagogue, school and Rabbi's office. R4 zoning district.

PREMISES AFFECTED – 147-02 76<sup>th</sup> Road, Block 6686, Lot 1, Borough of Queens.

**COMMUNITY BOARD #8Q**

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**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for continued hearing.  
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**317-14-BZ**

APPLICANT – Brian Cave LLP, for Acadia 3780-3858 Nostrand Avenue LLC, owner.

SUBJECT – Application December 4, 2014 – Special Permit (§73-44): that would allow the reduction in the number of off street parking spaces for ambulatory diagnostic treatment facilities listed in use group 4 and Uses in Parking Requirement Category Br, located within and C2-2/R4 zoning district.

PREMISES AFFECTED – 3780-3860 Nostrand Avenue, Block 7445, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.  
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**25-15-BZ**

APPLICANT – Slater & Beckerman, P.C., for The Roman Catholic Church of St. John the Baptist, owner; 71-85 Lewis Avenue LLC, lessee.

SUBJECT – Application February 17, 2015 – Special Permit (73-46) to allow a waiver of all required accessory off-street parking spaces required for dwelling units created by a conversion a five-story community facility, located within an R6B zoning district.

PREMISES AFFECTED – 71 Lewis Avenue, Block 1592, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for continued hearing.  
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**200-15-BZ**

APPLICANT – Dennis D. Dell’Angelo, for Baruch M. Wieder, owner.

SUBJECT – Application August 27, 2015 – Special Permit (§ZR 73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1364 East 23<sup>rd</sup> Street, Block 7568 Lot 76, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.  
-----

**2016-4237-BZ**

APPLICANT – Eric Palatnik, P.C., for 232 Smith Street LLC, owner; Crunch LLC, lessee.

SUBJECT – Application August 9, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Crunch*) within a new commercial building. C2-4/R6B zoning district.

PREMISES AFFECTED – 240 Smith Street, Block 408, Lot 41, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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 March 7, 2017, at 10 A.M., for decision, hearing closed.  
-----

**2017-46-BZ**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Mathew Loughran, owner.

SUBJECT – Application February 16, 2017– Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 35 Nova Court, Block 8866, Lot 1398, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to March 7, 2017, at 10 A.M., for postponed hearing.  
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*Ryan Singer, Executive Director*

# MINUTES

## \*CORRECTION

**This resolution adopted on June 16, 2015, under Calendar No. 619-73-BZ and printed in Volume 100, Bulletin Nos. 25-26, is hereby corrected to read as follows:**

### 619-73-BZ

APPLICANT – Sheldon Lobel, P.C., for CI Gateway LL, owner.

SUBJECT – Application October 23, 2014 – Re-instatement of a variance (§72-21) which permitted the operation of an eating and drinking establishment (UG 6) with an accessory drive thru which expired on February 26, 2004; Amendment to permit the redevelopment of the site; Waiver of the Rules.

R4 zoning district.

PREMISES AFFECTED – 2940 Cropsey Avenue, front of Bay 52nd Street, Cropsey Avenue and 53rd Street, Block 6949, Lot 37, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

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

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a re-opening and an extension of term for a variance permitting an eating and drinking establishment within a residence district, which expired on February 26, 2004, and an amendment of the aforesaid variance to permit the reinstatement of an eating and drinking establishment use and a new drive-in bank use at the subject premises; and

WHEREAS, a public hearing was held on this application on April 28, 2015, after due notice by publication in *The City Record*, with a continued hearing on June 2, 2015, and then to decision on June 16, 2015; and

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

WHEREAS, Community Board 13, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site has frontage on Bay 52<sup>nd</sup> Street, Cropsey Avenue and Bay 53<sup>rd</sup> Street and is thus a through lot as well as a corner lot, within an R4 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 200 feet of frontage along Cropsey Avenue, 92 feet of frontage along Bay 52<sup>nd</sup> Street and 107 feet of frontage along Bay 53<sup>rd</sup> Street; and

WHEREAS, the site has approximately 19,960 sq. ft. of lot area and is occupied by a vacant one-story eating and drinking establishment with 19 parking spaces; it was operated as a Burger King franchise until November, 2011, and has been

vacant since that time; and

WHEREAS, the Board has exercised jurisdiction over the site since February 26, 1974, when, under the subject calendar number, it granted, pursuant to ZR § 72-21, an application to permit in an R4 zoning district the construction of a one-story building to be operated as an eating and drinking establishment (Use Group 6) with accessory signage and parking, contrary to use regulations, for a term of ten (10) years, to expire on February 26, 1984; and

WHEREAS, the variance was amended at various times in subsequent years, including on June 5, 1979, when the Board amended the grant to authorize the operation of an accessory drive-through and the reconfiguration of parking spaces at the site; and

WHEREAS, on March 18, 1986, also under the subject calendar number, the Board, upon waiving its Rules of Practice and Procedure, reopened and amended the grant to include an extension of term for a period of ten years, expiring on February 26, 1994; and

WHEREAS, on August 9, 1988, also under the subject calendar number, the Board reopened and amended the grant to permit the enlargement of the existing building, add a vestibule and alter the dining area within the building; and

WHEREAS, on October 20, 1998, also under the subject calendar number, the Board, upon waiving its Rules of Practice and Procedure, reopened and amended the grant to extend the term of the variance for a period of ten (10) years, expiring on February 26, 2004; and

WHEREAS, the applicant now seeks, upon a waiver of the Board's Rules of Practice and Procedure, an extension of the term of the variance for a period of ten (10) years and an amendment of the variance to permit a new eating and drinking establishment and drive-in bank at the site (both of which are proposed to be within the footprint of the existing building); and

WHEREAS, the applicant proposes to maintain the majority of the Use Group 6 eating and drinking establishment within the footprint of the existing building but to eliminate the existing accessory drive-through, thereby reducing the required number of parking spaces at the site and eliminating the outdoor menu board and amplified intercom system; the applicant further proposed to construct a new Use Group 6 drive-in bank with approximately 150 square feet of floor area, also within the footprint of the existing building, which would be accessed via the existing drive-through lane; and

WHEREAS, the applicant notes that the site contains 19 parking spaces, four fewer than the 23 spaces which were required under the Board's previous grant, and states that the removal of four spaces resulted from the previous owner's installation of a curb cut at Bay 52<sup>nd</sup> Street; and

WHEREAS, the applicant proposes to eliminate the curb cut at Bay 52<sup>nd</sup> Street, restore the four previously eliminated parking spaces and add three additional spaces, increasing the total number of parking spaces on the site to 26, which would comply with the parking regulations applicable in a C1-1 zoning district (which would require 22 parking spaces); and

WHEREAS, the applicant states that the parking spaces will comply with all applicable provisions of ZR § 36-50 with



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# MINUTES

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respect to the size of parking spaces, maneuverability, travel lanes and minimum turnarounds, as if the site were located in a C1-1 zoning district; and

WHEREAS, pursuant to 2 RCNY § 1-07.3(b)(4)(ii), the Board may reinstate a use variance granted pursuant to a post-1961 variance where, as here, the grant is limited to a term that is specified only as a condition in the Board's resolution as, an amendment to modify such term; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may, in appropriate cases, allow an extension of the term of a variance; and

WHEREAS, at hearing, the Board directed the applicant to add signage directing drivers to yield for pedestrians; and

WHEREAS, the applicant provided the Board with updated plans depicting four signs, located at the entrance and exist to the drive-in bank lane, directing drivers to yield for pedestrians; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made for an extension of term under ZR §§ 72-01 and 72-22.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated February 11, 2003, so that as amended the resolution reads: "to permit an extension of the term of the variance for an additional ten years to expire on June 16, 2025; *on condition* that all work will substantially conform to drawings, filed with this application marked "Received, June 4, 2015" – (11) sheets; and on further condition:

THAT the term of the variance shall expire on June 16, 2025;

THAT the signage shall comply with the C1 regulations;

THAT landscaping shall be maintained in accordance with the BSA-approved plans;

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

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

THAT a certificate of occupancy shall be obtained by June 16, 2016;

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

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

Adopted by the Board of Standards and Appeals, June 16, 2015.

**\*The resolution has been amended.  
Corrected in Bulletin Nos. 9-10, Vol. 102, dated March 2, 2017.**

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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 102, No. 11

March 16, 2017

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### DIRECTORY

MARGERY PERLMUTTER, *Chair*

VACANT, *Vice-Chair*

DARA OTTLEY-BROWN

EILEEN MONTANEZ

SHAMPA CHANDA

*Commissioners*

Ryan Singer, *Executive Director*

Loreal Monroe, *Counsel*

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New Case Filed Up to March 7, 2017  
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**2017-57-BZ**

18-20 Bergen Street, located on the southerly side of Bergen Street between Court Street and Boerum Place, Block 00384, Lot(s) 15, 16 & 172, Borough of **Brooklyn, Community Board: 2**. Variance (§72-21) to permit the enlargement of an existing School (Mary McDowell Friends School) UG 3 contrary to ZR §24-11 (floor area increased the degree of non-compliance and lot coverage); ZR §23-33 (opposed 2 story addition in the rear yard is not a permitted obstruction); ZR § 23-662a (maximum base height of the street wall exceeds the maximum permitted); and ZR §23-662c (Proposed enlargement does not comply with the initial setback distance. R6A and R6B zoning districts. R6A & R6B district.  
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**2017-58-A**

7 East 69th Street, located on the north side of East 69th Street, 200 feet from the intersection formed by East 69th Street and Fifth Avenue, Block 01384, Lot(s) 11, Borough of **Manhattan, Community Board: 8**. Appeal of a determination of the New York City Fire Department that the subject property is in violation of §901.5 of the New York City Code. R8B zoning district. R8B district.  
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**2017-59-A**

3857 Ocean view Avenue, located on Oceanview Avenue between Highland and Sea Gate Avenue, Block 06955, Lot(s) 5, Borough of **Brooklyn, Community Board: 13**. Proposed enlargement of a one family home to a one family home with attic and community facility (UG 3) day care not fronting on a legally mapped street, contrary to General City Law 36. R3-1 zoning district. R3-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**REGULAR MEETING  
APRIL 4, 2017, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, April 4, 2017, 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**

**1259-79-BZ**

APPLICANT – Sheldon Lobel, P.C., for 29 West 26<sup>th</sup> LLC, owner.

SUBJECT – Application June 8, 2016 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy for a Variance (§72-21) to convert the fourth and sixth floors of an existing building from manufacturing lofts to residential use which expired on May 8, 2016. M1-6 zoning district.

PREMISES AFFECTED – 29 West 26<sup>th</sup> Street, Block 828, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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**REGULAR MEETING  
APRIL 4, 2017, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, April 4, 2017, 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**

**224-14-BZ/225-14-A**

APPLICANT – Eric Palatnik, P.C., for 1534 Victory Boulevard LLC, owner.

SUBJECT – Application September 15, 2014 – Variance (§72-21) to for ambulatory diagnostic or healthcare treatment facility (medical office) (UG 4) located in an R1-2 zoning district. Also a companion GCL 35 as portion of the roadway is within a mapped street. R1-2 zoning district.

PREMISES AFFECTED – 1534 Victory Boulevard, Block 695, Lot 81, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**178-15-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Margarita Bravo, owner.

SUBJECT – Application August 6, 2015 – Variance (§72-21) to permit the legalization of a two-family dwelling that exceeds permitted FAR and does not provide required front, side and rear yards. R3-1 zoning district.

PREMISES AFFECTED – 99-47 Davenport Court, Block 14243, Lot 1110, Borough of Queens.

**COMMUNITY BOARD #10Q**

-----

**270-15-BZ**

APPLICANT – Moshe M. Friedman, PE, for 338 Devoe St LLC, owner.

SUBJECT – Application December 10, 2015 – Variance (§72-21) to permit the construction of a 3 story residential building contrary to use regulations. M1-1 zoning district. M1-1 district.

PREMISES AFFECTED – 338 Devoe Street, Block 2924, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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**2016-4127-BZ**

APPLICANT – Dennis D. Dell’Angelo, for 1547 East 26<sup>th</sup> Street, LLC, owner; Israel Stern, lessee.

SUBJECT – Application February 26, 2016 – Special Permit (§73-622) for the enlargement of an existing single-family residence contrary to floor area and lot coverage (ZR §23-141); perimeter wall height (ZR§23-631) and less than the required rear yard (ZR §23-47). R3-2 zoning district.

PREMISES AFFECTED – 1547 East 26<sup>th</sup> Street, Block 6773, Lot 77, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Ryan Singer, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, MARCH 7, 2017 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 26-94-BZ

APPLICANT – Eric Palatnik, P.C., for CDC Realty, owner.  
SUBJECT – Application December 4, 2015 – Extension of Term of a Special Permit (§73-242) for a (UG6) eating and drinking establishment (*The Mansion Grand*) which expires on March 5, 2016; Amendment. C3A (SSRD) zoning district.

PREMISES AFFECTED – 141 Mansion Avenue, Block 5201, Lot 33, Borough of Staten Island.

#### COMMUNITY BOARD #3SI

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, this is an application for a reopening, amendment and extension of term of a previously granted special permit for an eating and drinking establishment (Use Group 6), which expired on March 5, 2016; and

WHEREAS, a public hearing was held on this application on October 18, 2016, after due notice by publication in *The City Record*, with a continued hearing on January 31, 2017, and then to decision on March 7, 2017; and

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

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

WHEREAS, the subject site is located on the southwest corner of Mansion Avenue and McKee Avenue, in a C3A zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the subject site has approximately 104 feet of frontage on McKee Avenue, 100 feet of frontage on Mansion Avenue, 10,400 square feet of lot area, and is occupied by an existing two-story commercial building used as an eating and drinking establishment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 2, 1985, when, under BSA Calendar No. 826-84-BZ, the Board granted a special permit under ZR § 73-242 to permit the construction of an two-story plus cellar eating and drinking establishment for a term of five (5) years, expiring April 2, 1990; and

WHEREAS, on March 5, 1996, under the subject

calendar number, the Board reestablished the expired special permit, extending the term for an additional five (5) years to expire March 5, 2001, with hours of operation limited to 8:00 a.m. to midnight, Sunday through Thursday and 8:00 a.m. to 2:00 a.m. Friday and Saturday; and

WHEREAS, on December 4, 2001, June 6, 2006, and November 9, 2010, under the subject calendar number, the Board extended the term for additional five (5) year terms, the latest of which expired on March 5, 2016; and,

WHEREAS, the applicant now requests an additional extension of the term as well as an amendment in order to make interior renovations and the addition of approximately 768 square feet of floor area to the building; and

WHEREAS, at the hearing, the Board expressed concerns about existing site conditions—including the maintenance of fencing surrounding the site and landscaping of the parking lot, lighting of the site, refuse storage and the accessibility of the eating and drinking establishment for persons with disabilities—as well as the potential adverse noise effects of a proposed new covered terrace at the site; and

WHEREAS, in response, the applicant submitted photographs reflecting improved site conditions, such as replaced fencing and landscaping as well as enclosures for existing HVAC equipment and refuse, clarified that handicap access is provided by a ramp and push button door opener at the rear of the building, that the purpose of the terraces is to infuse the restaurant with light and air, not provide additional seating for patrons, and provided a noise impact study concluding that opening the doors to the terrace will not exceed the thresholds permitted by the New York City Noise Code; and

WHEREAS, with regards to parking, the applicant states that, pursuant to ZR § 36-21, the enlarged building, with 4,570 square feet of floor area, triggers a parking requirement of 30 spaces, and that 23 spaces will be provided by attended parking on site and the remaining seven spaces will be provided at off-site at 142 Mansion Avenue, a location within 600 feet as required under ZR § 36-43, pursuant to a 50-year lease, thus satisfying the requirements of ZR § 36-45; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03(b), the Board finds that the subject special permit will not interfere with any public improvement project; and

WHEREAS, the Board notes that ZR § 73-03 subsections (c) and (d) are inapplicable to the subject application; and

WHEREAS, § 73-242 currently mandates a term of no more than five (5) years and, thus, pursuant to ZR § 73-03(e), the Board's imposition of a five (5) year term is not at the Board's discretion; and

# MINUTES

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, the Board finds that the proposed enlargement would be permitted under ZR § 73-242, noting specifically that the capacity of the enlarged establishment will not exceed a capacity of 200 persons, are required under ZR § 73-03(g); and

WHEREAS, based upon the above, the Board finds the requested extension and amendment appropriate, with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals reopens and amends the resolution, as adopted on March 5, 1996, as amended through November 9, 2010, so that as amended this portion of the resolution shall read: “to extend the term for a period of five (5) years from March 5, 2016, to expire on March 5, 2021, *on condition* that the use shall substantially conform to drawings as filed with this application, marked ‘Received March 7, 2017’– Ten (10) sheets; and *on further condition*:

THAT the term of this grant shall expire on March 5, 2021;

THAT the hours of operation shall be limited to 8:00 a.m. to midnight Sunday through Thursday and 8:00 a.m. to 2:00 a.m. Friday and Saturday;

THAT on-site valet parking shall be in place during all hours of operation;

THAT the entrance to the parking lot shall be made secure after business hours with a chain to prevent unauthorized entry;

THAT landscaping and street trees shall be planted and replaced as necessary in accordance with BSA approved plans;

THAT a sign shall remain posted at the exit on McKee Avenue prohibiting left turns as shown on plans;

THAT all identification and business signs shall be oriented towards Mansion Avenue;

THAT the term of this grant shall not exceed the duration of the 50-year lease permitting off-site parking at 142 Mansion Avenue, Staten Island;

THAT any change to the location of off-site parking shall require the Board’s prior consent;

THAT the terrace doors shall be closed if noise levels exceed 40 dBA, as measured from three feet inside the nearest residential window, if noise becomes a nuisance on the street or if noise complaints are lodged with New York City complaint reporting systems (including but not limited to 311) or the Board;

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

THAT a revised Certificate of Occupancy shall be obtained within one (1) year;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect and shall be listed on the certificate of occupancy;

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)/configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, March 7, 2017.

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## 66-96-BZ

APPLICANT – Francis R. Angelino, Esq., for Haug Properties, LLC, owner; Epiphany Community Nursery School, lessee.

SUBJECT – Application June 21, 2016 – Extension of Term of a previously approved Special Permit (§73-19) permitting the operation of a day care center school (UG 3) which expires on August 6, 2016. M1-4 zoning district.

PREMISES AFFECTED – 510 East 74<sup>th</sup> Street, Block 1485, Lot 45, Borough of Manhattan.

## COMMUNITY BOARD #8M

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a previously granted special permit for the operation of a school within an M1-4 zoning district, which expired on August 6, 2016; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in *The City Record*, with a continued hearing on March 7, 2017, and then to decision on the same date; and

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

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

WHEREAS, the subject site is located on the southern side of East 74<sup>th</sup> Street, between York Avenue and Franklin D. Roosevelt East River Drive, within an M1-4 zoning district, approximately 50 feet east of an R10 zoning district, in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along East 74<sup>th</sup> Street, 102 feet of depth, 5,108 square feet of lot area and is occupied by a three-story, with penthouse, community-facility building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 6, 1996, when, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-19 to permit a day care center (Use Group 3 school) within the subject M1-4 zoning district, contrary to ZR § 42-10, for a term of twenty (20) years, expiring August 6, 2016; and

# MINUTES

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional twenty (20) years; and

WHEREAS, in response to concerns raised by the Board regarding the use of public streets for stroller storage, the applicant submitted revised plans reflecting stroller racks within the entry corridor that accommodate 28 strollers and leave adequate room for egress; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03(b), the Board finds that the subject special permit will not interfere with any public improvement project; and

WHEREAS, the Board notes that ZR § 73-03 subsections (c),(d) and (g) are inapplicable to the subject application; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, and in accordance with ZR § 73-03(e), the Board finds an additional twenty (20) year term 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 6, 1996, so that as amended this portion of the resolution shall read: “to extend the term for a period of twenty (20) years from August 6, 2016, to expire on August 6, 2036; *on condition* that the use shall substantially conform to drawings filed with this application marked ‘Received February 14, 2017’-seven (7) sheets; and *on further condition*:

THAT this special permit shall be limited to a term of twenty (20) years to expire on August 6, 2036;

THAT no strollers shall be stored on the sidewalk in front of the premises;

THAT the mechanical equipment shall be located and enclosed as set forth in the Board-approved plans and shall comply with the New York City Noise Code;

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

THAT a new certificate of occupancy shall be obtained by March 7, 2018;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 7, 2017.

## 149-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Brodcom West Development Company, LLC, owner; TSI West End, LLC dba New York Sports Club, lessee.

SUBJECT – Application July 28, 2016 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*New York Sports Club*) which expires on July 30, 2016. C4-7 zoning district.

PREMISES AFFECTED – 75 West End Avenue, Block 1171, Lot 63, Borough of Manhattan.

## COMMUNITY BOARD #7M

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on July 30, 2016; and

WHEREAS, a public hearing was held on this application on March 7, 2017 after due notice by publication in *The City Record*, and then to decision on March 7, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and  
WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of West End Avenue and West 63rd Street, within a C4-7 zoning district, in Manhattan; and

WHEREAS, the site has approximately 413 feet of frontage on West End Avenue, 240 feet of frontage along West 63rd Street, 75,484 square feet of lot area and is occupied by a 38-story mixed residential-and-commercial buildings; and

WHEREAS, the zoning lot is part of a general large-scale development that expressly contemplated the inclusion of a PCE, and the PCE is located within the northern building with frontage on West 63rd Street (the “subject building”); and

WHEREAS, the Board has exercised jurisdiction over the site since July 30, 1996, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the existing PCE in the basement and a portion of the first floor of the subject building for a term of ten (10) years, expiring July 30, 2006; and

WHEREAS, on July 10, 2007, under the subject



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calendar number, the Board granted a waiver of its Rules of Practice and Procedure, reopened and extended the term of the special permit for ten (10) years, expiring July 30, 2016; and

WHEREAS, on February 10, 2014, the Board issued a letter of no objection the change in ownership of the facility from Crunch to New York Sports Club; and

WHEREAS, the previous term of the special permit having expired, the applicant now seeks an extension of term for an additional ten (10) years; and

WHEREAS, the facility remains in operation as New York Sports Club with the following hours of operation: Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant notes that the PCE continues to occupy 15,765 square feet of total floor area in the building, 1,749 square feet of floor area in the basement and 14,016 square feet of floor area on the first floor, as previously approved by the Board; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03 subsections (d) and (g) are inapplicable to the subject application; and

WHEREAS, § 73-36 mandates a term not to exceed ten (10) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to extend ten (10) years; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension 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 July 30, 1996, as amended through July 10, 2007, 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, expiring July 30, 2026, *on condition* that the site shall substantially conform to drawings as filed with this application, marked “Received July 28, 2016”- Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years from July 30, 2016, expiring July 30, 2026;

THAT there shall be no change in ownership or

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

THAT the rooftop air conditioning unit shall comply with the New York City Noise Control Code and shall be in compliance with Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by the Department of Buildings;

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

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

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

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

Adopted by the Board of Standards and Appeals, March 7, 2017.

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## 48-12-BZ

APPLICANT – Meister Seelig & Fein LLP, for IGS Realty Co., owner.

SUBJECT – Application August 30, 2016 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the legalization of an existing 14-story commercial building for use as offices, contrary to Special Garment Center District regulations (ZR §121-11) which expires on September 11, 2016. C6-4M (Special Garment Center District) zoning district.

PREMISES AFFECTED – 336 West 37<sup>th</sup> Street, Block 760, Lot 63, Borough of Manhattan.

## COMMUNITY BOARD #4M

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction, which expired on September 11, 2016; and

WHEREAS, a public hearing was held on March 7, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, the subject site is located on the southern

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side of West 37th Street, between Ninth Avenue and Eighth Avenue, within a C6-4M zoning district and the Special Garment Center District, the Preservation Area 2 (P-2) Sub-district and an Inclusionary Housing Designated Area, within Manhattan; and

WHEREAS, the site has approximately 100 feet of frontage on West 37th Street, 99 feet of depth, 9,875 square feet of lot area and is occupied by a 14-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 11, 2012, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the legalization of a Use Group 6 office use within the commercial building, contrary to ZR §§ 121-11 and 121-113, on condition that: the building not be occupied by adult establishments, banks, banquet halls, catering establishments, drug stores or eating or drinking establishments, except restaurants with a capacity of 200 persons or less; and the applicant reserve at least one space within the building for rent to a non-profit organization; and

WHEREAS, construction was to have been substantially completed by September 11, 2016, pursuant to ZR § 72-23; and

WHEREAS, the applicant represents that construction has not been completed because of delays caused by: necessary upgrades to achieve compliance with the New York City Construction Codes, including sprinkler-system upgrades, installation of a new fire-alarm system, construction of accessible bathroom facilities; upgrading an egress landing, as required by Fire Code; and other unanticipated construction delays caused by the age of the building; and

WHEREAS, the applicant represents that, with various approvals from city agencies now in place, it anticipates completion of the subject project within four (4) years and seeks such extension of time to complete construction; and

WHEREAS, the applicant asserts that there have been no substantial changes in the character and nature of the surrounding area since the grant of the variance; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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 September 11, 2012, so that as amended this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction and obtain a Certificate of Occupancy to September 11, 2020; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted; and *on further condition*:

THAT construction shall be substantially completed and a Certificate of Occupancy shall be obtained within four (4) years, by September 11, 2020;

THAT the building will not be occupied by the following uses: adult establishments; banks; banquet halls;

catering establishments; drug stores; eating or drinking establishments, except restaurants with a capacity of 200 persons or less;

THAT the applicant will reserve at least one space within the building to be rented to a non-profit organization;

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

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

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

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, March 7, 2017.

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**413-50-BZ**

APPLICANT – Eric Palatnik, P.C., for Sandra Yetman, owner; BP Products North America Inc., lessee.

SUBJECT – Application October 8, 2015 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expires on November 18, 2015. C2-4/R7-1 zoning district.

PREMISES AFFECTED – 691 East 149<sup>th</sup> Street, Block 2623, Lot 140, Borough of Bronx.

**COMMUNITY BOARD #1BX**

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for continued hearing.

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**949-57-BZ**

APPLICANT – Akerman, LLP, for Pelham Bridges Realities, LLC, owner; NY Dealers Stations, LLC, owner.

SUBJECT – Application July 7, 2015 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on October 29, 2014; Waiver of the Rules. R5D zoning district.

PREMISES AFFECTED – 2100 Williamsbridge Avenue, Block 4310, Lot 30, Borough of Bronx.

**COMMUNITY BOARD #11BX**

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for continued hearing.

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**395-60-BZ**

APPLICANT – Eric Palatnik, P.C., for Ali Swati, owner.

SUBJECT – Application March 11, 2016 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Repair Facility (UG 16) which expired on December 9, 2015; Waiver of the Rules. R5 zoning district.

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PREMISES AFFECTED – 2557 Linden Boulevard, Block 4461, Lot 27, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for continued hearing.

## 234-84-BZ

APPLICANT – Robert E. Schuster, AIA, for Forest Realty Management, LLC., owner.

SUBJECT – Application April 28, 2015 – Extension of Term (§11-411) of a previously approved Variance which permitted the operation of an Eating and Drinking Establishment (UG 6) which expired on February 12, 2015; Waiver of the Board's Rules. C81-/R3-1 zoning district.

PREMISES AFFECTED – 1076/82 Forest Avenue, Block 1696, Lot 26, Borough of Staten Island.

## COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.

## 120-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Harry McNulty, owner.

SUBJECT – Application March 14, 2016 – Extension of Term (§11-411) of a previously approved variance which permitted an Automotive Repair Facility (UG 16B) with the sale of used automobiles which expired on May 10, 2014; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 222-19 Linden Boulevard, Block 11323, Lot 1, Borough of Queens.

## COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for continued hearing.

## 235-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2009 Mermaid, LLC, owner.

SUBJECT – Application May 11, 2016 – Extension of Term of a previously approved Special Permit (§73-27) permitting the operation of funeral establishment (UG 7) which expired on May 12, 2014; Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 2009 Mermaid Avenue, Block 7018, Lot 42, Borough of Brooklyn.

## COMMUNITY BOARD #13BK

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for adjourned hearing.

## APPEALS CALENDAR

### 272-15-A

APPLICANT – Eric Palatnik, P.C., for Tribanor Real Estate, owner.

SUBJECT – Application December 14, 2015 – Proposed construction of a commercial building, not fronting a legally mapped street, contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED – 35 Derick Court, Block 7206, Lot 510, Borough of Staten Island.

### COMMUNITY BOARD #3SI

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 17, 2015, acting on New Building Application No. 520039459, reads in pertinent part:

“GCL 36, BC 502.1” “The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;

B) Proposed construction does not have at least 8% of the total perimeter of buildings(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2008 NYC Building Code”; and

WHEREAS, this is an application to allow for the construction of a one-story, with mezzanine, Use Group (“UG”) 16 warehouse, that does not front on a mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on August 16, 2016, after due notice by publication in *The City Record*, with continued hearings on September 27, 2016, and December 13, 2016, and then to decision on March 7, 2017; and

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

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

WHEREAS, the subject site is located north of Arthur Kill Road on Derick Court, in an M3-1 zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has 265,984 square feet of lot area; and

WHEREAS, GCL § 36 provides that no certificate of occupancy shall be issued for any building unless a street or highway giving access to such structure has been officially mapped and adequately improved in respect to the public

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health, safety and general welfare; and

WHEREAS, said statute empowers the Board to vary this requirement where there is practical difficulty or unnecessary hardship; and

WHEREAS, the applicant proposes to develop the subject site with a one-story, with mezzanine, UG 16 warehouse with 29,573 square feet of floor area, 26 parking spaces and two loading berths; and

WHEREAS, the applicant states that the proposed building complies with and conforms to all applicable zoning district regulations, including those applicable in the Special South Richmond Development District; and

WHEREAS, the applicant also represents that the subject site is located in a tidal wetlands adjacent area but is not located in a flood hazard zone, tidal wetland area or freshwater wetlands zone; and

WHEREAS, the applicant states that Derick Court is a paved, unmapped private street that extends north from Industrial Loop and ends in a cul-de-sac with a 35-foot radius; the applicant states further that Industrial Loop is an improved, one-way road that is not duly placed on the official map of the City of New York; the applicant notes that Industrial Loop, which begins and ends at Arthur Kill Road, provides access to several commercial and manufacturing lots north of Arthur Kill Road; and

WHEREAS, the applicant notes that vehicles enter the Industrial Loop off of Arthur Kill Road to the south of the subject site and complete a loop by traveling north, west and south, exiting again on Arthur Kill Road approximately 310 feet west of the point of entrance; and

WHEREAS, because the subject site is only accessible from Industrial Loop, which is not a street duly placed on the official map of the City of New York, the applicant seeks the relief sought herein; and

WHEREAS, the drawings submitted in support of this application demonstrate that both Derick Court and Industrial Loop are 40 feet in width; and

WHEREAS, the evidence further demonstrates that no parking is currently permitted along Derick Court or Industrial Loop and that enforcement occurs by towing at the expense of the vehicle owner; and

WHEREAS, the applicant represents that a deed restriction, which requires that a property owners' association be formed, has been placed on the property and that such association, Arthur Kill Association, Ltd., a not-for-profit corporation, was in fact formed; that each property owner is required to join the property owners' association; and that the property owners' association is responsible for continuously maintaining Industrial Loop and Derick Court, their utilities, sanitary sewer system, no-parking signage and property-servicing appurtenances in good working condition; and

WHEREAS, in addition, the applicant amended the By-Laws of the Arthur Kill Association to state that roadway signs indicating that no parking is allowed will be installed and maintained on Derick Court by the association and that any automobiles violating this restriction may be towed at the owner's expense; and

WHEREAS, by letter dated June 9, 2016, the Fire Department states that it has no objection to the subject application provided that (1) all required Siamese connections be within 100 feet of a hydrant and (2) parking be prohibited along the on-site fire apparatus access road with signage required by Fire Code § 503.2.7.2.1; and

WHEREAS, in response to the Fire Department's concerns, the applicant submitted amended plans including notes of the Fire Department's recommendations; and

WHEREAS, by letter dated September 24, 2013, the New York State Department of Environmental Conservation ("NYSDEC") states that NYSDEC Permit No. 2-6405-00553/00003 has been issued; and

WHEREAS, the applicant represents that the drawings filed with this application conform to those approved by NYSDEC; that, as condition of permit issuance by NYSDEC, riprap rock revetment slope protection will be constructed prior to installation of the proposed building foundation along with native grasses and shrubbery; and that such features will be maintained from the subject site's seaward frontage as accessed by boat; 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 decision of the Department of Buildings, dated November 17, 2015, acting on New Building Application No. 520039459, be *modified* under the powers vested in the Board by Section 36 of the General City Law, and that the appeal be *granted*, limited to the objection noted, *on condition* that all construction shall substantially conform to the drawings filed with the application marked "Received December 1, 2016"- One (1) sheet; and that all applicable laws, rules and regulations shall be complied with; and *on further condition*:

THAT curb and pavement improvements for the site shall be completed in substantial compliance with the Builder's Pavement Plan;

THAT all curbs, curb cuts, sidewalks, pavement, street lighting and street signage shall be designed and constructed in accordance with the requirements of the New York City Department of Transportation ("DOT") and be subject to DOT review and approval;

THAT all required Siamese connections shall be within 100 feet of a hydrant;

THAT parking shall be prohibited along the on-site fire apparatus access road with required signage as found in Fire Code § 503.2.7.2.1;

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

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

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

Adopted by the Board of Standards and Appeals,

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March 7, 2017.

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**2016-4129-A & 2016-4130-A**

APPLICANT – Eric Palatnik, P.C., for Harris Lane Associates Corp., owner.

SUBJECT – Application March 4, 2016 – Proposed construction of family dwelling not fronting on a legally mapped street contrary to General City Law 36. R3-1 (SRD) zoning district.

PREMISES AFFECTED – 72 & 74 Harris Lane, Block 7094, Lot(s) 1 & 9, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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

**THE VOTE TO GRANT** –

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

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decisions of the Department of Buildings (“DOB”), dated February 10, 2016, acting on New Building Application Nos. 520259826 and 520251931 read in pertinent part:

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

- A) No certificate of occupancy can be issued pursuant to Article 3, Section 36 of the General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space contrary to Sec 501.3.1 of the 2014 NYC. Building Code”; and

WHEREAS, this is an application to allow the construction of two single-family residences that do not front on a mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on July 19, 2016, after due notice by publication in *The City Record*, with continued hearings on October 14, 2016, and January 10, 2017, and then to decision on March 7, 2017; and

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

WHEREAS, Community Board 3, Staten Island, recommends disapproval of the subject application, citing concerns about access to the private sewer system, the Fire Department’s position on parking along Harris Lane, tandem parking, the environmental impact to adjoining properties and ownership of Harris Lane; and

WHEREAS, the subject site is located on the north side of Harris Lane, an unmapped private street unbuilt at the subject location, in an R3-1 zoning district as well as the Special South Richmond Development District and a Lower Density Growth Management Area, on Staten Island; and

WHEREAS, the subject site is currently Block 7094, Lot 1, which the applicant proposes to subdivide into tentative Lots 1 and 3; and

WHEREAS, the applicant provided the Board with the Application for Mergers or Apportionments submitted to the New York City Department of Finance for to the proposed subdivision, which was approved October 9, 2015, and the approval of Application N160116RCR by the New York City Department of City Planning for certification of future subdivision from one zoning lot into two zoning lots, pursuant to ZR § 107-08, on July 29, 2016; and

WHEREAS, Lot 1 has 49 feet of frontage along Harris Lane and 6,079 square feet of lot area; and Lot 3 has 49 feet of frontage along Harris Lane and 5,685 square feet of lot area; and

WHEREAS, GCL § 36 provides that no certificate of occupancy shall be issued for any building unless a street or highway giving access to such structure has been officially mapped and adequately improved in respect to the public health, safety and general welfare; and

WHEREAS, said statute empowers the Board to vary this requirement where there is practical difficulty or unnecessary hardship; and

WHEREAS, the applicant states that the proposed buildings are part of a larger development of 60 residential homes, all but two of which have already been built and occupied; and

WHEREAS, because the subject site is only accessible from Harris Lane, which is not a street duly placed on the official map of the City of New York, the applicant seeks the relief sought herein; and

WHEREAS, Harris Lane is built to a width of 30 feet just east of the subject site but is unbuilt at the subject site; Harris Lane connects to Bloomingdale Road, a two-way street appearing on the official map of the City of New York at a record width of 80 feet, but built to a width of approximately 50 feet and located approximately 600 feet to the east of the subject site; and

WHEREAS, the applicant proposes to build an extension of Harris Lane to front the subject site to a final width of between 30’-6” and 30’-4”;

WHEREAS, the applicant represents that the proposed residences comply with and conform to all applicable zoning district regulations, including those applicable in the Special South Richmond Development District and Lower Density Growth Management Areas; and

WHEREAS, the applicant states that each proposed residence will provide three accessory parking spaces and will be fully sprinklered with interconnected smoke alarms; and

WHEREAS, the drawings submitted in support of this application demonstrate that the newly improved portion of Harris Lane will have a width of 30 feet, a grade not exceeding 10 percent and “no parking” signs posted; and

WHEREAS, by letter dated September 18, 2015, the New York State Department of Environmental Conservation states that the site is not within its jurisdiction under the Fresh Wetlands Act or the Tidal Wetlands Act, so neither a

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tidal wetlands permit nor a freshwater wetlands permit is required; and

WHEREAS, the Board requested that the applicant provide information about the status of pending applications with the Department of City Planning for subdivision and school-seat certification; and

WHEREAS, by letter dated July 29, 2016, the Department of City Planning states that applicants for subdivision and school-seat certification were approved; and

WHEREAS, by letter dated November 3, 2015, the Fire Department states that it has no objection to this application, provided that both buildings be fully sprinklered, have interconnected smoke alarms and that “no parking” signs be affixed along Harris Lane; and

WHEREAS, by letter dated November 20, 2015, the Fire Department states that its Bureau of Facilities Management has determined that the proposed project will not affect any existing fire alarm facilities and does not require the addition of any fire alarm boxes; and

WHEREAS, in its recommendation report dated April 26, 2016, Community Board 3, Staten Island, recommended that the applicant clarify whether the Fire Department’s “no parking” condition applies to all of Harris Lane or to the newly improved section; and

WHEREAS, by letter dated June 9, 2016, the Fire Department clarifies that parking is prohibited along the newly developed portion of Harris Lane upon which the proposed residences front and addition the following additional conditions: a hydrant must be located within 250 feet of both main front entrances and the grade of the new portion of Harris Lane not exceed 10 percent; and

WHEREAS, the applicant revised the drawings and by letter dated January 5, 2017, the Fire Department states that the drawings are in compliance with its requirements for residential buildings; and

WHEREAS, at the hearings, the Board expressed concerns about clear and free access to the site, maintenance of the private street by a homeowners’ association and street lighting; and

WHEREAS, in response to the Board’s concerns, the applicant submitted revised plans and provided information about the proposed homeowners’ association as well as a chronological history of the larger development site; 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 decisions of the Department of Buildings, dated February 10, 2016, acting on New Building Application Nos. 520259826 and 520251931, be *modified* under the powers vested in the Board by Section 36 of the General City Law, and that the appeal be *granted*, limited to the objection noted, *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received December 9, 2016”– One (1) sheet; and that all applicable laws, rules and regulations shall be complied with; and *on further condition*:

THAT the restrictive declaration submitted in

connection with this application shall be recorded in the Office of the County Clerk, County of Richmond, prior to the issuance of any certificate of occupancy;

THAT the restrictive declaration shall be recorded on the certificates of occupancy;

THAT the recorded restrictive declaration shall substantially conform to the form and substance of the following:

DECLARATION made this \_\_\_\_\_, by Harris Lane Corp., hereinafter referred to as the “Declarant,” with a principal office located at 35 Bar Court, Staten Island, New York.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Staten Island, designated as Block 7094, Lots 1 and 3, on the Tax Map of the City of New York, hereinafter referred to as Parcel A (the “Subject Premises”), more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Declarant has requested the New York City Board of Standards and Appeals (the “BSA”) act upon BSA Cal. Nos. 2016-4129-A and 2016-4130-A to appeal the decision of the Staten Island Borough Commissioner, under application numbers 520259826 and 520251931 pursuant to Article III, Section 36 of the General City Law, denying the permit on the basis that the street giving access to the proposed buildings is not duly placed on the official map of the City of New York; and

WHEREAS, the BSA requires Declarant to execute and file this restrictive declaration prior to obtaining a Certificate of Occupancy for the Subject Premises.

NOW, THEREFORE, in consideration of BSA approval to allow the proposed construction of a two-family residence not fronting on a legally mapped street, contrary to General City Law 36, Declarant does hereby declare that Declarant and his successors and/or assigns shall be legally responsible for operating and maintaining the Subject Premises in compliance with the following restrictions of the FDNY’s letter of June 9, 2016 (As listed on the proposed site plan dated \_\_\_\_\_), and that such compliance shall be subject to enforcement by the Fire Commissioner:

1. That both buildings shall also be fully sprinklered.
2. That a hydrant must be located within 250 feet of both main front entrances.
3. Signs shall be conspicuously posted along the driveway indicating no parking permitted anytime along the entire newly developed portion of Harris Lane upon which the proposed residences front.
4. That the grade of the newly developed Harris

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Lane shall not exceed 10% as stated in NYC Fire Code 503.2.2.3.

5. That all the following conditions found on the stamped approved plan titled Harris Lane Residential Development dated June 9, 2016 shall be complied with.

a. Both proposed buildings must be fully fire sprinklered in conformity with the sprinkler provisions of the New York City Fire Department as well as reference standards of the New York City Building Code;

b. Both proposed buildings shall be provided with interconnected smoke alarms, which shall be designed and installed in accordance with the New York City Building Code Section 907.2.11.

c. No parking signs shall be affixed along Harris Lane in accordance with the New York City Fire Code Chapter 5 FC 503.2.7.2.1 signage.

1. This declaration may not be modified, amended or terminated without the prior written consent of the BSA;

2. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;

3. Failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the BSA; and

4. This declaration shall be recorded at the Office of the County Clerk against the Subject Premises and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to any building located on the Subject Premises and in any deed for the conveyance thereof.

IN WITNESS THEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written;

THAT both proposed buildings must be fully fire sprinklered in conformity with the sprinkler provisions of the New York City Fire Department as well as reference standards of the New York City Building Code;

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

THAT no parking signs shall be affixed along the entirely newly developed portions of Harris Lane upon

which the proposed buildings front in accordance with the New York City Fire Code Chapter 5 FC 3505.2.7.2.1 Signage;

THAT a hydrant must be located within 250 feet of the main front entrances of both proposed buildings;

THAT the grade of the newly development Harris Lane shall not exceed 10 percent as stated in the New York City Fire Code 503.2.2.3;

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

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

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

Adopted by the Board of Standards and Appeals, March 7, 2017.

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## **2016-4186-A thru 2016-4195-A and 2016-4197-A thru 2016-4207-A**

APPLICANT – Eric Palatnik, P.C., for Fulcrum Real Estate Advisors, LLC, owner.

SUBJECT – Application May 13, 2016 – Proposed construction for twenty-two single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law. R2 zoning district.

PREMISES AFFECTED – 150-11, 150-15, 150-19, 150-23, 150-27, 150-31, 150-35, 150-37, 150-43, 150-49, 150-12, 150-18, 150-22, 150-26, 150-32, 150-36, 150-42, 150-50, 150-56, 150-60 and 150-66 Sullivan Drive, Block 4509, Lot 1 (Tentative Lots 16, 18, 20, 22, 24, 25, 28, 30, 32, 34, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96 and 98), Borough of Queens.

### **COMMUNITY BOARD #7Q**

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”), dated April 13, 2016, acting on New Building Application Nos. 421204510, 421204529, 421256508, 421256544, 421256517, 421219443, 421219452, 421256492, 421256447, 421262289, 421302450 (dated January 11, 2017), 421306223, 421306214, 421306189, 421306205, 421306492, 421304939, 421262038, 421262216, 421266418 and 421266427 read in pertinent part:

“Section GCL 36, BC 501.3.1” “The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

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- A) No certificate of occupancy can be issued pursuant to Article 3, Section 36 of General City Law.
- B) Proposed construction does not have at least 8% of the total perimeter of the building(s) fronting directly upon a legally mapped street or frontage space contrary to Section 501.3.1 of the 2014 NYC Building Code”; and

WHEREAS, this is an application to allow the construction of twenty-one single-family residences that do not front on a mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in *The City Record*, with a continued hearing on February 28, 2017, and then to decision on March 7, 2017; and

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

WHEREAS, Community Board 7, Queens, recommends approval of the subject application; and

WHEREAS, the subject site is located along Sullivan Drive, a proposed and unmapped private street, between 150th Street and Powell’s Cove Boulevard, in an R2 zoning district, in Queens; and

WHEREAS, the subject site consists of twenty-one lots to be apportioned from of Block 4509, Lot 1 pursuant to an Application for Mergers or Apportionments submitted to the New York City Department of Finance and approved as of July 29, 2015; as the lots do not yet appear on the New York City Tax Map, they will be referred to herein as “Tentative Lots”; and

WHEREAS, the applicant represents that Tentative Lot 16 will have 5,940 square feet of lot area and be developed with a dwelling with 2,930 square feet of floor area (0.49 FAR); Tentative Lot 18 will have 7,531 square feet of lot area and be developed with a dwelling with 3,146 square feet of floor area (0.42 FAR); Tentative Lot 20 will have 7,511 square feet of lot area and be developed with a dwelling with 3,146 square feet of floor area (0.42 FAR); Tentative Lot 22 will have 7,492 square feet of lot area and be developed with a dwelling with 3,146 square feet of floor area (0.42 FAR); Tentative Lot 24 will have 7,054 square feet of lot area and be developed with a dwelling with 3,146 square feet of floor area (0.45 FAR); Tentative Lot 26 will have 5,483 square feet of lot area and be developed with a dwelling with 2,702 square feet of floor area (0.49 FAR); Tentative Lot 28 will have 5,322 square feet of lot area and be developed with a dwelling with 2,597 square feet of floor area (0.49 FAR); Tentative Lot 30 will have 5,301 square feet of lot area and be developed with a dwelling with 2,597 square feet of floor area (0.49 FAR); Tentative Lot 32 will have 5,279 square feet of lot area and be developed with a dwelling with 2,597 square feet of floor area (0.49 FAR); Tentative Lot 34 will have 5,258 square feet of lot area and be developed with a dwelling with 2,597 square feet of floor

area (0.49 FAR); Tentative Lot 78 will have 7,401 square feet of lot area and be developed with a dwelling with 3,050 square feet of floor area (0.40 FAR); Tentative Lot 80 will have 7,084 square feet of lot area and be developed with a dwelling with 3,431 square feet of floor area (0.48 FAR); Tentative Lot 82 will have 6,238 square feet of lot area and be developed with a dwelling with 3,050 square feet of floor area (0.49 FAR); Tentative Lot 84 will have 6,200 square feet of lot area and be developed with a dwelling with 3,050 square feet of floor area (0.49 FAR); Tentative Lot 86 will have 6,200 square feet of lot area and be developed with a dwelling with 3,050 square feet of floor area (0.49 FAR); Tentative Lot 88 will have 6,200 square feet of lot area and be developed with a dwelling with 3,050 square feet of floor area (0.49 FAR); Tentative Lot 90 will have 6,200 square feet of lot area and be developed with a dwelling with 3,050 square feet of floor area (0.49 FAR); Tentative Lot 92 will have 6,200 square feet of lot area and be developed with a dwelling with 3,050 square feet of floor area (0.49 FAR); Tentative Lot 94 will have 6,200 square feet of lot area and be developed with a dwelling with 3,050 square feet of floor area (0.49 FAR); Tentative Lot 96 will have 6,200 square feet of lot area and be developed with a dwelling with 3,050 square feet of floor area (0.49 FAR); and Tentative Lot 98 will have 6,200 square feet of lot area and be developed with a dwelling with 3,050 square feet of floor area (0.49 FAR); and

WHEREAS, GCL § 36 provides that no certificate of occupancy shall be issued for any building unless a street or highway giving access to such structure has been officially mapped and adequately improved in respect to the public health, safety and general welfare; and

WHEREAS, said statute empowers the Board to vary this requirement where there is practical difficulty or unnecessary hardship; and

WHEREAS, the applicant states that the proposed buildings are part of a larger development of 45 residences, 24 of which have frontage on the mapped streets 6th Avenue, 150th Street and Powell’s Cove Boulevard; and

WHEREAS, because the subject site is only accessible from Sullivan Drive, which not a street duly placed on the official map of the City of New York, the applicant seeks the relief sought herein; and

WHEREAS, the applicant represents that the proposed residences comply with and conform to all applicable zoning district regulations; and

WHEREAS, the applicant also represents that the subject site is not located in a flood hazard zone, tidal wetlands area or freshwater wetlands zone; and

WHEREAS, the drawings submitted in support of this application demonstrate that Sullivan Drive will have a width of 48 feet (34 feet curb-to-curb) and extend from 150th Street to Powell’s Cove Boulevard; and

WHEREAS, the applicant represents that Sullivan Drive will contain a new sewer line, utilities, street lighting, sidewalks, curbs and street trees in compliance with all applicable requirements and that the proposed buildings will be fully sprinklered; and



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WHEREAS, at the hearings, the Board expressed concerns about maintenance of the private street by a homeowners' association, street lighting and standards for roadwork; and

WHEREAS, in response to the Board's comments, the applicant submitted a draft Homeowner's Association Declaration ("HOA") providing, among other things, that the drainage system and roadway will be maintained by the as-yet-to-be-formed Homeowner's Association (the "Association"), that the owner of each dwelling unit on the site will be a member of the Association and that each member of the Association shall have a right and easement of use in and to the drainage system and roadway; the applicant additionally represented that the HOA will be recorded prior to the transfer of title to any new homeowner and the deed will be expressly subject to the HOA; and

WHEREAS, by letter dated October 5, 2016, the Fire Department states that it has no objection to the applicant's proposal, provided that Sullivan Drive has a minimum curb-to-curb width (?) of 34 feet between 150th Street and Powell's Cove Boulevard, that private fire hydrants be installed a minimum of every 250 feet or part thereof within the development and that private fire hydrant systems be maintained in good working order and be repaired when defective; and

WHEREAS, by letters dated December 16, 2016, and January 27, 2017, the Department of Transportation requested that the applicant describe the location of the easement private street on the proposed Sullivan Drive in the site plan and specify Sullivan Drive's curb cut locations and turning radius dimensions to ensure utility trucks can access the proposed private street; and

WHEREAS, in response to the Board's, the Fire Department's and the Department of Transportation's concerns, the applicant submitted revised plans and provided additional information about the proposed homeowners' association; 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 decisions of the Department of Buildings, April 13, 2016, acting on New Building Application Nos. 421204510, 421204529, 421256508, 421256544, 421256517, 421219443, 421219452, 421256492, 421256447, 421262289, 421302450 (dated January 11, 2017), 421306223, 421306214, 421306189, 421306205, 421306492, 421304939, 421262038, 421262216, 421266418 and 421266427, be *modified* under the powers vested in the Board by Section 36 of the General City Law, and that the appeal be *granted*, limited to the objection noted, *on condition* that construction shall substantially conform to the drawings filed with the application marked "Received March 3, 2017"— Two (2) sheets; and that all applicable laws, rules and regulations shall be complied with; and *on further condition*:

THAT a Homeowners' Association Declaration ("HOA") that substantially conforms with the one submitted

in connection with this application and requiring, *inter alia*, that a homeowners' association be formed, that each property owner shall be required to join the homeowners' association and that the homeowners' association shall be responsible for continuously maintaining the development, including the common areas and the streets, its utilities and property-servicing appurtenances in good working conditions, and including during times of inclement weather, shall be recorded with the New York State Attorney General prior to the transfer of title to any new owner of the subject lots;

THAT the restrictive declaration submitted in connection with this application shall be recorded in the Office of the City Register in Queens County prior to the issuance of any Certificate of Occupancy;

THAT the restrictive restriction shall be recorded on the certificates of occupancy;

THAT the recorded deed restriction shall substantially conform to the form and substance of the following:

DECLARATION made this \_\_\_\_\_, by Fulcrum Real Estate Advisors, LLC, hereinafter referred to as the "Declarant," with a principal office at 7-05 153rd Street, Suite 303, Whitestone, NY 11357.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Queens, designated as Block 4509 Lots 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98 on the Tax Map of the City of New York, hereinafter referred to as Parcel A (the "Subject Premises"), more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof:

WHEREAS, the Declarant has requested the New York City Board of Standards and Appeals (the "BSA") act upon BSA Cal. Nos. 2016-4186-A through 2016-4207-A to appeal the decisions of the Queens Borough Commissioner, as follows pursuant to Article III, Section 36 of the General City Law, denying permits on the basis that the street giving access to the proposed buildings is not duly placed on the official map of the City of New York

BSA CAL.NO.	LOT NUMBER	DOB JOB NUMBER
2016-4186-A	16	421204510
2016-4187-A	18	421204529
2016-4188-A	20	421256508
2016-4189-A	22	421256544
2016-4190-A	24	421256517
2016-4191-A	26	421219443
2016-4192-A	28	421219452
2016-4193-A	30	421256492
2016-4194-A	32	421256447
2016-4195-A	34	421262289

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2016-4197-A	78	421302450
2016-4198-A	80	421306223
2016-4199-A	82	421306214
2016-4200-A	84	421306189
2016-4201-A	86	421306205
2016-4202-A	88	421306492
2016-4203-A	90	421304939
2016-4204-A	92	421262038
2016-4205-A	94	421262216
2016-4206-A	96	421266418
2016-4207-A	98	421266427

; and

WHEREAS, the BSA, requires Declarant to execute and file this restrictive declaration prior to obtaining a Certificate of Occupancy for the subject Premises.

NOW, THEREFORE, in consideration of BSA approval to allow the proposed construction of single family residences not fronting on a legally mapped street, contrary to General City Law 36, Declarant does hereby declare that Declarant and his successors and/or assigns shall maintain the street in a good state of repair and cleanliness, including but not limited to the following:

- a) Maintaining the paved surfaces of the street in good repair;
- b) Maintaining street lights, if any in good working order;
- c) Assuring that street lights, if any operate during hours of darkness;
- d) Replacing street lights, if any when needed;
- e) Snow plowing at such times as the accumulated snow falls in any 12 hour period exceed two inches;
- f) Maintaining any required storm and sanitary drainage systems in a clear, workable and efficient manner;
- g) Maintaining all required utilities located under the streets in good working order, to the extent they are not maintained by public utilities or municipal agencies.

FURTHER, in consideration of BSA approval to allow the proposed construction of single family residences not fronting on a legally mapped street, contrary to General City Law 36, Declarant does hereby declare that Declarant and his successors and/or assigns shall be legally responsible for operating and maintaining the Subject Premises in compliance with the following parking restrictions of the FDNY's letter of October 5, 2016 (As listed on the proposed site plan dated \_\_\_\_\_), and that such compliance shall be subject to enforcement by the Fire Commissioner.

- The proposed private street Sullivan Drive shall have a minimum curb to curb distance of 34 feet, this distance shall be maintained

from 150th Street through Powell's Cove Boulevard

- Private fire hydrants shall be installed a minimum of 250 feet or part thereof within the Development
  - Private fire hydrant systems shall be maintained in good working order at all times and shall be repaired when defective. Additions, repairs, alterations and servicing shall comply with approved standards.
1. This declaration may not be modified, amended or terminated without the prior written consent of the BSA;
  2. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
  3. Failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the BSA; and
  4. This declaration shall be recorded at the city register's office against the Subject Premises and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to any building located on the subject Premises and in any deed for the conveyance thereof.

THIS DECLARATION IS ONLY EFFECTIVE UPON APPROVAL BY THE BOARD OF STANDARDS AND APPEALS OF THE APPLICATIONS FILED UNDER CAL. NOS. 2016-4186-A THROUGH 2016-4207-A.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written;

THAT all curbs, curb cuts, sidewalks and pavement to the middle of the street shall comply with the requirements of the Department of Transportation;

THAT all street trees shall comply with the requirements of the Department of Parks and Recreation;

THAT all street lighting shall comply with the requirements of the Department of Transportation;

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

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

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

Adopted by the Board of Standards and Appeals, March 7, 2017.

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**2016-4196-A**

APPLICANT – Eric Palatnik, P.C., for Fulcrum Real Estate Advisors, LLC, owner.

SUBJECT – Application May 13, 2016 – Proposed construction for twenty-two single family residential homes not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law. R2 zoning district.

PREMISES AFFECTED – 150-53 Sullivan Drive, Block 4509, Lot(s) 36, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

Adopted by the Board of Standards and Appeals, March 7, 2017.

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**235-15-A & 259-15-A**

APPLICANT – Sheldon Lobel, P.C., for Richard Roel, owner.

SUBJECT – Applications October 7, 2015 & November 18, 2015 – Proposed construction of building that does not provide adequate frontage on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R2A zoning district.

PREMISES AFFECTED – 8 Cornell Lane, Block 8129, Lot 156, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

**2016-4237-BZ**

APPLICANT – Eric Palatnik, P.C., for 232 Smith Street LLC, owner; Crunch LLC, lessee.

SUBJECT – Application August 9, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Crunch*) within a new commercial building. C2-4/R6B zoning district.

PREMISES AFFECTED – 240 Smith Street, Block 408, Lot 41, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 22, 2016, acting on Department of Buildings (“DOB”) Application No. 321138372, reads in pertinent part:

“Proposed PCE in a C2-4 (R6B) zoning district is contrary to Section 32-10 ZR and should be referred to the BSA”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within an R6B (C2-4) zoning district, the operation of a physical culture establishment (“PCE”) in a two-story, with cellar, commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 28, 2017, after due notice by publication in *The City Record*, and then to decision on March 7, 2017; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, Commissioner Montanez performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the northwest corner of the intersection of Smith Street and Douglass Street, in an R6B (C2-4) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 100 feet of frontage along Smith Street, 50 feet of frontage along Douglass Street, 5,000 square feet of lot area, and is proposed to be occupied by a new two-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in

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certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 proposed PCE will occupy a total of 10,000 square feet of floor area as follows: 5,000 square feet of floor space in the cellar consisting of group-fitness and spinning areas, storage, laundry and a locker room; 5,000 square feet of floor area on the first floor featuring a reception area, exercise equipment, child care, office, storage and a second locker room; and 5,000 square feet of floor area on the second floor, which will house exercise equipment, a bathroom and storage; and

WHEREAS, the PCE will be operated as Crunch Fitness with proposed hours of operation of Monday to Saturday, 5:00 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the PCE will be the sole tenant in a commercial building in a commercial area and, thus, the use will be consistent with the character of the surrounding area; the PCE will nevertheless have sound attenuation measures, including hanging speakers, thick padding and rubber floor mats in the exercise areas,

designed to ensure that sound levels experienced in neighboring buildings do not exceed 45 dBA, including sound emanating from any sound system installed; and

WHEREAS, the applicant further submits that a majority of the PCE's patrons will be residents of the neighborhood and that the PCE will be an asset to the surrounding area, providing a desirable use to the local community; and

WHEREAS, in light of the foregoing, the Board finds that the PCE use is located so as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to use of the premises, the applicant represents that the PCE contains facilities for physical improvement classes as well as equipment to improve patrons' cardiovascular health and fitness and aid in weight reduction; and

WHEREAS, the Board finds that the facilities provided at the proposed PCE are consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the special permit; 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 applicant represents that the PCE will be fully sprinklered and that an approved interior fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to a Fire Department-approved central station—will be installed in the entire PCE space; and

WHEREAS, by letter dated February 23, 2017, the Fire Department states that it has no objection to this application; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No.17-BSA-008K, dated August 9, 2016; and

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

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.3 and 617.5, §§ 5-02(a) and 5-02(b)(2) 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 within an R6B (C2-4) zoning district, the operation of a physical culture

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establishment in a two-story, with cellar, commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 3, 2017”- Six (6) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring March 7, 2027;

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

THAT minimum 3'-0" wide exit pathways shall be providing leading to the required exits and such pathways shall always be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to a Fire Department-approved central station—shall be installed in the entire PCE space;

THAT the PCE shall be fully sprinklered;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings;

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

THAT a Certificate of Occupancy shall be obtained within four (4) years, by March 7, 2021;

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

Adopted by the Board of Standards and Appeals, March 7, 2017.

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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 May 16, 2017, at 10 A.M., for adjourned hearing.

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## **4-15-BZ**

APPLICANT – Sheldon Lobel, P.C., for Bais Chaya Esther Inc., owner.

SUBJECT – Application January 9, 2015 – Variance (§72-21) to permit the conversion of the existing building at the premises from residential to community facility use.

PREMISES AFFECTED – 119 Webster Avenue, block 5416, Lot 1, Borough of Brooklyn.

## **COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for adjourned hearing.

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## **44-15-BZ**

APPLICANT – Akerman, LLP, for 145 CPN, LLC., owner.

SUBJECT – Application March 6, 2015 – Variance (§72-21) to permit the construction of a conforming fourteen-story, (UG 2) residential building containing 24 dwelling units contrary to the maximum building height and front setback requirements (§23-633) and rear setback requirements (§23-633(b)). R8 zoning district.

PREMISES AFFECTED – 145 Central Park North, between Adam Clayton Powell and Lenox Avenue, Block 01820, Lot 0006, Borough of Manhattan.

## **COMMUNITY BOARD #10M**

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for deferred decision.

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## **2016-4152-BZ**

APPLICANT – Law Office of Jay Goldstein, for Midyan Gate Realty No. 3 LLC, owner.

SUBJECT – Application March 28, 2016 – Special Permit (§73-19) to allow a school (UG 3) (*Yeshiva Darche Eres*) to occupy a portion of the first floor and the entirety of the second, third and fourth floors of the Premises, contrary to use regulation (§42-10). M1-1 (OP) zoning district.

PREMISES AFFECTED – 325 Avenue Y, Block 7192, Lot 45, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for deferred decision.

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## **2016-4164-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Mark M. Papa and Chana S. Papa, owners.

SUBJECT – Application April 6, 2016 – Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yard requirements (§§23-461 & 23-48) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1744 East 29<sup>th</sup> Street, Block 6811, Lot 22, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to March 21, 2017, at 10 A.M., for adjourned hearing.

# MINUTES

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**REGULAR MEETING**  
**TUESDAY AFTERNOON, MARCH 7, 2017**  
**1:00 P.M.**

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

## ZONING CALENDAR

### 2017-46-BZ

#### CEQR #17-BSA-091K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Mathew Loughran, owner.

SUBJECT – Application February 16, 2017– Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 35 Nova Court, Block 8866, Lot 1398, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

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

#### THE VOTE TO GRANT –

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

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3 zoning district, the alteration and elevation of an existing single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements of ZR § 64-723; and

WHEREAS, a public hearing was held on this application on February 28, 2017, after due notice by publication in *The City Record*, and then to decision on March 7, 2017; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-05.3 (Filing Period), (3) 2 RCNY § 1-05.4 (Application Referral), (4) 2 RCNY § 1-05.6 (Hearing Notice), (5) 2 RCNY § 1-05.7 (List of Affected Property Owners), (6) 2 RCNY § 1-09.4 (Owner’s Authorization), and (7) 2 RCNY § 1-10.7 (Proof of Service

for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the western side of Nova Court, between Noel Avenue and Madoc Avenue, in an R4 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along Nova Court, 45 feet of depth, 1,800 square feet of lot area and is occupied by a two-story, detached single-family dwelling; and

WHEREAS, the applicant seeks a special permit, pursuant to ZR § 64-92, to allow the alteration and elevation of an existing single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements of ZR § 64-723; and

WHEREAS, Department of Buildings has interpreted ZR § 64-723 to require that residences be elevated in their exact footprint and insists that a waiver of the same is required because the elevation proposed herein will also demolish a 7 inch portion of a rear addition that encroaches over the property line and, therefore, will not be within the footprint of the existing dwelling; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s

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# MINUTES

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potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant states that the, because the original footprint of the dwelling encroaches over the property line, the original footprint cannot be maintained, which creates practical difficulties in comply with flood-resistant construction standards without modification of ZR § 64-723, which is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district, thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the neighborhood is characterized by single- and two-family detached homes and that the proposed alteration and elevation includes flood-mitigating elements, including change in stairway direction, that will contribute positively to the existing neighborhood fabric; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA091K, dated February 27, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4 zoning district, the alteration and elevation of an existing single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements of ZR § 64-723; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received February 27, 2017"—Eight (8) sheets; and *on further condition*:

THAT this approval shall be limited to the Build It Back program;

THAT all Department of Buildings and related agency application(s) filed in connection with the authorize use

and/or bulk shall be signed off by the Department of Buildings and all other relevant agencies by March 7, 2021;

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

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

Adopted by the Board of Standards and Appeals, March 7, 2017.

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## 56-15-BZ

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

SUBJECT – Application March 13, 2015 – Special Permit (§73-622) to permit the enlargement of an existing three story one family home contrary to floor area (ZR 23-141 (b)). R2 zoning district.

PREMISES AFFECTED – 2124 Avenue J, Block 7603, Lot 49, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for continued hearing.

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## 234-15-BZ

APPLICANT – Sarah Tadros Awad, for Nawal Tosson, owner.

SUBJECT – Application October 7, 2015 – Special Permit (§73-622) to permit the legalization of an enlargement and the conversion to a two family home of an existing single-family, semi-detached residential building contrary to floor area ZR 23-141 and perimeter wall height 23-631(b). R4-1 zoning district.

PREMISES AFFECTED – 1223 67<sup>th</sup> Street, Block 5760, Lot 70, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for continued hearing.

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## 2016-4121-BZ

APPLICANT – Eric Palatnik, P.C., for Fifteen and Fifth LLC, owner; Crunch LLC, lessee.

SUBJECT – Application February 19, 2016– Special Permit (§73-36) to operate a physical culture establishment (*Crunch*) within an existing building. C4-3A zoning district. PREMISES AFFECTED – 555 5<sup>th</sup> Avenue, Block 1042, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for continued hearing.

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# MINUTES

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**2016-4147-BZ**

APPLICANT – Sheldon Lobel, P.C., for Pietro Alesci, owner.

SUBJECT – Application March 17, 2016 – Variance (§72-21) to permit the development of a three-story, three-family residential building (UG 2) contrary to ZR §42-10. M1-1D zoning district.

PREMISES AFFECTED – 57-12 58<sup>th</sup> Place, Block 2672, Lot 96, Borough of Queens.

**COMMUNITY BOARD #5Q**

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for continued hearing.

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**2016-4168-BZ**

APPLICANT – Law Office of Steven Simicich, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application April 8, 2016 – Variance (§72-21) to permit the construction of single family detached home, contrary to side yard and minimum distance regulation (ZR §23-461c). R3A zoning district.

PREMISES AFFECTED – 94 Elm Street, Block 158, Lot 84, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for continued hearing.

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**2016-4208-BZ**

APPLICANT – Sheldon Lobel, P.C., for USD 142 W 19 LLC, owner.

SUBJECT – Application May 13, 2016 – Variance (§72-21) to permit the development of a 10-story residential building contrary to ZR §23-692. C6-3A zoning district.

PREMISES AFFECTED – 142 West 19<sup>th</sup> Street, Block 794, Lot 63, Borough of Manhattan.

**COMMUNITY BOARD #4M**

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for continued hearing.

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**2016-4254-BZ**

APPLICANT – Mango & Lacoviello, LLP, for Central Harlem Plaza Commercial Unit, LLC, owner; Infitme LLC, lessee.

SUBJECT – Application September 15, 2016 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*I Love Kickboxing*) on a portion of the first floor of an existing building. C4-5X zoning district.

PREMISES AFFECTED – 120 Lenox Avenue a/k/a 47 West 116<sup>th</sup> Street, Block 1600, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #11M**

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for postponed hearing.

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Ryan Singer, Executive Director



# MINUTES

## \*CORRECTION

**This resolution adopted on January 30, 2015, under Calendar No. 38-14-BZ and printed in Volume 100, Bulletin Nos. 5-6, is hereby corrected to read as follows:**

### **38-14-BZ**

APPLICANT – Eric Palatinik, P.C., for Yury Dreysler, owner.

SUBJECT – Application February 28, 2014 – Special Permit (§73-622) for the enlargement of single family home, contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 116 Oxford Street, between Shore boulevard and Oriental Boulevard, Block 8757, Lot 89, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

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

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

### **THE RESOLUTION –**

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated February 4, 2014, acting on DOB Application No. 320870063, reads in pertinent part:

1. Proposed floor area ratio is contrary to ZR 23-141(a).
2. Proposed open space contrary to ZR 23-141(a).
3. Proposed lot coverage is contrary to ZR 23-141(a).
4. Proposed side yards (exist. Non-compliance) contrary to ZR 23-461(a).
5. Proposed rear yard is contrary to ZR 23-47.  
Minimum required: 30’  
Proposed: 20’

WHEREAS, this is an application under ZR § 73-622, to permit, on a site within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on October 7, 2014, after due notice by publication in *The City Record*, with continued hearings on November 18, 2014, November 25, 2014, and January 6, 2015, and then to decision on January 30, 2015; and

WHEREAS, Chair Perlmutter, Vice Chair Hinkson and Commissioners Montanez and Ottley-Brown performed inspections of the subject premises and site, together with its surrounding area and neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

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

WHEREAS, the site has 25 feet of frontage along Oxford Street and approximately 2,500 sq. ft. of lot area; and

WHEREAS, the site is occupied by a one-story, single-family home with 834 sq. ft. of floor area (0.33 FAR); and

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

WHEREAS, the applicant now seeks to enlarge the single-family home by enlarging the first floor of the existing building and adding an additional two floors, thereby increasing the floor area of the building from 834 sq. ft. (0.33 FAR) to 2,489 sq. ft. (0.99 FAR) (the maximum permitted floor area is 1,500 sq. ft. (0.6 FAR) which includes the 250 square feet (0.1 FAR) that must be provided directly under a sloping roof) and increasing the height of the building from 16’-9” to 35’-0”;

WHEREAS, in order to comply with applicable flood regulations the applicant shall raise the building by removing the existing floor beams from the north and south walls thereof, increasing the height of the shelf upon which the existing floor currently rests using solid brick masonry and replacing the existing floor beams so that the first floor elevation will be increased from 6’-7” to 13’-00”;

WHEREAS, the applicant seeks to decrease the open space ratio from 67 percent to 53.5 percent; the minimum required open space ratio is 65 percent; and

WHEREAS, the applicant seeks to maintain existing side yard widths of 0’-1” and 2’-11”;

the general requirement is two side yards with a minimum total width of 13’-0” and a minimum width of 5’-0” each, however, as per ZR § 23-48, the minimum total width of 13’-0” is not required at the subject site; and

WHEREAS, the applicant also seeks to decrease its rear yard depth from 34’-2” to 20’-0”;

a rear yard with a minimum depth of 30’-0” is required; and

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

WHEREAS, the applicant asserts that the proposed 0.99 FAR and 2,489 sq. ft. of floor area is consistent with the bulk and lot area of one and two-family homes in the surrounding area; and

WHEREAS, in support of this assertion, the applicant provided evidence of 19 one- or two-family homes within 400’ of the subject site with an FAR equal to or in excess of 0.99 and floor area equal to or in excess of 2,450 sq. ft.; and

WHEREAS, at hearing, the Board directed the applicant to narrow its analysis of neighborhood character to focus on the block on which the site is located, as such character is, in the subject area, block specific; and

WHEREAS, in response, the applicant identified one and two-family homes on the subject block which consist of two or

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# MINUTES

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more stories and provided a streetscape which included the proposed building; and

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

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

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under ZR § 73-622, to permit, on a site within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked “December 18, 2014”– (10) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the building: a maximum floor area of to 2,489 sq. ft. (0.99 FAR), a minimum open space of 53.5 percent, side yards with minimum widths of 0’-1” and 2’-11”, and a minimum rear yard depth of 20’-0”, as illustrated on the BSA-approved plans;

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

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

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

Adopted by the Board of Standards and Appeals, January 30, 2015.

**The resolution has been amended. In the 10<sup>th</sup> WHEREAS....300 square feet. Now reads: ...250 square feet... Corrected in Bulletin No. 11, Vol. 102, dated March 6, 2017.**

# 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.

Volume 102, Nos. 12-13

March 30, 2017

### DIRECTORY

MARGERY PERLMUTTER, *Chair*

VACANT, *Vice-Chair*

DARA OTTLEY-BROWN

EILEEN MONTANEZ

SHAMPA CHANDA

*Commissioners*

Ryan Singer, *Executive Director*

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2016-4163-BZ	8120 Colonial Road, Brooklyn
2016-4229-BZ	1452 Drumgoole Road West, Staten Island

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# DOCKETS

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New Case Filed Up to March 21, 2017  
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**2017-60-BZ**

111 Barrow Street, located on the southwesterly corner of Barrow Street and Greenwich Street, Block 00603, Lot(s) 37, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-19) to allow for a Day Care Center (UG 3) (Bright Horizons Child Care Center) to be located on the first (1st) floor of an existing building contrary to ZR §42-00. M1-5 zoning district. M1-5 district.  
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**2017-61-BZ**

36-18 Main Street, lot extending from Main Street to Prince Street, between Northern Boulevard and 37th Avenue, Block 04971, Lot(s) 16, Borough of **Queens, Community Board: 7**. Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-20. C4-2 & C4-3 zoning district. Waiver of section §1-05.3 of the Rules of Practice and Procedure to allow filing of a Department of Buildings Objection form more than 30 days after the final determination by the Commissioner of Buildings. C4-2, C4-3 district.  
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**2017-62-BZ**

387 Park Avenue South, located on the southeast corner of the intersection formed by Park Avenue South and East 27th Street, Block 00883, Lot(s) 1, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Barry's Bootcamp) to be located within a portion of an existing building's first floor contrary to ZR §32-10. C6-4A and C4-5A zoning districts. C6-4A and C4-5A district.  
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**2017-63-BZ**

9 Post Court, located at the intersection formed by Madoc Avenue and Post Court, Block 08856, Lot(s) 1882, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district. R4 district.  
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**2017-64-BZ**

2813 Brown Street, located on Brown Street between Shore Parkway and Emmons Avenue, Block 08800, Lot(s) 84, Borough of **Brooklyn, Community Board: 15**. Variance (§72-21) to permit the development of a two-family (2) home contrary to ZR §§ 23-142 (FAR, Lot Coverage, Open Space), 23-631(b) (Front Wall), and 23-45(a) (Front Yard). R4-1 zoning district. R4-1 district.  
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**2017-65-BZ**

2811 Brown Street, located on Brown Street between Shore Pakway and Emmons Avenue, Block 08800, Lot(s) 86, Borough of **Brooklyn, Community Board: 15**. Variance (§72-21) to permit the development of a two (2) family building contrary to ZR §§ 23-142 (FAR, Lot Coverage, Open Space), 23-631(b) (Front Wall), and 23-45(a) (Front Yard). R4-1 zoning district. R4-1 district.  
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**2017-66-BZ**

4 Maple Terrace, located on the intersection formed by Dustan Street and Maple Terrace, Block 04083, Lot(s) 40, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X zoning district. R3X district.  
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**2017-67-BZ**

2714 Avenue R, located on the south side of Avenue R between East 27th & 28th Streets, Block 06833, Lot(s) 7, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-141); perimeter wall height (ZR §23-631) and side yards (ZR §23-461). R3-2 zoning district. R3-2 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING APRIL 25, 2017, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 25, 2017, 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

#### 146-79-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Estate of Georgia Koufakis, owner.

SUBJECT – Application October 24, 2014 – Extension of term of a previously variance and an Amendment/Waiver: to permit a change in use to automotive sales (UG9) from automotive repair and parts installation(UG 16). C2-2(R3-2) district.

PREMISES AFFECTED – 210-11 Jamaica Avenue aka 210-01/21 Jamaica Avenue, Block 10543, Lot 3, Borough of Queens.

**COMMUNITY BOARD #13Q**

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#### 36-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 65-75 Owners Corp., owner; World Gym, Inc., lessee.

SUBJECT – Application December 5, 2014 – Extension of Term and Waiver (§72-01): to extend the term of a previous grant permitting a physical culture establishment (*World Gym*) within an existing cellar and one-story commercial building. C1-2/R3-1 zoning district.

PREMISES AFFECTED – 65-75 Woodhaven Boulevard aka 85-01 66<sup>th</sup> Avenue, Block 3139, Lot 1, Borough of Queens.

**COMMUNITY BOARD #6Q**

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#### 189-96-BZ

APPLICANT – John C. Chen, R.A., for Ping Yee, owner; Club Flamingo, lessee.

SUBJECT – Application October 24, 2016 – Extension of Term for a previously granted Special Permit (§73-244) of a UG12 Eating and Drinking establishment with entertainment and dancing (*Flamingos*) which expires on May 19, 2016; Waiver of the Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 85-10/12 Roosevelt Avenue, Block 1502, Lot 3, Borough of Queens.

**COMMUNITY BOARD #4Q**

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## REGULAR MEETING APRIL 25, 2017, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 25, 2017, 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

#### 161-15-BZ

APPLICANT – Sheldon Lobel, P.C., for Church of Pentecost U.S.A., Inc., owner.

SUBJECT – Application July 23, 2015 – Variance (§72-21) to permit the enlargement of an existing house of worship (UG 4) contrary to lot coverage and rear yard requirements. R6A/R5A zoning district.

PREMISES AFFECTED – 621 East 216<sup>th</sup> Street, Block 4649, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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#### 2016-4122-BZ

APPLICANT – Eric Palatnik, P.C., for 902 Quentin Road, LLC, owner.

SUBJECT – Application February 19, 2016 – Special Permit (§73-44) to reduce the required number of accessory parking spaces contrary to §36-21 for ambulatory diagnostic or treatment facility use (UG 4) from eighty seven (87) to forty four (44) parking spaces. C8-2/C4-2 zoning district.

PREMISES AFFECTED – 902-912 Quentin Road, Block 6666, Lot(s) 1, 5, 8, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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#### 2016-4133-BZ

APPLICANT – Law Office of Lyra J. Altman, for BD 2018 East 4<sup>th</sup> LLC, owner.

SUBJECT – Application March 10, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141) and perimeter wall height (§23-631). R2X (OP) zoning district.

PREMISES AFFECTED – 2018 East 4<sup>th</sup> Street, Block 7106, Lot 176, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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# CALENDAR

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**2016-4181-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Alber Bukai and Subhi Bukai, owners.

SUBJECT – Application May 2, 2016 – Special Permit (§73-622) for the enlargement and conversion of an existing two family dwelling to a single family dwelling, contrary to side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R5 zoning district.

PREMISES AFFECTED – 1981 East 14<sup>th</sup> Street, Block 7293, Lot 54, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Ryan Singer, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, MARCH 21, 2017 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 651-60-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, for Briar Hill Realty LLC, owner.

SUBJECT – Application September 26, 2016 – Extension of Term (§11-411) of a variance allowing the conversion of cellar space in an existing multiple dwelling to a valet service, office/stationary store and packaged goods store which expired on March 7, 2011; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 600 West 246<sup>th</sup> Street, Block 5909 Lot 825, Borough of Bronx.

#### COMMUNITY BOARD #8BX

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

#### THE VOTE TO GRANT –

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

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of the term of a variance, previously granted by the Board, which expired on March 7, 2011; and

WHEREAS, a public hearing was held on this application on March 21, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, the subject site is located at the southeast corner of the intersection of West 246<sup>th</sup> Street and Independence Avenue, in an R4 zoning district, in the Bronx; and

WHEREAS, the site has approximately 592 feet of frontage along West 246<sup>th</sup> Street, 468 feet of frontage along Independence Avenue, 401 feet of frontage along Blackstone Avenue and is occupied by a 13-story multiple-dwelling residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 7, 1961, when, under the subject calendar number, the Board granted a variance to permit a conversion of one apartment in the cellar of the existing building to a valet service without dry-cleaning as an accessory to the development for a term of ten (10) years, expiring March 7, 1971, on condition that the use be limited to the tenants of the development, there be no signs on the

exterior of the building, that all applicable laws, rules and regulations be complied with and that all permits be obtained, all work completed, and a Certificate of Occupancy be obtained pursuant to the Zoning Resolution; and

WHEREAS, on April 20, 1971, and June 2, 1981, under the subject calendar number, the Board extended the term of the variance for additional ten (10) year terms, the latter of which expired on March 7, 1991; and

WHEREAS, on February 8, 1994, under the subject calendar number, the Board waived its Rules, amended the variance to permit the continued use of an existing home occupation in the basement of the premises and extended the variance term for an additional ten (10) years, expiring March 7, 2001, on condition, *inter alia*, that a new Certificate of Occupancy be obtained with one (1) year; and

WHEREAS, by letter dated August 14, 2002, the Board approved a change in use of a portion of the valet service space to a packaged non-perishable goods store; and

WHEREAS, on January 8, 2008, under the subject calendar number, the Board again waived its Rules and extended the term of the variance for ten (10) years, expiring March 7, 2011; and

WHEREAS, the previous term having expired, the applicant presently seeks a further ten (10) year extension of the term of the variance; and

WHEREAS, the applicant also seeks to surrender the variance as it relates to a 361 square foot portion of the previously-approved valet service area, which the applicant submits will be utilized as an accessory rental office; valet services will continue to be provided in the remaining portion of the variance space; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(3) to permit the filing of this application more than two (2) years but less than ten (10) years after the expiration of the term; and

WHEREAS, consistent with the requirements of Rule § 1-07.3(b)(3), the applicant has demonstrated that the valet service use has been continuous at the site since the expiration of the term and that substantial prejudice would result without the requested waiver; and

WHEREAS, pursuant to ZR § 11-411, the Board finds that a ten (10) year extension of the term of the variance is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated March 7, 1961, as amended through January 8, 2008, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years from the expiration of the last grant to expire on March 7, 2021, and to permit the surrender of a portion of the variance as it relates to a 361 square foot area noted as a modification to the previously-approved plans; *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received September 26, 2016’-Four (4) sheets; and *on further condition*:



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# MINUTES

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THAT this grant shall be limited to a term of ten (10) years expiring March 7, 2021;

THAT the use of the valet service shall be limited to the tenants of this development;

THAT there shall be no signs on the exterior of the building;

THAT the above conditions shall be reflected on the Certificate of Occupancy;

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

Adopted by the Board of Standards and Appeals, March 21, 2017.

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## 574-85-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 125 East 39<sup>th</sup> Street Realty LLC, owner.

SUBJECT – Application September 26, 2016 – Extension of term for a previously granted Variance (§72-21) permitting an eating and drinking establishment (UG6) located in the cellar, basement and first floor of a five story building which expired on June 17, 2016. C1-5(R-10) zoning district.

PREMISES AFFECTED – 125 East 39<sup>th</sup> Street, Block 895, Lot 18, Borough of Manhattan.

## COMMUNITY BOARD #6M

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of the term of a variance, previously granted by the Board, which expired on June 17, 2016; and

WHEREAS, a public hearing was held on this application on March 21, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Chanda performed an inspection of the site and the surrounding neighborhood; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application for an additional five (5) year term; and

WHEREAS, the subject site is located on the north side of East 39<sup>th</sup> Street, between Lexington Avenue and Park Avenue, in an R10 (C1-5) zoning district, in Manhattan; and

WHEREAS, the site has approximately 20 feet of frontage along East 39<sup>th</sup> Street, a depth of 99 feet, 1,975 square feet of lot area and is occupied by a five-story mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over this site since June 17, 1986, when, under the subject calendar number, the Board granted a variance to permit the extension of an eating and drinking establishment (Use Group 6) located in the basement of the existing building to the first floor of the same, contrary to use regulations, for a term of ten (10) years, expiring June 17, 1996; and

WHEREAS, on April 15, 1997, under the subject calendar number, the Board extended the term of the variance for an additional ten (10) years, expiring June 17, 2006; and

WHEREAS, on November 21, 2006, under the subject calendar number, the Board waived its Rules and granted a ten (10) year extension of the term of the variance, expiring June 17, 2016; and

WHEREAS, the previous term having expired, the applicant presently seeks a further extension of the term of the variance for an additional ten (10) years; and

WHEREAS, in addition, the applicant requests, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, a waiver of Rule § 1-07.3(b)(2) to permit the filing of this application less than two (2) years after the expiration of the term; and

WHEREAS, consistent with Rule § 1-07.3(b)(2), the applicant represents that the use has been continuous at the site since the expiration of the term and that substantial prejudice would result without the requested waiver; and

WHEREAS, the Board finds that the requested amendment and a ten (10) year extension of the term of the variance 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 June 17, 1986, as amended through November 21, 2006, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years from the expiration of the last grant, to expire on June 17, 2026; *on condition* that the use and operation shall substantially conform to the previously approved plans; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring June 17, 2026;

THAT the hours of operation for commercial use on the first floor (second story) shall be limited to not later than 11:00 P.M. daily;

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

THAT a new Certificate of Occupancy shall be obtained within one (1) year;

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;

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# MINUTES

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

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

Adopted by the Board of Standards and Appeals, March 21, 2017.

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## 163-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee. SUBJECT – Application February 24, 2016 – Extension of time to obtain a certificate of occupancy for a previously granted physical culture establishment (Crunch Fitness) which expired on October 29, 2014; Waiver of the Rules. C2-4/R7A zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, Block 2096, Lot(s) 66, 69, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

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

#### THE VOTE TO GRANT –

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

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of time to obtain a Certificate of Occupancy, which expired on October 29, 2014; and

WHEREAS, a public hearing was held on February 14, 2017, after due notice by publication in *The City Record*, with continued hearing on March 21, 2017, and then to decision on the same date; and

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

WHEREAS, the subject site is located on the northwest corner of Fulton Street and St. Felix Street, in an R7A (C2-4) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 166 feet of frontage along Fulton Street, 175 feet of frontage along St. Felix Street and is occupied by a two-story commercial building at 691 Fulton Street (Lot 69) and a one-story commercial building at 695 Fulton Street (Lot 66); and

WHEREAS, the Board has exercised jurisdiction over the subject premises since July 12, 2005, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to allow the locating of a physical cultural establishment (“PCE”) within the cellar and first floor of the two-story building on Lot 69 for a term of ten (10) years, which expired on July 12, 2015; and

WHEREAS, on April 24, 2007, under the subject calendar number, the Board amended the special permit to

allow the enlargement and extension of the existing PCE into the first floor of the adjacent one-story building on Lot 66; and

WHEREAS, on July 17, 2012, under the subject calendar number, the Board granted an application for an extension of time to obtain a Certificate of Occupancy, the time for which expired on April 24, 2011, until July 17, 2013; and

WHEREAS, on October 29, 2013, under the subject calendar number, the Board further extended the time to obtain a Certificate of Occupancy to October 29, 2014; and

WHEREAS, the applicant having still not obtained a Certificate of Occupancy for the enlarged and extended PCE, the applicant presently seeks a one year extension from the date of approval of this application; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, or Rule § 1-07.3(d)(2) to permit the filing of this application more than thirty (30) days after the expiration of the time to obtain a Certificate of Occupancy; and

WHEREAS, the applicant represents that attempts to obtain a Certificate of Occupancy have been stymied by the bankruptcy filing of the PCE operator’s parent company, as well as several audits at Department of Buildings, but submits that efforts are already underway to resolve the outstanding objections and that all necessary work at the premises can be completed within one (1) year of the approval of this application; and

WHEREAS, based upon its review of the record, the Board finds that 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 *waives* its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 12, 2005, as amended through October 29, 2013, so that as amended this portion of the resolution reads: “to grant an extension of time to obtain a Certificate of Occupancy to March 21, 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 there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all massages shall be performed only by New York State licensed massage professionals;

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

THAT a Certificate of Occupancy shall be obtained by March 21, 2018;

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 objections(s); and

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

# MINUTES

Adopted by the Board of Standards and Appeals,  
March 21, 2017.

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**240-55-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties LLC, owner.

SUBJECT – Application December 24, 2015 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair facility (UG 16B) which is set to expire on November 3, 2018; Amendment (§11-413) to permit a change in use from automotive repair facility (UG 16B) to automotive sales (UG 9A); Extension of Time to Obtain a Certificate of Occupancy which expired on April 1, 2015; Waiver of the Rules to permit the filing for an Extension of Term in excess of 1 year prior to the expiration and for filing in excess of 30 day but less than 1 year of the expiration of the time to obtain a Certificate of Occupancy. C2-2/R6B & R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Block 7305, Lot 19, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for adjourned hearing.

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**1289-80-BZ**

APPLICANT – Troutman Sanders LLP, for Evelyn L. Wells, as surviving Trustee and Steven R. Straus, owner; Bally Total Fitness, lessee.

SUBJECT – Application July 15, 2016 – Extension of Term of a variance allowing the operation of a Physical Culture Establishment (*24 Hour Fitness*) which expired on July 21, 2016. C1-3/R6 zoning district.

PREMISES AFFECTED – 298 West 231<sup>st</sup> Street, Block 5711, Lot 29, Borough of Bronx.

**COMMUNITY BOARD #8BX**

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for continued hearing.

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**1016-84-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Livia Liberace Trust, owner; Raja Auto Sales & Auto Repair & Body Shop, Inc., lessee.

SUBJECT – Application August 18, 2016 – Extension of Term (§11-411) of a previously approved Variance for the operation of an auto repair shop (UG16B) with accessory uses which expired on July 30, 2015; Waiver of the Rules. C8-2 & R5 (Special Ocean Parkway District) zoning district. PREMISES AFFECTED – 790 Coney Island Avenue a/k/a 790-798 Coney Island Avenue, Block 5393, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for continued hearing.

**377-88-BZ**

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Application – Compliance Hearing of a previously approved Variance (§72-21) which permitted the legalization of a one (1) story enlargement to a one (1) story blacksmith and welding shop (UG 16) which increased the degree on non-conformance contrary to ZR §52-22 in a then R4 zoning district. C2-4/R6A zoning district.

PREMISES AFFECTED – 145-64 Liberty Avenue, southwest corner of Liverpool Street. Block 10049, Lot 11. Borough of Queens.

**COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Laid over to April 25, 2017, at 10 A.M., for continued hearing.

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**67-91-BZ**

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

SUBJECT – Application September 11, 2015 – Amendment (§11-412) to a previously-granted Automotive Service Station (Gulf) (UG 16B), with accessory uses, to permit the enlargement of an existing 1 story building and convert service bays to an accessory convenience store and install 6 new multiple product dispensers. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 54-55 Little Neck Parkway aka 260-01 Horace Harding Expressway, Block 8274, Lot 135, Borough of Queens.

**COMMUNITY BOARD #11Q**

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for decision, hearing closed.

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**109-93-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.

SUBJECT – Application December 24, 2015 – Extension of Term of a previously approved Variance (72-21) permitting an eating and drinking establishment (UG 6) which expired on May 24, 2014; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 189-11 Northern Boulevard, Block 5365, Lot 5, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to March 28, 2017, at 10 A.M., for continued hearing.

# MINUTES

## **65-94-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for KGH Realty Corp., owner.

SUBJECT – Application March 7, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted an enlargement contrary to side yard regulations and community facility (UG 4) on the ground and cellar floors and commercial offices (UG 6) in the garage which expired on March 5, 2016. R4B zoning district.

PREMISES AFFECTED – 144-02 Jewel Avenue, Block 6642, Lot 2, Borough of Queens.

## **COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for adjourned hearing.

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## **57-95-A thru 59-95-A**

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application February 9, 2015 – Amendment/Time to complete construction filed under Certificate of Occupancy Modification. R7-2 zoning district.

PREMISES AFFECTED – 473 Central Park West, West side of Central Park West between West 107th and West 108th Streets, Block 01843, Lot 32, Borough of Manhattan.

## **COMMUNITY BOARD #7M**

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for adjourned hearing.

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## **201-97-BZ**

APPLICANT – Eric Palatnik, P.C., for Monroe Queens-Rockaway, LLC, owner.

SUBJECT – Application August 6, 2015 – Amendment of a previously approved Variance (§72-21) which permitted the erection and use of a one-story building as a non-conforming Use Group 6 drug store with accessory parking. The Amendment seeks to eliminate the term of the variance since the use is now permitted in the district. C2-3/R3-2 zoning district.

PREMISES AFFECTED – 119-02 Rockaway Boulevard, corner of Rockaway Boulevard and Lefferts Boulevard, Block 11712, Lot 28, Borough of Queens.

## **COMMUNITY BOARD #10Q**

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for adjourned hearing.

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## **4-98-BZ**

APPLICANT – Eric Palatnik, P.C., for Madison Queens & Guy Brewer, LLC, owner.

SUBJECT – Application July 24, 2015 – Amendment of a previously approved variance (72-21) which permitted the operation of a drug store (UG 6) contrary to uses regulations. The amendment seeks to eliminate the term of the variance and reflect non-compliance with respect to bulk. C1-3/R3X zoning district.

PREMISES AFFECTED – 127-04 Guy Brewer Boulevard, corner of Guy Brewer Boulevard and Baisley Boulevard, Block 12269, Lot 29, Borough of Queens.

## **COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for adjourned hearing.

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## **182-02-BZ**

APPLICANT – Eric Palatnik, P.C., for Gaseteria Oil Corporation, owner.

SUBJECT – Application July 22, 2014 – Extension of Term of a previously approved (§72-21) permitting the operation of an Automotive Service Station (UG 16B) with an accessory convenience store which expired January 7, 2013; Waiver of the Rules. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 2990 Victory Boulevard, Block 2072, Lot 42, Borough of Staten Island.

## **COMMUNITY BOARD #2SI**

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.

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## **180-05-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TCAM Core Property Fund Operating LP, owner; Equinox 85<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application February 4, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (Equinox) which expires on February 28, 2016. C2-8A/R8B zoning district.

PREMISES AFFECTED – 1511 Third Avenue (a/k/a 201 East 85<sup>th</sup> Street) Block 1531, Lot 1, Borough of Manhattan.

## **COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.

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## **APPEALS CALENDAR**

### **2016-4245-A thru 2016-4248-A**

APPLICANT – Law Office of Steven Simicich, for Over Development, LTD, owner.

SUBJECT – Applications September 8, 2016 – Proposed construction of four single family residential buildings not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1 zoning district

PREMISES AFFECTED – 4004, 4006, 4008, 4010 Manhattan Avenue, Block 7024, Lot(s) 119, 120, 121, 122, Borough of Brooklyn.

## **COMMUNITY BOARD #13BK**

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

THE VOTE TO GRANT –

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

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# MINUTES

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Negative: .....0

## THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”) Brooklyn Borough Commissioner dated August 15, 2016 acting on DOB Application Nos. 321192464, 321192259, 321192277 and 321192286 read in pertinent part:

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

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 501.3 of the 2014NYC Building Code; and

WHEREAS, this is an application to allow the construction of four single-family residences that do not front on a mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on January 24, 2017, after due notice by publication in *The City Record*, with a continued hearing on March 21, 2017, and then to decision on that date; and

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

WHEREAS, Community Board 13, Brooklyn, recommended disapproval of this application; and

WHEREAS, the subject lots are located on the northwestern corner of the intersection of Manhattan Avenue and Neptune Avenue, in an R3-1 zoning district, in Brooklyn; and

WHEREAS, the site is currently identified as Block 7024, Lot 119 on the New York City Tax Map (“Tax Map”), but an Application for Mergers or Apportionments, dated January 3, 2016, requesting the apportionment of Lot 119 into four new tax lots—Tentative Lots 122, 121, 120 and 119—was submitted to the New York City Department of Finance; the new Lots were issued as of January 6, 2016, but as the new lots do not yet appear on the Tax Map, there are herein referred to as “Tentative Lots”; and

WHEREAS, Tentative Lot 119 will have 2,200 square feet of lot area, Tentative Lot 120 will have 2,201 square feet of floor area, Tentative Lot 121 will have 2,204 square feet of lot area and Tentative Lot 122 will have 2,404 square feet of lot area; and

WHEREAS, the applicant proposes to develop each of the Tentative Lots as follows: a single family four-story semi-detached residence with 1,292 square feet of floor area, a floor area ratio (“FAR”) of 0.59 and 33 percent lot coverage on Tentative Lot 119; a four-story one-family semi-detached residence with 1,292 square feet of floor area, 0.59 FAR and 33 percent lot coverage on Tentative Lot 120; a four-story one-family semi-detached residence with 1,292 square feet of floor area, 0.59 FAR and 33 percent lot coverage on Tentative Lot 121; and a two-story one-family semi-detached residence with

1,420 square feet of floor area, 0.59 FAR and 35 percent lot coverage on Tentative Lot 122; and

WHEREAS, the applicant represents that each of the four new tax lots will also be new zoning lots; and

WHEREAS, at hearing, the Board expressed concern regarding the size of Tentative Lot 122, specifically whether, because of its curved lot line, the Tentative Lot complied with applicable zoning regulations regarding minimum lot width and could provide the side yards required by applicable zoning; and

WHEREAS, specifically, the Board was concerned that the apportionment of Tentative Lot 122 will create a future variance site; and

WHEREAS, in response to this concern, the applicant submits that, consistent with the ZR § 12-10 definition of “lot width,”<sup>1</sup> the width of Tentative Lot 122 is approximately 29 feet, a width that complies with the 18 foot minimum lot width requirement for the use proposed on the lot; and

WHEREAS, nevertheless, the Board notes, and so advised the applicant, that in the case Tentative Lot 22 becomes the subject of a future variance application, pursuant to ZR § 72-21, in which the lot’s size and/or shape is the “unique physical condition” alleged to cause practical difficulties or unnecessary hardship in complying with the use or bulk provisions of the Zoning Resolution, the apportionment of the same in connection with the subject application constitutes a self-created hardship “created by the owner or by a predecessor in title” that precludes the (d) finding for such variance; and

WHEREAS, at hearing, the former president of the Sea Gate Association (the “Association”) expressed opposition to the proposal on the basis that the proposed development exceeds the height regulations applicable in the zoning district, is out of character with the surrounding neighborhood and that the development of four dwellings on a lot previously developed with one dwelling will impose a significant burden on existing sewage infrastructure; and

WHEREAS, the Board notes that no zoning regulation waivers are associated with this application and, thus, the proposed dwellings must comply with all applicable zoning regulations, including height; the Board also notes that there is no neighborhood character finding associated with applications for waivers of GCL § 36 and the only concern expressed in association with such waivers is the protection of the existing and future street grid—to wit, the law suggests only that the Board “may in passing on such appeal make any reasonable exception . . . that will protect any future street or highway layout”; and

WHEREAS, the dwellings proposed on Tentative Lots 119, 120 and 121 will each front and have parking accessible via curb cuts on Manhattan Avenue and the dwelling proposed on Tentative Lot 122 will front both Manhattan Avenue and Neptune Avenue, but have parking accessible only by curb cut on Manhattan Avenue; and

WHEREAS, the applicant represents that each of the dwellings will fully comply with all flood plain regulations as

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1 “Lot width” is defined in ZR § 12-10 as “the mean horizontal distance between the *side lot lines* of a *zoning lot*.”

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well as all zoning requirements applicable in the zoning district and seeks the subject relief because the proposed dwellings will front Manhattan Avenue and Neptune Avenue, private roads that, as part of the private community of Sea Gate, are not duly placed on the official map of the City of New York; and

WHEREAS, the Association is the owner in fee of streets within the community, including Manhattan Avenue and Neptune Avenue, and, pursuant to the Association's Rules and Regulations, property owners are responsible for the maintenance and repair of sidewalks, keeping sidewalks, driveways, front yards and porches clear of debris; and

WHEREAS, the applicant submitted into the record a topographical survey of the area showing that Manhattan Avenue and Neptune Avenue have unobstructed widths of not less than 34 feet—Manhattan Avenue is improved to a width of 34 feet and Neptune Avenue is improved to a width of 42 feet at the subject site—and, therefore, the residences proposed herein are not required to be sprinklered pursuant to Section 503.3.2 of the Fire Code ("FC"); and

WHEREAS, in addition, the applicant submits that a private fire hydrant is located on the opposite side of Neptune Avenue within 250 feet of the entrances to the proposed residences, in compliance with FC 508.5.1; and

WHEREAS, by letter dated October 20, 2016, the Fire Department states that, as the proposal complies with all Fire Code provisions relative to street access, street width, parking, site access and distances from required hydrants, it has no objection to the subject application; and

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

*Therefore it is Resolved*, that the decisions of the DOB dated March 2, 2016 acting on DOB Application Nos. 321192464, 321192259, 321192277 and 321192286, are modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received March 3, 2017"- One (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT a future application for a variance, pursuant to ZR § 72-21, for Tentative Lot 22 on the basis that the lot size and/or shape causes practical difficulties or unnecessary hardship has been precluded by the apportionment of Tentative Lot 22 in connection with the subject application because such size and/or shape was created by the subject applicant;

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

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

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

to the relief granted.

Adopted by the Board of Standards and Appeals, March 21, 2017.

## 2016-4329-A

APPLICANT – Richard G. Leland, for Baychester Retail III LLC, owner.

SUBJECT – Application November 10, 2016 – Administrative appeal challenging the Department of Buildings' final determination dated October 25, 2016, to permit the installation of 54 individual signs at the subject property. C7 zoning district.

PREMISES AFFECTED – 2001 Bartow Avenue, Block 5141, Lot 101, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for continued hearing.

## ZONING CALENDAR

### 252-12-BZ

APPLICANT – Richard Bowers of Akerman Senterfitt, LLP, for Mia & 223<sup>rd</sup> Street Management Corp., owner.

SUBJECT – Application August 15, 2012 – Variance (§72-21) to legalize four single family homes which do not comply with the rear yard requirements, ZR §23-47. R1-2 zoning district.

PREMISES AFFECTED – 39-39 223<sup>rd</sup> Street & 223-01/15/19 Mia Drive, Block 36343, Lot(s) 154-157, Borough of Queens.

### COMMUNITY BOARD #11Q

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 10, 2012, acting on Department of Buildings ("DOB") Application No. 491762035 reads in pertinent part:

ZR 23-47, ZR 12-10: Rear yard provided is contrary to ZR 23-47. The eastern portion of the lot abuts the parkland adjoining to Cross Island Parkway; therefore this property cannot be considered a through lot. Provide 30-ft rear yard; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R1-2 zoning district, to legalize four single-family dwellings that do not comply with the rear yard requirement, contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on February 14, 2017, after due notice by

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publication in *The City Record*, with a continued hearing on March 21, 2017, and then to decision on the same date; and

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

WHEREAS, Community Board 11, Queens, originally recommended disapproval, but, upon learning that adjacent neighbors retracted their opposition after making the determination that the homes on the site, which have been vacant and subject to vandalism, would contribute more positively to the community if occupied, now has no objection to the subject application; and

WHEREAS, the subject site is located at the northwestern corner of the intersection of 223rd Street and Mia Drive, in an R1-2 zoning district, in Queens; and

WHEREAS, the site is a single zoning lot comprised of four tax lots having approximately 100 feet of frontage along 223rd Street, 230 feet of frontage along Mia Drive, and 22,859 square feet of lot area; and

WHEREAS, the zoning lot is developed with four two-story single family homes and provides a 15 foot rear yard along the eastern lot line; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 13, 2010, when, under BSA Cal. Nos. 23-10-A thru 26-10-A, the Board recognized that the owner had acquired a common law vested right to continue the development of the single-family dwellings after the subject site was rezoned from an R2 zoning district to an R1-2 zoning district and the development no longer complied with applicable minimum front yard regulations; and

WHEREAS, such determination relied, in part, on the Board's finding that the construction was conducted pursuant to valid permits, a finding that was based on letters issued from DOB, dated March 18, 2010, and June 7, 2010, stating that the applicable permits were lawfully issued prior to the date of the rezoning; and

WHEREAS, the applicant now seeks a variance of the rear yard requirements to legalize the four single-family dwellings based on practical difficulties and unnecessary hardship resulting from the applicant's reliance, in good faith, on validly issued DOB permits and DOB determinations that the subject site was a through lot and no rear yards were required; and

WHEREAS, the applicant sets forth the following timeline for the existing dwellings' approval process: in February and March 2004, the applicant obtained New Building Permits from DOB for the construction of four single-family detached homes at the subject premises; in a letter to the then-Queens Borough Commissioner dated October 6, 2004, a nearby property owner (the "Opposition") challenged the issuance of the permits alleging that, because the property directly east of the eastern lot line of the subject property was a public park, the subject site was an interior lot, not a through lot, and a 30 foot rear yard was, therefore, required; on October 20, 2004, the then-Queens Borough Commissioner issued a Stop

Work Order and Intent to Revoke Approvals and Permits to the site unless and until the applicant verified that the subject lot constituted a "through lot" as defined in ZR § 12-10; on October 28, 2004, in response to a letter from the applicant's architect requesting confirmation that the site is a through lot with no rear yard requirement because it fronts on the mapped Cross Island Parkway, the Queens Borough President's Consulting Engineer issued a letter confirming that the Topographical Bureau of the then-Queens Borough President's Office had determined that the east lot line of Lot 154 coincides with the west mapped street line of the Cross Island Parkway; upon receipt of the Topographical Bureau's determination, DOB vacated the Stop Work Order; and in a letter dated May 20, 2005, the then-Queens Borough Commissioner responded to the Opposition sharing her conclusion that the subject site was a through lot; and

WHEREAS, on April 12, 2005, (the "Effective Date"), the rezoning of the site from an R2 zoning district to an R1-2 zoning district became effective and two of the subjects dwellings—39-39 223rd Street and 223-19 Mia Drive—were rendered non-compliant with regards to front yards, but the applicant avers that construction was entitled to continue, pursuant to ZR § 11-331(b), because the foundation of at least one of the four dwelling had been completed prior to the Effective Date; and

WHEREAS, the applicant submits that final construction, electrical and plumbing signoffs were obtained for the dwelling located at 39-39 223rd Street on August 22, 2005, February 13, 2006, and May 8, 2006, respectively; that final electrical signoff was obtained for the remaining three dwellings on October 24, 2005, and that final construction signoff was obtained for a second dwelling at 223-09 Mia Drive on November 29, 2005; and

WHEREAS, nevertheless, the applicant states that, though construction at the site was substantially completed by April 12, 2007, they were unable to obtain certificates of occupancy for the dwellings within two years after the Effective Date, pursuant to ZR § 11-332(a); and

WHEREAS, accordingly, the applicant filed the aforementioned vested rights applications at the Board on February 23, 2010; by letter dated March 18, 2010, DOB Counsel issued a letter stating that the permits for the subject buildings were lawfully issued, a conclusion that was subsequently re-confirmed by additional letters dated May 13, 2010, and June 7, 2010; the Board granted the vested rights applications on July 13, 2010, and the time for the applicant to complete construction and obtain Certificates of Occupancy for the dwellings on the site was extended until July 13, 2012; and

WHEREAS, although the applicant continued to work with DOB, since the Board's 2012 grant of an extension of time, to resolve issues preventing the issuance of Certificates of Occupancy for the four subject dwellings, on January 10, 2012, DOB issued an Intent to Revoke permits as well as zoning objections for the failure to provide a 30 foot rear yard; DOB also subsequently denied the applicant's request for reconsideration of those zoning objections on February 6, 2012, citing another DOB final determination—dated October 12, 2010, and affirmed by the Board in a decision dated March

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8, 2011, for BSA Cal. No. 215-10-A (29-01 216th Street, Queens)—that a similarly situated lot was an interior lot, not a through lot; and

WHEREAS, the applicant represents that in order to provide the rear yards, approximately 15 feet of the total 27 foot width of the existing dwelling at 223-19 Mia Drive would have to be demolished and that such action is cost prohibitive and would result in a substandard, unmarketable dwelling approximately 12 feet wide; and

WHEREAS, accordingly, the applicant has filed for the subject relief; and

WHEREAS, the Board notes that New York State courts have recognized that property owners may invoke the principle of good faith reliance in the context of a variance application when they have made expenditures towards construction performed pursuant to a building permit that is later revoked due to a non-compliance that existed at the time the permit was issued and such reliance resulted in a unique hardship, thereby serving as a substitute for the customary uniqueness finding set forth in ZR § 72-21(a);

WHEREAS, in *Jayne Estates, Inc. v. Raynor*, 22 N.Y.2d 417 (1968), the Court of Appeals determined that the expenditures made by a property owner in reliance on permits deemed to be invalid were suitably considered in an application for a variance, particularly with regards to the (a) finding, in which an applicant must allege “unnecessary hardship,” because (1) the property owner acted in good faith and (2) there was no reasonable basis upon which the property owner could have been charged with constructive notice of the permit’s invalidity; and

WHEREAS, in *Pantelidis v. Board of Standards and Appeals*, 10 N.Y.3d 846 (2008), the Court of Appeals, in a limited opinion, held that it was appropriate for the New York State Supreme Court to have conducted a good faith reliance hearing, rather than remand the case to the Board, to determine whether the property owner could claim reliance in the context of an Article 78 proceeding to overturn the Board’s denial of a variance application; the Court established that the Board should conduct such a hearing and that good faith reliance is relevant to the variance analysis; and

WHEREAS, most recently, in *Woods v. Srinivasan*, 108 A.D.3d 412 (1st Dep’t 2013) *lv to appeal denied*, 22 N.Y.3d 859 (2014), the Appellate Division found that, where the issue was whether construction documents and plans complied with the applicable side lot line requirements, DOB, rather than the property owner, was in the best position to avoid the erroneous issuance of the permit; accordingly, the Appellate Division found that the owner had relied in good faith on DOB’s permit issuance and remanded the matter to the Board to consider whether petitioner satisfied the remaining elements required for a variance; and

WHEREAS, the Board notes that the body of case law that addresses good faith reliance and a property owner’s ability to establish detrimental reliance that can be introduced in a variance application is limited to those instances where there is a unique history of approvals from high-level municipal officials—the Village Board of Trustees in *Jayne Estates* and a DOB Borough Commissioner in *Pantelidis*—on

the precise matter at issue; and

WHEREAS, accordingly, the Board identifies the findings for good faith reliance under the common law as: (1) that a permit was issued and later revoked based on a permit defect that existed when the permit was first issued; (2) that the permit approval process included an inquiry into the issue that would subsequently be the basis for the revocation of such permit; (3) that the owner could not have known that the permit was defective despite municipal assurances to the contrary; and (4) that construction was performed and expenditures were made subsequent to the issuance of the permit; and

WHEREAS, with respect to the first and second elements of good faith reliance, the applicant asserts that DOB issued the permits in February and March 2004 and issued an Intent to Revoke the permits on January 10, 2012, based on the purported non-compliance of the development with ZR § 23-47, a defect that existed in 2004 and was the precise subject of inquiry by the Queens Borough Commissioner, who, after issuing an Intent to Revoke and Stop Work Order for the site on October 20, 2004, unless and until it was verified that the site constituted a “through lot” as defined in ZR § 12-10, in a 2005 letter concluded that the subject site was, indeed, a through-lot and had the Stop Work Order vacated; and

WHEREAS, with regard to the third element, the applicant submits that it could not have known that the permits were defective despite multiple municipal assurances to the contrary because DOB’s denial of a request for reconsideration for the rear yard zoning objections relied, in part, on a DOB final determination, dated October 12, 2010, that post-dated both the 2004 issuance of permits for the subject site and the substantial completion of construction at the site in 2007; and

WHEREAS, finally, in satisfaction of the fourth element, the applicant represents that construction on the four residences was completed subsequent to the 2004 issuance of the permits at a cost of approximately \$1 million as of 2010, when the applicant applied to the Board to recognize a common law vested right to continue the development of the site; and

WHEREAS, while the Board acknowledges that government agencies, such as DOB, maintain the ability to correct mistakes and that DOB may not be estopped from correcting the erroneous approval of a building permit or issuance of a Certificate of Occupancy, the Board finds the retroactive application of DOB’s corrected interpretation as to whether properties similar to the subject site are “interior lots” rather than “through lots” to have, in this case, resulted in a unique hardship; and

WHEREAS, accordingly, the Board finds that the applicant has made all of the findings required to establish their good faith reliance on the issuance of the 2004 permits in satisfaction of ZR § 72-21(a); and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(b), there is no reasonable possibility that modifications to the site required for compliance with the Zoning Resolution, specifically, the demolition of approximately 15 feet from the existing 27-foot wide single-family residence located at 223-19 Mia Drive, will bring a



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reasonable return and, in support of this contention, provided cost estimates for the demolition and reconstruction of a revised as-of-right 12-foot wide residence at this location (approximately \$538,000), the costs associated with the construction of the existing residence (assumed to be one-quarter of the total construction costs, approximately \$274,000), and the loss in sales value of a 12-foot wide residence as compared to a 27-foot wide residence; and

WHEREAS, as evidence of the significant loss in sale value, stated to be approximately \$1 million, the applicant provided letters from two real estate brokers with experience selling property in the area surrounding the subject site who both concluded that a 12-foot wide home would be substandard, have an inefficient and unattractive layout and, therefore, be unmarketable, regardless of its location in an up-scale neighborhood, and that the cost to convert it from its existing conditions would be greater than its market value; and

WHEREAS, in sum, demolition and reconstruction of the existing residence at 223-19 Mia Drive required for compliance with ZR § 23-47 and the provision of a 30-foot rear yard at the site would constitute a loss of more than \$1.8 million; and

WHEREAS, upon review of these submissions, the Board has determined that because of the applicant's good faith reliance on early DOB approvals, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the surrounding area is predominated by residential uses, primarily one- and two-family residences, and, thus, the subject proposal 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 prepared a study of the area surrounding the subject site—including sites on the same Tax Block, located to the west of the Cross Island Parkway and north of the Long Island Railroad tracks, and sites on neighboring Tax Blocks 6197, 6344 and 6340 (the "Study Area")—and, of the 83 total sites in the Study Area, 81 (98 percent) of the lots are improved with single-family homes, 22 of these have floor area ratios ("FARs") equal to or greater than the FAR of the subject site (0.49 FAR) and an additional 35 (a total of 70 percent) have FARs equal to or greater than 0.40; and

WHEREAS, the applicant concedes that a majority of the lots on the same Tax Block as the subject site provide larger open areas between their eastern building walls and rear lot lines, but the applicant submits that, because the rear yard in question abuts an area currently mapped as park land adjoining the Cross Island Parkway, the granting of the subject variance, and the maintenance of the existing 15 foot rear yard in lieu of an enlargement to 30 feet, will have no impact on the light, air or open space enjoyed by the

neighboring homes, nor will it decrease the distance between the subject dwellings and their neighbors; and

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

WHEREAS, the applicant states that, per ZR § 72-21(d), the hardship was not self-created, but was, instead, the result of reliance on multiple assurances from municipal officials that the subject site was a "through lot" for which rear yards were not required; and

WHEREAS, the applicant additionally cites the New York Supreme Court's decision in *Pantelidis*, 10 Misc.3d 1077(A), 9 (N.Y. Cnty. 2005), for the proposition that the presence of good faith precludes a finding of self-created hardship; and

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

WHEREAS, supported by their study of the surrounding area and submission that the existing dwellings are comparable in bulk to their neighbors, the applicant represents that the subject proposal is the minimum needed to provide relief; and

WHEREAS, the Board agrees, in accordance with ZR § 72-21(e), that the subject proposal is the minimum necessary to afford the owner relief; 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 a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 13-BSA-019Q, dated August 15, 2013; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to permit, in an R1-2 zoning district, the legalization of four sing-family dwellings that do not comply with rear yard requirements, contrary to ZR § 23-47; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 1, 2017—twelve (12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the site: minimum rear yard depth of 15'-0", as reflected on the BSA-approved plans;

THAT Certificates of Occupancy shall be obtained within one (1) year;

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

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

Adopted by the Board of Standards and Appeals, March 21, 2017.

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## 2016-1221-BZ

### CEQR #16-BSA-075M

APPLICANT – Jay Goldstein, Esq., for Fifth Jam Development, LLC, owner; EVF Row House Inc., lessee.

SUBJECT – Application February 11, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Row House*) on the second floor of an existing commercial building. C2-7A zoning district.

PREMISES AFFECTED – 269 West 23<sup>rd</sup> Street, Block 773, Lot 9, Borough of Manhattan.

### COMMUNITY BOARD #4M

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

#### THE VOTE TO GRANT –

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

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Chief Plan Examiner of the Manhattan Borough Office of the Department of Buildings (“DOB”), dated August 29, 2016, acting on DOB Application No. 122514323, reads in pertinent part:

Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right as per section ZR 32-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C2-7A zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor and the second floor of an existing two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 27, 2016, after due notice by publication in *The City Record*, with a continued hearing on January 10, 2017, and then to decision on March 21, 2017; and

WHEREAS, Community Board 4, Manhattan recommends approval of this application; 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 north side of West 23rd Street, between Eighth Avenue and Seventh Avenue, in a C2-7A zoning district, in Manhattan; and

WHEREAS, the site has approximately 38 feet of frontage along West 23rd Street, a depth of 99 feet, 3,703 square feet of lot area and is occupied by a two-story commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X,

C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the

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subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and Certificate of Occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 130 square feet of floor area on the first floor, consisting of stairs to the second floor, and 2,465 square feet of floor area on the second floor of the existing building containing a reception area, locker rooms, storage and a rowing studio; and

WHEREAS, the PCE has been in operation as Row House since November 2015; and

WHEREAS, the PCE's hours of operation are Monday through Friday, 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, 6:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will not impair the essential character or the future use or development of the surrounding area because it is entirely contained within an existing commercial building and surrounded by other commercial uses; and

WHEREAS, in addition, the applicant submits that sound attenuation measures have been provided within the space so as to not disturb other tenants in the building; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides facilities for a low-impact full body workout combining rowing circuits with interval training; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE is equipped with an interior fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to the building's interior fire alarm connected to an FDNY-approved central station; and

WHEREAS, by letter dated March 8, 2017, the Fire Department recommended that no final decision be made on this application until on-site inspection of the premises was scheduled and received a confirmed date, but at hearing, the Fire Department revised its position, noting that an existing sprinkler and fire alarm system has been approved for the subject building and that it no longer has any objection to approval of this application; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

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

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-075M, dated February 11, 2016; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C2-7A zoning district, the operation of a physical culture establishment on a portion of the first floor and second floor of an existing two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 11, 2016" – Four (4) sheets and "Received March 1, 2017" – One (1) sheet and;

THAT the term of the PCE grant will expire on November 1, 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 the existing fire alarm system will be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a revised Certificate of Occupancy shall be obtained within one year;

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.

# MINUTES

Adopted by the Board of Standards and Appeals,  
March 21, 2017.

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**2016-4164-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Mark M. Papa and Chana S. Papa, owners.

SUBJECT – Application April 6, 2016 – Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yard requirements (§§23-461 & 23-48) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1744 East 29<sup>th</sup> Street, Block 6811, Lot 22, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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

**THE VOTE TO GRANT** –

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

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 8, 2016, acting on Department of Buildings (“DOB”) Application No. 321307046, reads in pertinent part:

1. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed floor area ratio exceeds the maximum permitted;
2. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed open space is less than the minimum required;
3. Proposed plans are contrary to Zoning Resolution Section 23-141 in that the proposed lot coverage exceeds the maximum permitted;
4. Proposed plans are contrary to Zoning Resolution Section 23-461 and 23-48 in that the proposed side yard is less than the minimum required;
5. Proposed plans are contrary to Zoning Resolution Section 23-47 in that the proposed rear yard is less than the minimum required; and

WHEREAS, the Board notes that since the filing of this application, the Zoning Resolution has been amended and the text formerly found in ZR § 23-141, setting for the maximum floor area ratio, minimum required open space and maximum lot coverage permitted in an R3-2 zoning district, is now found in ZR § 23-142; thus, the Board treats the citation to ZR § 23-141 in DOB’s objection as a citation to ZR § 23-142; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-2 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area ratio, open space, lot coverage, side yards, and rear yards, contrary to ZR §§ 23-142, 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on August 23, 2016, after due notice by publication in *The City Record*, with continued hearings on November 1, 2016, and January 24, 2017, and then to decision on March 21, 2017; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 29th Street, between Quentin Road and Avenue R, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 30 feet of frontage along East 29th Street, a depth of 100 feet and 3,000 square feet of lot area; and

WHEREAS, the site is occupied by a two-story single-family detached dwelling with 1,483 square feet of floor area, a floor area ratio (“FAR”) of 0.49, 71 percent open space, 29 percent lot coverage, side yards measuring 3’-1” and 6’-7” and a rear yard of 37’-2”; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

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

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# MINUTES

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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 23-631, 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; and

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 detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing dwelling to 2,526 square feet of floor area (0.84 FAR), decrease the percentage of open space from 71 percent to 56 percent, increase the lot coverage from 29 percent to 44 percent, maintain the existing side yards, and reduce the existing 37'-2" rear yard to 20 feet at the first floor and 25 feet at the second floor; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted, a minimum of 65 percent open space is required and a maximum of 35 percent lot coverage is permitted pursuant to ZR § 23-142; two side yards with widths of at least 5 feet each are required pursuant to ZR §§ 23-461 and 23-48; and a rear yard of at least 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant submits that the existing side yards pre-date the 1961 Zoning Resolution and are, thus, legal non-compliances; in support of that contention the applicant has submitted a 1930 Sanborn map of the premises demonstrating that the position of the existing dwelling on the lot has not changed since that time; and

WHEREAS, the applicant presented analyses of the floor area ratio of single- and two-family residences within 200 feet of subject lot, of the rear yards at the first and second floors of residences on the subject block and of the lot coverage of one- and two-family residences within 400 feet of subject premises to demonstrate that the proposed enlargement is consistent with character of the surrounding neighborhood; and

WHEREAS, the floor area analysis concluded that 25 of the 32 residences (78 percent) in the study area had FARs greater than 0.50 ranging from 0.52 and 1.01 FAR; the lot coverage analysis concluded that of the 159 residences in the study area, 125 (80 percent) have a lot coverage greater than 35 percent, ranging from 36 percent to 65 percent; and the rear yard analyses submitted by the applicant demonstrated that 24 of the 54 residences on the subject block (41 percent) have rear yards with depths of less than 30 feet at the first floor and 9 (15 percent) have rear yards of less than 30 feet at the second floor; and

WHEREAS, neighbors voiced objections to the subject proposal on the basis that the enlarged house was not consistent with the character of the subject block, particularly with regards to the proposal to eliminate the front setback at the second floor of the existing dwelling, a design feature common to the other dwelling on the block, and, make the second floor flush with the first floor, as well as the applicant's original proposal to reduce the rear yard to 20 feet at both the first and second floor; and

WHEREAS, at hearing, the Board discussed the applicability of a potential as-of-right building envelope to an analysis of neighborhood character and concluded that, while the as-of-right envelope is sometimes relevant if indicative of public policy, the actually built conditions are dispositive with respect to the Board's analysis on this finding of the special permit; and

WHEREAS, in response to comments from the Board and neighborhood objections that the existing character of the neighborhood did not support a shallow rear yard at the second floor of the proposed enlargement, and consistent with the applicant's own study of rear yard conditions on the subject block, the applicant revised the proposal to provide a 20 foot rear yard at the first floor and a 25 foot rear yard at the second floor; and

WHEREAS, the applicant additionally provided overlay drawings to demonstrate that the proposed modifications to the front elevation of the dwelling fits within the character of the subject block and offered that the architect designed the wrapped roof detail around the front elevation to pay homage to the character of the subject block; and

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

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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 NYCRR 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, in an R3-2 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area ratio, open space, lot coverage, side yards and rear yards, contrary to ZR §§ 23-142, 23-461, 23-48 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 March 10, 2017”- Nine (9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: maximum floor area of 2,526 square feet (0.84 FAR), a minimum of 56 percent open space, a maximum of 44 percent lot coverage, side yards of at least 3’-1” and 6’-7” and a rear yard of at least 20 feet at the first floor and 25 feet at the second floor, as illustrated on the BSA-approved plan; and

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

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 special 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 21, 2017.

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## 263-14-BZ

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application October 24, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141(b); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 1601 Oriental Boulevard, Block 8757, Lot 23, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for continued hearing.

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## 134-15-BZ

APPLICANT – Sheldon Lobel, P.C., for David Aronowicz, owner; Cinderella 248, LLC, lessee.

SUBJECT – Application June 5, 2015 – Special Permit (§73-36) to allow the operation of a Physical Culture establishment (*Orange theory Fitness*) in the existing building on the first floor and cellar of a one story commercial building, located within an R7A/C2-4 zoning district.

PREMISES AFFECTED – 248 Flatbush Avenue, Block 936, Lot 12, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.

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## REGULAR MEETING

TUESDAY AFTERNOON, MARCH 21, 2017

1:00 P.M.

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

## ZONING CALENDAR

### 2016-4244-BZ

#### CEQR #17-BSA-015K

APPLICANT – Law Office of Lyra J. Altman, for Havemeyer Owner LLC, owner.

SUBJECT – Application September 1, 2016 – Special Permit (§73-44) for the reduction in parking for commercial office (UG 6) uses in Parking Requirement Category B1. C4-3 zoning district.

PREMISES AFFECTED – 263-279 South 5<sup>th</sup> Street, Block 2447, Lot(s) 13, 19, 35, 36, 41 & 135, Borough of Brooklyn.

#### COMMUNITY BOARD #1BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 19, 2016, acting on New Building Application No. 321192437, reads in pertinent part:

“ZR 36-21” “Proposed number of parking spaces for the proposed commercial use is less than the minimum required contrary to ZR 36-21”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, within a C4-3 zoning district, a reduction in the required number of accessory off-street parking spaces for Use Group 6 offices in parking requirement category B1, contrary to ZR § 36-21; and

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WHEREAS, a public hearing was held on this application on March 21, 2017, after due notice by publication in *The City Record*, and then to decision on the same day; and

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

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the block bounded by Havemeyer Street, South 4th Street, Marcy Avenue and South 5th Street, in a C4-3 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 103 feet of frontage on Havemeyer Street, 163 feet of frontage on South 4th Street, 124 feet of frontage on Marcy Avenue, 290 feet of frontage on South 5th Street, and 50,738 square feet of lot area; and

WHEREAS, the zoning lot is comprised of six tax lots (Lots 13, 19, 35, 36, 41 and 135), with a two-story building on Lot 36, a one-story building on Lot 135, and a one-story and a two-story building on Lot 35; and

WHEREAS, the applicant notes that the buildings on Lots 135 and Lot 35 will be demolished to effectuate the subject proposal, while the building on Lot 36 will remain; and

WHEREAS, the applicant proposes to construct a 22-story mixed-use building with commercial, residential and community-facility space having a total floor area of 233,388 (4.6 FAR) and 301 accessory parking spaces, 104 of which would be accessory to the office use; and

WHEREAS, the applicant represents that, pursuant to ZR § 36-21, 208 accessory parking spaces are required for the proposed office use, calculated at a rate of one space per 400 square feet of floor area; however, the applicant seeks to provide 104 spaces, 104 fewer spaces than required; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to

meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
PARKING SPACES REQUIRED FOR  
AMBULATORY DIAGNOSTIC  
OR TREATMENT FACILITIES LISTED IN  
USE GROUP 4 AND  
COMMERCIAL USES IN PARKING  
REQUIREMENT CATEGORY B1

Parking Spaces Required

Per Number of Square

Feet on *Floor Area*\* Districts

1 per 400		C1-1	C2-1	C3	C4-1
1 per 600		C1-2	C2-2	C4-2	C8-1
		M1-1	M1-2	M1-3	
		M2-1	M2-2	M3-1	
1 per 800		C1-3	C2-3	C4-3	C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar* space, except *cellar* space used for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for Use Group 6 offices in parking requirement category B1 at the subject site from one space per 400 square feet of floor area to one space per 800 square feet of floor area provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant submitted an affidavit stating that the building will be occupied by office use in parking category B1; and

WHEREAS, the applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the Use Group 6 offices are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Board finds the affidavit credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed commercial use at the site; and

WHEREAS, the Board notes that its determination is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces will impact the surrounding community; and

WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand for parking generated by the proposed Use Group 6 offices will be 40 spaces on weekdays from 9 a.m. to 11 a.m. and that such demand can be accommodated by the proposed 104 spaces on site, which will be attended and will utilize stackers; and

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WHEREAS, the parking study also demonstrates that the maximum demand for parking generated by all uses on site simultaneously will be 98 spaces on weekdays from 3 p.m. to 5 p.m., and that such demand can be accommodated by the proposed 301 total parking spaces on site; and

WHEREAS, in response to questions from the Board at hearing, the applicant further represents that, because of the diverse mix of uses on the site, the on-site uses have different periods of peak parking demand; and

WHEREAS, the applicant also represents that the parking study reflects conservative overestimates for parking demand and that a number of parking garages in the area currently go underutilized; and

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

WHEREAS, the applicant represents that the parking modification will not interfere with any public improvement project; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17-BSA-015K, dated February 17, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to *permit*, within a C4-3 zoning district, a reduction in the required number of accessory off-street parking spaces for Use Group 6 offices in parking requirement category B1, contrary to ZR § 36-21; *on*

*condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received February 17, 2017”–Seventeen (17) sheets, and *on further condition:*

THAT no certificate of occupancy shall be issued if the office use in parking requirement category B1 in Use Group 6 is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT the above condition shall be stated on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by March 21, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, March 21, 2017.

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## **2017-63-BZ**

### **CEQR #17-BSA-104K**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation (“HRO”)

SUBJECT – Application March 16, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 9 Post Court, Block 8856, Lot 1882, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

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

**THE VOTE TO GRANT** –

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

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4 zoning district, the redevelopment and elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards, lot coverage and open space, pursuant to ZR §§ 23-45, 23-461 and 23-142; and

WHEREAS, a public hearing was held on this



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application on March 21, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-05.3 (Filing Period), (3) 2 RCNY § 1-05.4 (Application Referral), (4) 2 RCNY § 1-05.6 (Hearing Notice), (5) 2 RCNY § 1-05.7 (List of Affected Property Owners), (6) 2 RCNY § 1-09.4 (Owner's Authorization), and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the northwestern corner of the intersection of Post Court and Madoc Avenue, in an R4 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along Post Court, 45 feet of frontage along Madoc Avenue, 1,800 square feet of lot area and was formerly occupied by a one one-half story single-family detached home; and

WHEREAS, the applicant seeks a special permit, pursuant to ZR § 64-92, to allow the redevelopment and elevation of the previously existing single-family detached home, which was non-compliant with regards to front yards, side yards, lot coverage and open space, providing front yards measuring 3'-11", side yards measuring 4 feet and 4'-2.5", 66 percent lot coverage and 34 percent open space; and

WHEREAS, at the subject site, a front yard of at least 10 feet is required fronting both Post Court and Madoc Avenue, pursuant to ZR § 23-45; one side yard measuring at least 5 feet and one side yard measuring at least 20 feet are required, pursuant to ZR § 23-461; and a maximum of 45 percent lot coverage and a minimum of 55 percent open space are required pursuant to ZR § 23-142; and

WHEREAS, in reconstructing and elevating the dwelling, the applicant has additionally proposed to set back the redeveloped building from Post Court to permit the addition of a stair for ingress and egress to the dwelling; and

WHEREAS, as a result, the reconstructed building will provide a 10 foot front yard, maintain the 3'-11" front yard fronting Madoc Avenue; maintain the 4 feet and 4'-2.5" side yards, decrease lot coverage to 55 percent and increase the open space to 45 percent; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards

and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to set the reconstructed residence further back from Post Court to provide improved egress creates practical difficulties in complying with flood-resistant construction standards without the modification of the front yard, side yards, lot coverage and open spaces requirements and that a waiver of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the neighborhood is characterized by single- and two-family detached dwellings and that the proposal improves the existing front yard condition thus, making a positive contribution to the

# MINUTES

existing neighborhood fabric; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA104K, dated March 16, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4 zoning district, the redevelopment and elevation of an existing detached one and one-half-story single-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards, lot coverage and open space, pursuant to ZR §§ 23-45, 23-461 and 23-142; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received March 16, 2017”- Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: front yards measuring at least 10 feet and 3’-11”, side yards measuring 4 feet and 4’-2.5”, maximum lot coverage of 55 percent and at least 45 percent open space, as illustrated on the BSA-approved plans;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by March 21, 2021;

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

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

Adopted by the Board of Standards and Appeals, March 21, 2017.

## 105-15-BZ

APPLICANT – Eric Palatnik, P.C., for Aleksandr Finkelshtein, Contract Vendee.

SUBJECT – Application May 12, 2015 – Variance (§72-21) to permit the development of a four (4) story building consisting of Use Group 6 commercial offices on the first and second floor and community facility uses on the third and fourth floors. R4 zoning district.

PREMISES AFFECTED – 2102-2124 Avenue Z, Block 7441, Lot 371, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for continued hearing.

## 179-15-BZ

APPLICANT – Moshe M. Friedman, P.E., for 127 Taaffe LLC, owner.

SUBJECT – Application August 10, 2015 – Variance (§72-21) to permit the development of a four-story, multifamily residential building (UG2) contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 129 Taaffe Place, Block 1897, Lot 6, Borough of Brooklyn.

## COMMUNITY BOARD #3BK

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.

## 2016-4163-BZ

APPLICANT – Sheldon Lobel, P.C., for George Arsoff, owner.

SUBJECT – Application April 1, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space ZR 23-141. R2 zoning district.

PREMISES AFFECTED – 8120 Colonial Road, Block 5994, Lot 45, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for continued hearing.

## 2016-4229-BZ

APPLICANT – Eric Palatnik, P.C., for Loffcoff Properties LLC, owner.

SUBJECT – Application July 21, 2016 – Variance (§72-21) to permit the construction of a two (2) family detached home contrary to rear yard requirements (ZR §23-47). R3X (SSRD) zoning district.

PREMISES AFFECTED – 1452 Drumgoole Road West, Block 6333, Lot 201, Borough of Staten Island.

## COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for continued hearing.

*Ryan Singer, Executive Director*

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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 102, No. 14

April 13, 2017

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### DIRECTORY

MARGERY PERLMUTTER, *Chair*

VACANT, *Vice-Chair*

DARA OTTLEY-BROWN

EILEEN MONTANEZ

SHAMPA CHANDA

*Commissioners*

Ryan Singer, *Executive Director*

Loreal Monroe, *Counsel*

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<b>OFFICE -</b>	<b>250 Broadway, 29th Floor, New York, N.Y. 10007</b>
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19-94-BZ	37-18 75 <sup>th</sup> Street, Queens
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2016-4266-BZ	330-332 East 59 <sup>th</sup> Street, Manhattan
2016-4277-BZ	79-04 151 <sup>st</sup> Avenue, Queens

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New Case Filed Up to March 28, 2017  
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**2017-68-A**

39 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 39, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.  
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**2017-69-A**

37 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 40, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.  
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**2017-70-A**

35 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 41, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.  
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**2017-71-A**

33 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 42, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.  
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**2017-72-A**

31 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 43, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.  
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**2017-73-A**

29 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 44, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.  
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**2017-74-A**

27 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 46, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.  
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**2017-75-A**

25 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 47, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.  
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**2017-76-A**

23 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 48, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.  
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**2017-77-A**

21 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 49, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.  
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## 2017-78-A

19 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 50, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-79-A

17 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 51, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-80-A

15 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 52, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-81-A

12 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 53, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-82-A

15 Frosinone Lane, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 54, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-83-A

16 Frosinone Lane, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 55, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-84-A

42 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 56, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-85-A

41 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 57, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-86-A

43 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 58, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-87-A

45 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 59, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-88-A

44 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 60, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-89-A

12 Frosinone Lane, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 61, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-90-A

11 Frosinone Lane, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 62, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-91-A

10 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 63, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-92-A

11 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 64, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-93-A

9 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 65, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-94-A

7 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 66, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-95-A

47 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 72, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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## 2017-96-A

49 Torrice Loop, located on the north side of Richmond Valley Road between Madsen Avenue and Weinber Street, Block 07577, Lot(s) 73, Borough of **Staten Island, Community Board: 3**. Proposed construction of a two-family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district. R3X (SRD) district.

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

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# CALENDAR

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**REGULAR MEETING  
MAY 2, 2017, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 2, 2017, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

-----

**SPECIAL ORDER CALENDAR**

**418-50-BZ**

APPLICANT – Law Office of Stuart Klein, for WOTC Tenants’ Corp., owner.

SUBJECT – Application November 21, 2014 – Amendment seek to modify the grant to allow for the addition of 98 parking spaces and the development of a clubhouses which will provide additional amenities and recreation space for the sole use and enjoyment of the residents at the premises, located in an R3-2 zoning district.

PREMISES AFFECTED – 73-69 217<sup>th</sup> Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74<sup>th</sup> Avenue (Block 7754, Lot 3); 73-10 220<sup>th</sup> Street (Block 7755, Lot 3), Borough of Queens.

**COMMUNITY BOARD #11Q**

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**REGULAR MEETING  
MAY 2, 2017, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 2, 2017, 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**

**215-14-BZ/214-14-A**

APPLICANT – Sheldon Lobel, P.C., for Fernando Fernandez, owner.

SUBJECT – Application September 3, 2014 – Variance (§72-21) to permit four-three-story three family semi-detached residential building at the existing premises in an R5 zoning district, also building in the bed of mapped street pursuant to GCL 35. R5 zoning district.

PREMISES AFFECTED – 50-11 & 50-15 103<sup>rd</sup> Street, 103-10 & 103-16 Alstyn Avenue, Block 1930, Lot 50, Borough of Queens.

**COMMUNITY BOARD #4Q**

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**88-15-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Lisa Wortman and Bruce Wortman, owners.

SUBJECT – Application April 20, 2015 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1834 East 21<sup>st</sup> Street, Block 6803, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**2016-4211-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Chanie Edelstein and Shimon Edelstein, owners.

SUBJECT – Application June 1, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space ratio (ZR §23-141); side yards (ZR §23-461) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1052 East 23<sup>rd</sup> Street, Block 7604, Lot 66, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**2016-4336-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 645 East Tremont LLC, owner; Blink East Tremont Avenue, Inc., lessee.

SUBJECT – Application November 21, 2016 – Special Permit (73-36) to allow the operation of a physical culture establishment (*Blink*) at the subject premises. C4-5X zoning district.

PREMISES AFFECTED – 643 East Tremont Avenue, Block 3079, Lot 2, Borough of the Bronx.

**COMMUNITY BOARD #6BX**

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*Ryan Singer, Executive Director*



# MINUTES

## REGULAR MEETING TUESDAY MORNING, MARCH 28, 2017 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 67-91-BZ

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

SUBJECT – Application September 11, 2015 – Amendment (§11-412) to a previously-granted Automotive Service Station (Gulf) (UG 16B), with accessory uses, to permit the enlargement of an existing 1 story building and convert service bays to an accessory convenience store and install 6 new multiple product dispensers. C2-2/R3-2 zoning district. PREMISES AFFECTED – 54-55 Little Neck Parkway aka 260-01 Horace Harding Expressway, Block 8274, Lot 135, Borough of Queens.

#### COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

#### THE VOTE TO GRANT –

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

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application, pursuant to ZR § 11-412, to reopen and amend a variance, previously granted by the Board and permitting an automotive service station (Use Group 16B) with accessory uses, to permit, on a site located partially within an R4 (C1-2) and partially within an R1-2 zoning district, the enlargement of an existing one-story building, the conversion of service bays to an accessory convenience store and the installation of new multiple product dispensers; and

WHEREAS, a public hearing was held on this application on January 31, 2017, after due notice by publication in *The City Record*, with a continued hearing on March 21, 2017, and then to decision on March 28, 2017; and

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

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

WHEREAS, the subject site is located on the northwest corner of Little Neck Parkway and Nassau Boulevard, partially within an R4 (C1-2) zoning district and partially within an R1-2 zoning district, in Queens; and

WHEREAS, the site has approximately 231 feet of frontage on Little Neck Parkway, 100 feet of frontage on Nassau Boulevard, 17,100 square feet of lot area and is

occupied by a one-story automotive service station with an automotive repair shop and accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 15, 1947, when, under BSA Calendar Number 721-41-BZ, the Board granted a variance to permit construction of a gasoline service station and for minor repairs and accessory uses for a term of ten (10) years; and

WHEREAS, on May 2, 1950, under BSA Calendar Number 721-41-BZ, the Board reopened and amended the variance to approve working plans and impose further conditions; and

WHEREAS, on September 12, 1950, under BSA Calendar Number 721-41-BZ, the Board amended its resolution and extended the term of the variance to fifteen (15) years from the date of this amendment; and

WHEREAS, on July 21, 1964, under BSA Calendar Number 721-41-BZ, the Board amended its grant to permit a total of ten 550-gallon approved storage tanks; and

WHEREAS, on September 28, 1965, under BSA Calendar Number 721-41-BZ, the Board reopened and extended the term of the variance for an additional ten (10) years on condition; and

WHEREAS, on May 20, 1969, under BSA Calendar Number 66-69-BZ, the Board permitted the enlargement in lot area and floor area and a change in use to automotive service station with accessory uses on condition that the re-grading, repaving and drainage of the lot be to the satisfaction of the Department of Buildings; and

WHEREAS, on June 2, 1970, under BSA Calendar Number 66-69-BZ, the Board reopened and amended its grant to extend the time to substantially complete construction pursuant to the previous grant by one (1) year, expiring May 20, 1971, on condition that a copy of the resolution as amended, and a certified copy of the Board-approved drawings, be permanently posted in the office of the automotive service station; and

WHEREAS, on October 28, 1975, under BSA Calendar Number 66-69-BZ, the Board reopened and amended its grant to extend the term of the variance, previously granted under BSA Calendar Number 721-41-BZ, for ten (10) years; and

WHEREAS, on February 15, 1984, under BSA Calendar Number 1058-83-A, the Board granted on condition an application to permit the installation and use of self-service devices in the gasoline service station for a term of five (5) years, which expired February 15, 1989; and

WHEREAS, on February 15, 1984, under BSA Calendar Number 66-69-BZ, the Board reopened and amended its grant to permit the construction of a canopy, the installation of new gasoline pump islands with new self-serve dispensers and the change of the office and sales area of the accessory building to an attendant's office on condition that the surface of the lot be resurfaced, all planting areas be restored with new shrubbery and be maintained and promptly replaced when necessary, the parking of cars be limited to five cars awaiting service, the

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# MINUTES

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premises be maintained clean and free of debris at all times and there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and

WHEREAS, on March 17, 1992, under the subject calendar number, the Board granted a reestablishment of the expired variance for a term of ten (10) years to permit continued use of the site as an automotive service station with minor repairs and accessory uses on condition that there be no sale of cars on the lot, there be no parking of cars on the sidewalk, there be no storage of vehicles on the lot, there be no automotive repairs conducted on the open lot, all fencing be in accordance with the Board-approved plans, the existing picket fence be painted, all landscaping be installed and maintained in accordance with the Board-approved plans and all site lighting be directed downward and away from adjacent residential uses; and

WHEREAS, on October 19, 2004, under the subject calendar number, the Board reopened and amended its grant to permit a minor reconfiguration of the sales area, private office and utility room to facilitate the sale of convenience store items and the placement of a container for storage and refrigeration of soft drinks for an additional term of ten (10) years on condition that the site be maintained free of debris and graffiti, any graffiti located on the site be removed within 48 hours and all signage conform to applicable zoning district requirements; and

WHEREAS, on December 11, 2012, under the subject calendar number, the Board reopened and amended its grant to permit an extension of term for ten (10) years, expiring on March 17, 2022, on condition that landscaping be maintained in accordance with the Board-approved plans, the site be maintained free of debris and graffiti, no parking be permitted on the landscaped area at the rear of the site and signage comply with C1 zoning district regulations; and

WHEREAS, the applicant now seeks to enlarge of the existing one-story building, convert service bays to an accessory convenience store and install new multiple product dispensers; and

WHEREAS, in response to questions from the Board concerning landscaping, the shrubbery buffer, fencing, the trash enclosure, repaving, the button for assistance, retail selling floor area as well as the proposed operational plan with hours of operation and refuse collection, the applicant revised the drawings and revised its proposal to provide landscaping and a shrubbery buffer along the north and east frontages, to show the trash enclosure designed to match the quality of the new construction, repave the site, place signs at the pumps for customers needing assistance to call a specified number, proof that the previous enlargement of the existing building did not increase the floor area by more than 50 percent, proposed the hours of operation as 24 hours per day, seven days per week, and proposed to schedule refuse collection once per week; and

WHEREAS, the applicant represents that the convenience store contains 1,649 square feet of retail selling floor area within a completely enclosed building, which satisfies TPPN # 10/99 and that the proposed alterations are

permitted pursuant to ZR § 11-412; and

WHEREAS, based on the foregoing, the Board has determined that the requested amendments to the variance are 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 March 17, 1992, as amended through December 11, 2012, so that as amended this portion of the resolution shall read: “to permit the enlargement of an existing one-story building, the conversion of service bays to an accessory convenience store and the installation of new multiple product dispensers, *on condition* that all work will substantially conform to drawings, filed with this application marked “Received March 24, 2017”- Ten (10) sheets; and *on further condition*:

THAT the term of the variance grant expires on March 17, 2022;

THAT there shall be a payment screen at each fueling position featuring a ‘help’ button that, when pressed, activates an intercom system with the attendant area;

THAT there shall be a ‘honk for assistance’ sign at each fueling position;

THAT landscaping shall be installed and maintained in accordance with the Board-approved plans;

THAT there shall be no sale of cars on the lot;

THAT there shall be no parking of cars on the sidewalk;

THAT there shall be no parking on the landscaped area at the rear of the site;

THAT there shall be no storage of vehicles on the lot;

THAT there shall be no automotive repairs conducted on the open lot;

THAT all fencing shall be in accordance with the Board-approved plans;

THAT the existing picket fence shall be painted;

THAT all site lighting be directed downward and away from adjacent residential uses;

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

THAT any graffiti located on the site shall be removed within 48 hours;

THAT all signage shall conform to C1 zoning district regulations;

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

THAT a revised certificate of occupancy shall be obtained within one (1) year, by March 28, 2018;

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 objections cited and filed by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or

# MINUTES

configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals,  
March 28, 2017.

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**202-62-BZ**

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

SUBJECT – Application June 4, 2015 – Extension of Term and Waiver (§11-411) to extend the term and a Waiver of a previously granted variance for an automotive service station, which expired on April 3, 2011; Waiver of the Rules. C2-2/R4-1 zoning district.

PREMISES AFFECTED – 950 Allerton Avenue, southeast corner of the intersection of Allerton Avenue and Williamsbridge Road, Block 04447, Lot 062, Borough of Bronx.

**COMMUNITY BOARD #11BX**

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for adjourned hearing.

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**109-93-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.

SUBJECT – Application December 24, 2015 – Extension of Term of a previously approved Variance (72-21) permitting an eating and drinking establishment (UG 6) which expired on May 24, 2014; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 189-11 Northern Boulevard, Block 5365, Lot 5, Borough of Queens.

**COMMUNITY BOARD #11Q**

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to April 4, 2017, at 10 A.M., for decision, hearing closed.

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**19-94-BZ**

APPLICANT – Andrew Schwarsin, Esq., for Walter R. Schwarsin, owner.

SUBJECT – Application July 13, 2016 – Extension of Term of a previously approved Variance permitting a public parking lot (UG 8) of which a portion of the lot lies in a residential zoning district which expired on July 18, 2015; Waiver of the rules. C4-3/R-5 zoning district.

PREMISES AFFECTED – 37-18 75<sup>th</sup> Street, Block 1285, Lot 47, Borough of Queens.

**COMMUNITY BOARD #3Q**

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

**174-94-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for David Rosero, owner.

SUBJECT – Application May 30, 2014 – Extension of the term of the variance, permitting an automotive sales establishment, which expired on May 6, 2012; Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 99-07 Roosevelt Avenue, Block 1765, Lot 44, Borough of Queens.

**COMMUNITY BOARD #3Q**

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for adjourned hearing.

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**168-98-BZ**

APPLICANT – Robert J. Stahl for Herbert D. Freeman, 238 Street Holding, LLC, owner.

SUBJECT – Application April 10, 2015 – Extension of Term (§ 11-411) of a previously approved variance which permitted a parking lot for more than five motor vehicles (Use Group 8) which expired on March 23, 2009; Waiver of the Rules. R6/R4A zoning district.

PREMISES AFFECTED – 3050 Bailey Avenue, Block 3261, Lot 12, Borough of Bronx.

**COMMUNITY BOARD #8BX**

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for continued hearing.

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**30-00-BZ**

APPLICANT – Fried, Frank, Harris Shriver & Jacobson LLP, for The Trustees of Columbia University in the City of New York, lessee.

SUBJECT – Application February 17, 2016 – Extension of term of a previously granted variance granted pursuant to §72-21 of the zoning resolution which permitted an open parking lot (Use Group 8) which expired on February 6, 2016. R7-2 zoning district.

PREMISES AFFECTED – 465-469 West 165<sup>th</sup> Street and 458-464 West 166<sup>th</sup> Street, Block 2111, Lot(s) 53, 54, 55, 57, 71, 72, 73, Borough of Manhattan.

**COMMUNITY BOARD #12M**

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for continued hearing.

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**80-05-BZ**

APPLICANT – Aura Wellness Spa Corp., for Erol Devli, owner; Rockford Chun, lessee.

SUBJECT – Application December 15, 2015 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (Aura Wellness Spa Corp.) which expired on November 15, 2015.

C6-6 and C6-4.5 zoning district.  
PREMISES AFFECTED – 49 West 33<sup>rd</sup> Street, Block 835, Lot 9, Borough of Manhattan.

**COMMUNITY BOARD #5M**

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for decision, hearing closed.

## 187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation & Yeshiva Maschzikei Hadas, owner.

SUBJECT – Application April 22, 2016 – Amendment to a variance (§72-21) to allow a five-story school (*Congregation & Yeshiva Maschzikei Hadas*). The application seeks to increase the zoning lot contrary to the previous Board approval. M1-2/R6B zoning district.

PREMISES AFFECTED – 1247 38<sup>th</sup> Street, Block 5295, Lot(s) 52 & 109, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for continued hearing.

## 301-13-BZ

APPLICANT – Eric Palatnik, P.C., for Rabbi Mordechai Jofen, owner.

SUBJECT – Application September 6, 2016 – Amendment of a previously approved Variance (§72-21) permitting the addition of three floors to an existing one story and basement UG 4 synagogue for a religious-based college and post graduate (UG 3) with 10 dormitory rooms, contrary to sections 24-11, 24-521, 24-52,24-34(a),24-06. The amendment seeks a correction that the original DOB objection did not include a waiver of ZR §24-551 (side yard) and ZR §24-11 (Lot Coverage) R5B zoning district.

PREMISES AFFECTED – 1502 Avenue N, Block 6753, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for continued hearing.

## APPEALS CALENDAR

### 2016-4170-A

APPLICANT – Juan D. Reyes of Seyfarth Shaw, for Cast Iron Corp., owner.

SUBJECT – Application April 15, 2017 – Appeal to challenge the NYC Department of Buildings Permit Number 121236983-01-AL. C6-1 zoning district.

PREMISES AFFECTED – 809-811 Broadway, Block 563, Lot 35, Borough of Manhattan

### COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to June 6,

2017, at 10 A.M., for decision, hearing closed.

### 2016-4232-A thru 2016-4235-A

APPLICANT – Eric Palatnik, P.C., for Anthony Gallo, owner.

SUBJECT – Application August 3, 2016 – Proposed three-story two and cellar residential development which is within the unbuilt portion of the mapped street, contrary to General City Law 35. R5 zoning district.

PREMISES AFFECTED – 139-12, 139-16, 139-19 and 139-22 Atlantic Avenue, aka 95<sup>th</sup> Avenue, Block 10006, Lot(s) 5, 7, 8, 9, Borough of Queens.

### COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for decision, hearing closed.

### 2016-4332-A

APPLICANT – Eric Palatnik, P.C., for Dov Finman, owner.

SUBJECT – Application November 11, 2016 – To permit the proposed development of a one family home, contrary to Article 3 Section 36 of the General City Law. R4-1 zoning district.

PREMISES AFFECTED – 4 Williams Court, Block 15622, Lot 181, Borough of Queens.

### COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for continued hearing.

## ZONING CALENDAR

### 201-15-BZ

APPLICANT – Law Office of Steven Simicich, for Jim Sidiropoulos, owner.

SUBJECT – Application August 27, 2015 – Special Permit (§73-53) to permit the enlargement of a one-story non-conforming warehouse building into a five story building containing parking, office space and residential use which exceeds the allowable commercial floor area. R6B & M1-2 zoning districts.

PREMISES AFFECTED – 218 57<sup>th</sup> Street, Block 845, Lot(s) 13 & 66, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, March 28, 2017.

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**2016-4123-BZ**

**CEQR #16-BSA-079K**

APPLICANT – Eric Palatnik, P.C., for 168 Havemeyer Realty LLC, owner.

SUBJECT – Application February 23, 2016 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. C1-3/R6 zoning district.

PREMISES AFFECTED – 168 Havemeyer Street, Block 2420, Lot 30, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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

**THE VOTE TO GRANT** –

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

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 26, 2016, acting on Alteration Application No. 320956239, reads in pertinent part:

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

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, on a site located within an R6 (C1-3) zoning district, a reduction in the required number of accessory parking spaces for a Use Group (“UG”) 4 ambulatory diagnostic or treatment facility, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in *The City Record*, with a continued hearing on March 28, 2017, and then to decision on the same day; and

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

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

WHEREAS, the subject site is located on the west side of Havemeyer Street, between South 2nd Street and South 3rd Street, within an R6 (C1-3) zoning district, in Brooklyn; and

WHEREAS, the site is an L-shaped lot having approximately 24 feet of frontage along Havemeyer Street, 20 feet of frontage along South 3rd Street, 2,969 square feet of lot area and is occupied by a four-story, with cellar, mixed-use commercial and community-facility building having 1,291 square feet of UG 6 retail floor area and 9,145 square feet of UG 4 ambulatory diagnostic or treatment facility floor area<sup>1</sup>; and

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<sup>1</sup> The site currently provides zero parking spaces; the applicant represents that the parking requirement for the existing building was waived pursuant to ZR § 36-231.

WHEREAS, the applicant proposes to enlarge the existing building to 13,642 square feet of total floor area with 12,351 square feet of floor area dedicated to the UG 4 use and no change in the floor area dedicated to the UG 6 retail use; and

WHEREAS, the applicant represents that, pursuant to ZR § 36-21, 31 accessory parking spaces are required for the proposed enlarged ambulatory diagnostic or treatment facility use, calculated at a rate of one space per 400 square feet of floor area; however, the applicant seeks to provide 15 spaces for the UG 4 use, 16 fewer spaces than required and, accordingly, seeks the relief requested herein; and

WHEREAS, the UG 6 retail use also generates a parking requirement of three spaces, pursuant to ZR § 36-21 and, as ZR § 73-44 only authorizes a reduction in the required number of parking spaces for floor area occupied by an ambulatory diagnostic or treatment facilities and uses in parking requirement category B1, no reduction in the number of these parking spaces is requested as part of this application and a total of 34 parking spaces are required for the subject site; and

WHEREAS, the applicant submits that, upon grant of this relief, waiver of the remaining 18 parking spaces will be sought pursuant to ZR § 36-231, which allows the waiver of all accessory parking in cases where the total number of required accessory off-street parking spaces is less than 25; and

WHEREAS, the Board takes no position as to whether approval of the subject special permit application qualifies the site for a parking waiver pursuant to ZR § 36-231, which is a determination subject to review by DOB; and

WHEREAS, the applicant states that the building will otherwise comply with the zoning regulations relating to floor area, height, yards and setbacks applicable in the underlying zoning district; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site

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or within the permitted off-site radius.  
 REDUCED ACCESSORY OFF-STREET  
 PARKING SPACES REQUIRED FOR  
 AMBULATORY DIAGNOSTIC  
 OR TREATMENT FACILITIES LISTED IN  
 USE GROUP 4 AND  
 COMMERCIAL USES IN PARKING  
 REQUIREMENT CATEGORY B1

Parking Spaces Required Per Number of Square Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar* space, except *cellar* space used for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for a UG 4 ambulatory diagnostic or treatment facility at the subject site from one space per 400 square feet of floor area to one space per 800 square feet of floor area provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant submitted an affidavit stating that the proposed UG 4 community facility use shall be limited to use as an ambulatory diagnostic or treatment facility; and

WHEREAS, the applicant also notes that the medical practice currently utilizing the existing building, and proposing the subject enlargement to expand the practice by providing an ambulatory facility and additional treatment rooms, has been in the neighborhood for over thirty years; and

WHEREAS, the applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the UG 4 ambulatory diagnostic or treatment facility is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the applicant submitted a copy of the current certificate of occupancy for the existing building, which demonstrates that the current lawful occupancy includes a four-story ambulatory diagnostic and treatment facility, without sleeping accommodations, in UG 4; and

WHEREAS, the Board finds the affidavit credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed ambulatory diagnostic or treatment facility use at the site; and

WHEREAS, the Board notes that its determination is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, the Board directed the applicant to

demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces will impact the surrounding community; and

WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand for parking generated by the proposed enlarged UG 4 use at the site will be 3 spaces during the peak hour of demand, weekdays from 11 a.m. to 12 p.m., and that such demand can be accommodated by available on-street parking spaces; and

WHEREAS, the parking study further shows that approximately 34 percent of the existing medical practice's current patients and staff travel to the site by public transit, 41 percent arrive by foot, 9 percent travel by taxi and 16 percent travel by car; and

WHEREAS, the parking study also presents an on-street parking survey concluding that, during the weekday peak demand hours from 11 a.m. to 12 p.m., there are 45 parking spaces available within a one-quarter mile radius (a walking distance of approximately five minutes), for a utilization rate of 88 percent within the parking study area; and

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

WHEREAS, the applicant represents that the parking modification will not interfere with any public improvement project; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16BSA079K, dated September 15, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; 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

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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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to *permit*, on a site located within an R6 (C1-3) zoning district, a reduction in the required number of accessory parking spaces for a mixed-use Use Group 6 retail and Use Group 4 ambulatory diagnostic or treatment facility building from 34 to 18, contrary to ZR § 36-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received March 28, 2017”–Nineteen (19) sheets, and *on further condition*:

THAT no revised certificate of occupancy shall be issued if the ambulatory diagnostic or treatment facility listed in Use Group 4 is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT DOB shall review the proposal to determine whether the site qualifies for a waiver of the required number of parking spaces pursuant to ZR § 36-231;

THAT the above condition shall appear on the revised certificate of occupancy;

THAT a revised certificate of occupancy shall be obtained within four (4) years, by March 28, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, March 28, 2017.

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## 2016-4183-BZ

APPLICANT – Stroock & Stroock & Lavan LLP, for East 14<sup>th</sup> Street Owner LLC, owner.

SUBJECT – Application May 9, 2016 – Variance (§72-21) to permit the construction of a mixed residential and commercial building contrary to ZR §§23-163 (floor area and 35-65 (Height and setback). C1-6A zoning district.

PREMISES AFFECTED – 432-438 East 14<sup>th</sup> Street a/k/a 435-445 East 13<sup>th</sup> Street, Block 441, Lot(s) 23 & 32, Borough of Manhattan.

## COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown,

Commissioner Montanez and Commissioner Chanda.....4  
Negative: .....0

Adopted by the Board of Standards and Appeals,  
March 28, 2017.

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## 22-15-BZ

APPLICANT – Simons & Wright LLC, for 219 26<sup>th</sup> Street, LLC, owner.

SUBJECT – Application February 5, 2015 – Variance (72-21) to proposed to construct a residential building on a small lot at premises, located in an M1-1D zoning district, contrary to (Section 42-00) not permitted as of right.

PREMISES AFFECTED – 219 26<sup>th</sup> Street, Block 655, Lot 55, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for decision, hearing closed.

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## 258-15-BZ

APPLICANT – Eric Palatnik, P.C., for Elijah Realty LLC, owner.

SUBJECT – Application November 18, 2015 – Special Permit (§73-44) to reduce the number of required accessory off street parking spaces from twenty nine (29) to fourteen (14) at the existing building. C4-2 zoning district.

PREMISES AFFECTED – 2619 East 16<sup>th</sup> Street, Block 7460, Lot 96, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for adjourned hearing.

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**REGULAR MEETING  
TUESDAY AFTERNOON, MARCH 28, 2017  
1:00 P.M.**

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

## ZONING CALENDAR

### 2017-66-BZ

#### CEQR #17-BSA-107R

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (HRO), for Lori Widlund, owner.

SUBJECT – Application March 20, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3X zoning district.

PREMISES AFFECTED – 4 Maple Terrace, Block 4083, Lot 40, Borough of Staten Island.

#### COMMUNITY BOARD #2SI

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

#### THE VOTE TO GRANT –

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

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3X zoning district, the redevelopment and elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards and side yards, pursuant to ZR §§ 64-723, 23-45 and 23-461; and

WHEREAS, a public hearing was held on this application on March 28, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-05.3 (Filing Period), (3) 2 RCNY § 1-05.4 (Application Referral), (4) 2 RCNY § 1-05.6 (Hearing Notice), (5) 2 RCNY § 1-05.7 (List of Affected Property Owners), (6) 2 RCNY § 1-09.4 (Owner’s Authorization), and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the southeast corner of the intersection of Dustan Street and Maple Terrace, in an R3X zoning district, on Staten Island; and

WHEREAS, the site has approximately 62 feet of frontage along Dustan Street, 60 feet of frontage along Maple Terrace, 3,720 square feet of lot area and was formerly occupied by a two-story, with cellar, single-family detached home; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Calendar Number 2016-962-A, the Board granted application to allow the elevation and reconstruction of a single-family detached residence that does not front on a mapped street, contrary to General City Law § 36, as well as a waiver of the Board’s Rules of Practice and Procedure on condition that the building have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the building be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the building where the foundation is not closed have a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceed 32’-0” feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the redevelopment and elevation of the previously existing single-family detached home, which had one non-compliant front yard and one non-compliant side yard; and

WHEREAS, the existing residence provided front yards measuring 9’-9” fronting Maple Terrace and 18’-10” fronting Dustan Street and side yards measuring 16 feet and 7’-6”; and

WHEREAS, at the subject site, front yards of at least 10 feet are required, pursuant to ZR § 23-45, and one side yard measuring at least 20 feet and one side yard measuring at least 10 feet are required, pursuant to ZR § 23-461; and

WHEREAS, the reconstructed building will maintain the existing front and side yards but proposes to add a new-encroachment into the 16 foot side yard to accommodate an added handicapped accessible bathroom; and

WHEREAS, the Department of Buildings (“DOB”) has interpreted ZR § 64-723 to require that residences be elevated in their exact footprint and insists that a waiver of the same is required for this application because, with the new encroachment in the non-complying side yard, the reconstructed building would not be in the original footprint; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant*



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*construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant states that the need to accommodate the elevated home and its front stairs with a chair lift within the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of the front yard and side yard requirements and that a waiver of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the neighborhood is characterized by single- and two-family detached dwellings; that the design of the residence is consistent with

the existing aesthetic of the neighborhood; and that the proposed flood resistant construction would serve as a model for future development in the area; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA107R, dated March 20, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R3X zoning district, the redevelopment and elevation of an existing detached two-story, with cellar, single-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards and side yards, pursuant to ZR §§ 64-723, 23-45 and 23-461; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received March 20, 2017"- four (4) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard measuring at least 9'-9" fronting Maple Terrace and side yards measuring at least 16'-0" and 7'-6", as illustrated on the BSA-approved plans;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by March 28, 2021;

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

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

Adopted by the Board of Standards and Appeals, March 28, 2017.

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**330-14-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Jack Guindi, owner.

SUBJECT – Application December 30, 2014 – Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461); perimeter wall height (ZR 23-263) and less than the required minimum rear yard (ZR23-

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47); R3-2 zoning district.  
PREMISES AFFECTED – 1746 East 21<sup>st</sup> Street, Block 6783, Lot 18, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for continued hearing.  
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**20-15-BZ**

APPLICANT – Alexander Levkovich, for Steven Israel, owner; Mishkan Yerushalayim, lessee.

SUBJECT – Application February 5, 2015 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship community facility at the premises contrary to floor area ratio, open space, lot coverage, wall height, front yard, side yards, rear yard, sky exposure plane, and parking regulations. R4 (OP) zoning district.

PREMISES AFFECTED – 461 Avenue X, Block 7180, Lot 75, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for postponed hearing.  
-----

**2016-3-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seneca Clove Corp., owner.

SUBJECT – Application January 4, 2016 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store (UG 16B). C2-1/R2 zoning district.

PREMISES AFFECTED – 1212 Victory Boulevard, Block 651, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for continued hearing.  
-----

**2016-4251-BZ**

APPLICANT – Jesse Masyr, Esq., Fox Rothschild LLP, for Neptune South Commercial LLC, owner.

SUBJECT – Application September 13, 2016 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for ambulatory diagnostic and treatment health care facility use (UG 4A) and office use (UG 6B). C8-2 (Special Ocean Parkway District) zoning district.

PREMISES AFFECTED – 626 Sheepshead Bay Road, Block 7279, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for postponed hearing.  
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**2016-4266-BZ**

APPLICANT – Francis R. Angelino, Esq., for Brause 59 Co., owner; 330 East 59<sup>th</sup> Street Gym, LLC, lessee.

SUBJECT – Application October 6, 2016 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*ICE NYC*) in portions of the ground and cellar of an existing building. C2-5/R8 zoning district.

PREMISES AFFECTED – 330 East 59<sup>th</sup> Street, Block 1351, Lot 36, Borough of Manhattan.

**COMMUNITY BOARD #6M**

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for continued hearing.  
-----

**2016-4277-BZ**

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Consolidated Edison Company of New York, Inc., owner.

SUBJECT – Application March 28, 2017 – Special Permit (§73-16) to permit the addition of a battery storage facility to an existing electric utility substation that was granted pursuant to BSA Calendar Number: 178-63-BZ. R4 zoning district.

PREMISES AFFECTED – 79-04 151<sup>st</sup> Avenue, Block 11426, Lot 2, Borough of Queens.

**COMMUNITY BOARD #10Q**

**ACTION OF THE BOARD** – Laid over to May 23, 2017, at 10 A.M., for continued hearing.  
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*Ryan Singer, Executive Director*

# 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.

Volume 102, No. 15

April 20, 2017

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# DOCKETS

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New Case Filed Up to April 4, 2017  
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**2017-97-BZ**

55 Washington Street, located on a block bounded by Washington, Water, Adams and Front Streets, Block 00038, Lot(s) 1, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to permit the legalization of physical culture establishment (Gleason's Gym) on a portion of the first floor of an existing building. M1-2/R8A (Dumbo Historic District) zoning district. M1-2/R8A district.  
-----

**2017-98-BZ**

21 West End Avenue, northwest corner of the intersection formed by West Avenue and West 60th Street, Block 01171, Lot(s) 164, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36) to operate a physical culture establishment (SoulCycle) within an existing building. C4-7 zoning district. C4-7 district.  
-----

**2017-99-A**

37-98 Railroad Avenue, located on Railroad Avenue, parallel to and between Review Avenue and Newton Creek, approximately 830 ft. south of Greenpoint Avenue., Block 00312, Lot(s) 279, Borough of **Queens, Community Board: 2**. Proposed construction of a fabric enclosure not fronting on a legally mapped street contrary to General City Law 36. M3-1 zoning district M3-1 district.  
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**2017-100-BZ**

412 East 90th Street, located on the south side of East 90th Street, 245 feet west of the intersection formed by East 90th Street and York Avenue, Block 01569, Lot(s) 35, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-19) to allow for a Use Group 3 school use (The Spence School) contrary to ZR §32-31 (Use Regulations); Variance (§72-21) to permit the development of the building contrary to ZR §33-292 (Proposed building extends 30 ft. into the required open area) and ZR §33-26 (Proposed building extends 20 ft. into the required rear yard. C8-4 zoning district. C8-4 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 MAY 16, 2017, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 16, 2017, 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

#### 183-85-BZ

APPLICANT – Eric Palatnik, P.C., for 206 20<sup>th</sup> Street LLC, owner.

SUBJECT – Application September 27, 2016 – Extension of Term of a previously approved Variance (§72-21) for the operation of a (UG 16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom building, which expires on November 18, 2016. R6B zoning district.

PREMISES AFFECTED – 206/8 20<sup>th</sup> Street, Block 640, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

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#### 1-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 117 Seventh Avenue South Properties, LLP, owner TSI Sheridan, LLC dba New York Sports Club, lessee.

SUBJECT – Application February 25, 2016 – Extension of Term for a previously granted special permit (§73-36) for a physical culture establishment (*New York Sports Club*) which expired on June 13, 2015; Waiver of the Rules. C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, Block 610, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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#### 75-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for The Rupert Yorkville Towers Condominium, owner; TSI East 91<sup>st</sup> Street LLC dba New York Sports Club, lessee.

SUBJECT – Application August 18, 2016 – Extension of Term for a special permit (§73-36) permitting the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on January 28, 2016; Waiver of the Rules. C2-8 zoning district.

PREMISES AFFECTED – 1635 Third Avenue, Block 1537, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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## REGULAR MEETING MAY 16, 2017, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 16, 2017, 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

#### 2016-4131-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ateret Torah Center, owner.

SUBJECT – Application March 7, 2016 – Special Permit (§73-19) to permit the construction of a school (UG 3) (Yeshiva Ateret Torah) contrary to use regulation on a portion of the lot and a Variance (§72-21) to permit waivers for height and setback, front yard, street wall height, ridge line and absence of off-street loading facilities. C8-2 and R5 (OP) zoning district.

PREMISES AFFECTED – 901 Quentin Road, Block 6641, Block 38, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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#### 2016-4184-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for MB-REEC Houston Property Owner LLC, owner; Equinox 196 Orchard Street, Inc., lessee.

SUBJECT – Application May 11, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Equinox*) within a new mixed-use building. C6-2A/C4-4A zoning district.

PREMISES AFFECTED – 194 Orchard Street, Block 412, Lot 12, Borough of Manhattan.

**COMMUNITY BOARD #3M**

-----

#### 2016-4185-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 108-18 LLC, owner; Blink 108-14 Roosevelt, Inc., lessee.

SUBJECT – Application May 11, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Blink*) within a new commercial building. C2-4/R6B zoning district.

PREMISES AFFECTED – 108-18 Roosevelt Avenue, Block 1996, Lot 11, Borough of Queens.

**COMMUNITY BOARD #4Q**

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# CALENDAR

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**2016-4231-BZ**

APPLICANT – Jay Goldstein, Esq., for JSM Associates LLC, owner; Flywheel Sports Inc., lessee.

SUBJECT – Application August 3, 2016 – Special Permit (§73-36) to permit the legalization of the operation of a physical culture establishment (*Flywheel*) located within a portion of the cellar of an existing building. C6-3 zoning district.

PREMISES AFFECTED – 51 Astor Place, Block 554, Lot 35, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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**2016-4250-BZ**

APPLICANT – Transform Fitness Inc., for 133 E. 58<sup>th</sup> Street, LLC, owner.

SUBJECT – Application September 9, 2016 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Transform Fitness*) an existing building. C5-2) zoning district.

PREMISES AFFECTED – 133 East 58<sup>th</sup> Street, Block 1313, Lot 14, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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**2016-4254-BZ**

APPLICANT – Mango & Lacoviello, LLP, for Central Harlem Plaza Commercial Unit, LLC, owner; Infitme LLC, lessee.

SUBJECT – Application September 15, 2016 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*I Love Kickboxing*) on a portion of the first floor of an existing building. C4-5X zoning district.

PREMISES AFFECTED – 120 Lenox Avenue a/k/a 47 West 116<sup>th</sup> Street, Block 1600, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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*Ryan Singer, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, APRIL 4, 2017  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**109-93-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Barone Properties, Inc., owner.

SUBJECT – Application December 24, 2015 – Extension of Term of a previously approved Variance (72-21) permitting an eating and drinking establishment (UG 6) which expired on May 24, 2014; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 189-11 Northern Boulevard, Block 5365, Lot 5, Borough of Queens.

**COMMUNITY BOARD #11Q**

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

**THE VOTE TO GRANT –**

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

**THE RESOLUTION –**

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a variance, previously granted by the Board pursuant to ZR § 72-21, which expired on May 24, 2014; and

WHEREAS, a public hearing was held on this application on August 23, 2016, after due notice by publication in *The City Record*, with continued hearings on January 24, 2017, March 21, 2017, and March 28, 2017, and then to decision on April 4, 2017; and

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

WHEREAS, Community Board 11, Queens, recommends disapproval of this application out of concerns that the subject building is too small for a full-service restaurant and that the continuation of the use will exacerbate traffic and parking conditions in the neighborhood; and

WHEREAS, by letter dated November 1, 2016, Senator Tony Avella recommends disapproval of this application, citing concerns about traffic, parking and neighborhood character; and

WHEREAS, in addition, the Auburndale Improvement Association provided written and oral testimony in opposition to this application, expressing concerns regarding parking, prior noise complaints associated with the former operator at the site and the potential for the proposed as-of-right residential units on the second and third floors of the subject buildings to become SRO or dormitory units; and

WHEREAS, the subject site is located on the northern side of Northern Boulevard, between 189th and 190th Streets, partially within an R3-2 zoning district and partially within an R3X zoning district, in Queens; and

WHEREAS, the site has approximately 50 feet of frontage along Northern Boulevard, 110 feet of depth, 5,436 square feet of lot area and is occupied by an existing three-story, with basement, mixed-used commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 24, 1994, when, under the subject calendar number, the Board granted a variance to legalize, for a term of ten (10) years and expiring May 24, 2004, an office use (Use Group 6B) on the first floor of an existing three-story, with basement, multiple dwelling on condition that the barbed wire around the fence be removed, the fence be limited to 6 feet in height, there be no open storage on the lot and landscaping be maintained; and

WHEREAS, on December 13, 2005, under the subject calendar number, the Board reopened and amended the variance to extend the term for ten (10) years, expiring May 24, 2014, and to allow the change of use of the first floor from office to an eating and drinking establishment with accessory food preparation and storage in the basement on condition that the hours of operation be 7 a.m. to 12 a.m. daily, all deliveries be made from Northern Boulevard between 9 a.m. and 9 p.m., there be no storage of vehicles on the site, the existing fence along the property lines be replaced with a 6’-0” high aluminum fence, all exterior lighting be directed away from adjacent residences and all signage on the site comply with C1 zoning district regulations; and

WHEREAS, the term of the variance having expired, the instant application seeks a further extension of the term of the variance for an additional ten (10) years; and

WHEREAS, at hearing, the Board expressed concerns about the compatibility of the subject use with residential uses both above and around the use, the outdoor seating proposed in the front yard, the handicap accessibility of the building, trash storage and dilapidated fencing conditions at the site, landscaping along the site perimeter to buffer the use from its



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residential neighbors, the proposed hours of operation, fire-safety measures taken with the building (including sprinklers, means of egress and exit signage), traffic and noise impacts of the continued eating and drinking establishment use and the hours of deliveries; and

WHEREAS, Community Board 11, Senator Avella and various members of the community expressed similar concerns about the eating and drinking establishment's compatibility with nearby residential uses, hours of operation, deliveries, trash storage and poor condition of the existing fencing; and

WHEREAS, in response, the applicant agreed to reduce the proposed hours of operation to 7 a.m. to 10:30 p.m., Sunday through Thursday, with no music or outdoor seating after 10 p.m., and 7 a.m. to 12 a.m., Friday and Saturday, with no music or outdoor seating after 10 p.m.; amended the drawings to reflect changes in interior layouts, additional sprinkler heads and indicate the installation of a new weather treated fence and additional landscaping along the rear property line; redesigned the handicap accessibility ramp; relocated the trash storage for commercial use to the front of the building away from the residential entrance; and represented that the residential units above will each be one-family only; and

WHEREAS, additionally, addressing community concerns about delivery hours and at the Board's request, the applicant further reduced delivery hours from 9 a.m. to 8 p.m.; and

WHEREAS, with regards to concerns regarding parking, the Board notes that a parking availability survey provided by the applicant demonstrates that sufficient parking spaces exist on the surrounding blocks to accommodate the parking demand; and

WHEREAS, in addition, the applicant notes that, though not part of the subject application, two parking spaces are proposed as accessory to the residential units at the site and this represents an increase in parking provided at the premises; and

WHEREAS, at hearing, the Fire Department stated that it has no objection to this application on condition that Department of Buildings reviews egress; and

WHEREAS, in addition, the application requests, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, a waiver of Rule § 1-07.3(b)(2) to permit the filing of this application less than two (2) years after the expiration of the term; and

WHEREAS, consistent with Rule § 1-07.3(b)(2), the applicant represents that the prior commercial tenant was evicted for non-payment of rent and for constructing an enclosure in the rear yard without authorization in December 2014, but that substantial prejudice would result without the requested waiver; and

WHEREAS, the Board finds the requested waiver and a ten (10) year extension of the term of the variance are appropriate with certain conditions as set forth below.

*Therefore, it is Resolved,* that the Board of Standards and Appeals waives its Rules of Practice and Procedure and reopens and amends the resolution, dated May 24, 1994, as amended through December 13, 2005, so that as amended this portion of the resolution reads: "to grant an extension of the term of the variance for a term of ten (10) years from the expiration of the last grant, to expire May 24, 2024; *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received March 31, 2017'-Six (6) sheets; and *on further condition:*

THAT the term of this grant shall be for ten (10) years, to expire on May 24, 2024;

THAT hours of operation shall be limited to 7 a.m. to 10:30 p.m., Sunday through Thursday, with no music or outdoor seating after 10 p.m., and 7 a.m. to 12 a.m., Friday and Saturday, with no music or outdoor seating after 10 p.m.;

THAT deliveries shall be limited to between 9 a.m. and 8 p.m.;

THAT residential units in the building shall be limited to one single-family dwelling unit per floor;

THAT the rear yard and garage shall only be used by residential tenants;

THAT access to the rear yard for the eating and drinking establishment shall be for emergency egress only;

THAT no storage of commercial materials shall be permitted in the rear yard;

THAT the open portion of the front fence shall be repaired and all fencing shall be maintained in accordance with Board-approved plans;

THAT the ceiling between the first and second floor shall be sound insulated to protect residential occupants from noise emitted by the eating and drinking establishment below;

THAT there shall be no open storage, including storage of vehicles, on the lot;

THAT landscaping shall be maintained in accordance with the Board-approved plans;

THAT all deliveries shall be made from Northern Boulevard;

THAT all exterior lighting shall be directed away from adjacent residences;

THAT all signage shall comply with C1 zoning district regulations;

THAT the above conditions and all conditions from prior resolutions shall appear on the Certificate of Occupancy;

THAT an amended Certificate of Occupancy shall

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be obtained within one (1) year, by April 4, 2018;

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 objections cited and filed by the Department of Buildings;

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

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

Adopted by the Board of Standards and Appeals, April 4, 2017.

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## 57-95-A

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application February 9, 2015 – Amendment/Time to complete construction filed under Certificate of Occupancy Modification. R7-2 zoning district.

PREMISES AFFECTED – 473 Central Park West, West side of Central Park West between West 107th and West 108th Streets, Block 01843, Lot 32, Borough of Manhattan.

### COMMUNITY BOARD #7M

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of time to obtain a Certificate of Occupancy, which expired on September 18, 2008; and

WHEREAS, a public hearing was held on November 24, 2015, after due notice by publication in *The City Record*, with continued hearings on February 2, 2016, April 5, 2016, August 23, 2016, September 27, 2016, and January 31, 2017, and then to decision on April 4, 2017; 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 Central Park West, between West 107th and West

108th Street, in an R7-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 24 feet of frontage along Central Park West, 100 feet of depth, 2,400 square feet of lot area and is occupied by a five-story residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since January 29, 1963, when, under BSA Calendar No. 1874-61-A, the Board granted waivers of Sections 216 and 34(6) of the New York State Multiple Dwelling Law (“MDL”), pursuant to MDL § 310, to permit the creation of Class A apartments in the cellar for a term of five (5) years, expiring January 29, 1968, on condition that a Certificate of Occupancy be obtained; and

WHEREAS, the Board granted waivers of the same MDL sections and for the same purposes for adjacent buildings located at 474/475 and 476 Central Park West under BSA Cal. Nos. 1937-61-A and 1871-61-A, respectively (referred to herein, together with the subject premises, as the “Subject Buildings”); and

WHEREAS, on June 18, 1968, December 5, 1972, and January 17, 1978, under BSA Calendar No. 1874-61-A, the Board granted extensions of the term of the MDL waivers for additional five (5) year terms, the last of which expired on January 17, 1983, on condition that a new Certificate of Occupancy be obtained; and

WHEREAS, on October 25, 1983, under BSA Calendar No. 1874-61-A, the Board granted another extension of the term of the MDL waivers for an additional five (5) year term, expiring January 17, 1988, on condition that access to the street through the cellar conform to the Board-approved plans, that, in the event the building was separately sold, an easement permitting the required access to the street must be provided at the time of sale and such easement condition must appear on the Certificate of Occupancy and a new Certificate of Occupancy be obtained within one (1) year; and

WHEREAS, on November 21, 1995, under the subject calendar number, the MDL waivers having lapsed and occupancy of the dwelling units in the cellar having continued, the Board reinstated the waiver for a term of ten (10) years, expiring November 14, 2005, on condition that, in the event the building was separately sold, an easement permitting the required access to the street must be provided at the time of sale and such easement condition must appear on the Certificate of Occupancy, that smoke detectors and exit signs be provided in accordance with the Board-approved plans and a new Certificate of Occupancy be obtained within one (1) year; and

WHEREAS, on March 18, 2008, under the subject calendar number, the Board granted a waiver of its Rules, amended the MDL waivers to eliminate the term of years and extended the time to obtain a Certificate of

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Occupancy by six months, to be obtained by September 18, 2008, on condition that, in the event the building is sold separately, an easement permitting the required access to the street be provided and all fire safety measures be installed and maintained pursuant to the Board-approved plans; and

WHEREAS, the applicant now seeks an extension of time to obtain a Certificate of Occupancy and a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(d)(2) to permit the filing of this application more than thirty (30) days after the expiration of time to obtain a Certificate of Occupancy; and

WHEREAS, each of the Subject Buildings remains filed under separate calendar numbers, but all three applications were heard together; and

WHEREAS, the photographs submitted with the subject applications raised issues regarding the safety and maintenance of the cellar dwelling units and showed, *inter alia*, the metal stairs, public corridors, flooring and masonry in the buildings' cellars to be in poor condition, impermissible storage of materials along the fire route and maintenance of unenclosed garbage under the stairs and in front of cellar dwelling unit windows; and

WHEREAS, at the public hearing held on November 24, 2015, the Board also raised concerns regarding the substantial number of outstanding Department of Buildings ("DOB") and Housing Preservation and Development ("HPD") violations at the Subject Buildings and requested that all violations be corrected; and

WHEREAS, by letter dated November 23, 2015, the Fire Department requested that any action by the Board on this applications be conditioned on the installation of a full sprinkler system throughout the cellars of the Subject Buildings; and

WHEREAS, shortly before the public hearing held on February 2, 2016, ownership of the Subject Buildings was transferred and the management company for the purchaser proposed a plan to resolve the open violations, which included the replacement and conversion of the boiler systems, installation of fire stopping in the cellar ceilings, installation of an automatic sprinkler system in the cellars, and gut renovation of the 34 dwelling units (out of a total 75 dwelling units in the Subject Buildings) that were vacant; and

WHEREAS, at that public hearing, the Board requested additional information regarding the timeline for the proposed renovations and plans for correcting violations in occupied dwelling units; the Board additionally discussed reinstatement of the term of the MDL waivers due to the present conditions in the Subject Buildings; and

WHEREAS, at this time, the applicant represented

that the vacant dwelling units included two of the four total dwelling units located in the cellar of 473 Central Park West, three of the seven total dwelling units located in the cellar of 474/475 Central Park West and all four of the dwelling units located in the cellar of 476 Central Park West; and

WHEREAS, by letter dated February 25, 2016, in light of the applicant's representation that dwelling units in the Subject Buildings would be gut renovated, the Fire Department revised its recommendation to request that any Board action be conditioned on the installation of sprinklers throughout all dwelling units, hallways and accessory spaces of the Subject Buildings in compliance with the MDL, New York City Building Code and New York City Fire Code; and

WHEREAS, by submission dated March 17, 2016, the applicant voiced its opposition to the Fire Department's request that the Subject Buildings be sprinklered in their entirety on the basis that the Fire Department had misunderstood the representations previously made by the applicant regarding the scope of the proposed renovation work and that no applicable law or code required full sprinklering; and

WHEREAS, by letter dated March 18, 2016, the Fire Department identified testimony by the applicant's representative from the prior public hearing that, indeed, referenced "gut renovations," acknowledged that strict interpretation of applicable codes did not require sprinklers in the Subject Buildings, but stated that its recommendation was, further, based on the historical mismanagement, lack of proper maintenance and violation history of the subject premises and the Fire Department's interest in ensuring that life safety systems in aging buildings are brought to current code, whenever possible; and

WHEREAS, the Board was further alarmed by the physical conditions of the cellar dwelling units as indicated by additional photos of the premises submitted into the record by the applicant's submission, dated March 17, 2016; in particular, the Board expressed concern that the repair work being undertaken to address the existing violations was minor and failing to address or correct underlying building issues, including, but not limited to, evident plumbing leaks and potential mold; and

WHEREAS, the Board noted that given the substantial number of vacant dwelling units in the Subject Buildings located above grade, and, thus, the potential to relocate tenants from the cellar, continued occupancy of the cellar dwelling units and the grant of the relief requested herein could only be justified if the dwelling units in the cellar were maintained in desirable conditions; and

WHEREAS, the Board also stated, at the public hearing held on April 5, 2016, that the significant number

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of HPD violations and quantity of vacant dwelling units suggested that tenants vacated the Subject Buildings due to the prior owner's neglect and that rent-regulated dwelling units may have been deregulated as a result of these vacancies; and

WHEREAS, by letter dated July 27, 2016, the Fire Department further revised its recommendation to request that sprinklers be installed throughout the cellars of each of the Subject Buildings, including all public areas, service areas, storage areas and residential units; sprinklers be installed in all public hallways and stairways, cellar to bulkhead inclusive, of the Subject Buildings; hard-wired smoke and carbon monoxide detectors be installed in all residential units, both renovated and currently occupied, of the Subject Buildings; and that no vote be taken by the Board until the sprinkler systems are installed and approved by both the Fire Department and DOB; and

WHEREAS, on September 14, 2016, the Board performed a site visit of the Subject Buildings, gained access to the vacant cellar dwelling units, rear and side yards, as well as a recently renovated dwelling unit on an upper floor, but was unable to view any of the occupied cellar dwelling units; at that visit, the project manager in charge of building construction represented that the intention was to retain all demising and interior walls in the cellar apartments, skim coat the walls, paint and install kitchen cabinets, appliances and fixtures, relocate corridor walls and install electrical upgrades, if required by code; and

WHEREAS, at the Executive Session, held on September 26, 2016, the Board stated that these statements contradicted the floorplans submitted with the applicant's submission, dated September 8, 2016, which showed that all interior partitions at the cellar level, including all corridor walls, as new; and

WHEREAS, as a result of these conflicting representations, and the Board's recognition that many of the cellar dwelling units are undersized and non-compliant with MDL regulations regarding minimum unit and room sizes, the Board further stated that it was inclined to deny the subject applications as proposed unless the applicant agreed to comply with the following: gut renovation of the cellars of the Subject Buildings that matches the quality of the renovated units located on the upper floors of the Subject Buildings with full sprinklering in the cellar and hard wired smoke detectors; combination of the cellar units so as to provide units of habitable size and layout in compliance with the MDL; installation of code compliant radiators in lieu of ceiling-mounted coil heating units; relocation of all exposed piping, as necessary, so as to be concealed in the hung ceiling; replacement of all wiring in the cellar; clear route from all cellar units to a second means of egress to the Subject Buildings' side or rear yards via doors rather than windows; installation of a

raised insulated floor in the unit located over the boiler room to reduce the extreme heat load currently experienced in that unit and the maintenance of an 8 foot floor to ceiling height in that unit; relocation of electric and gas meters to an enclosed meter closet in a corridor recess so as to not impact the corridor's width or circulation; an uninterrupted and continuous corridor floor without any features that would compromise access or egress; enclosure of corridor walls with finished material; and replacement of stairs to cellar levels with stairs that meet the rise to run and tread width requirements of the Building Code; and

WHEREAS, the Board further requested that tenants of rent-regulated dwelling units located in the cellars be relocated to apartments located above grade without any increase to their rent and that hard-wired smoke detectors be installed in all rent-regulated dwelling units in the Subject Buildings, whether or not they have been renovated; and

WHEREAS, the Board expressed concern that the requested combination of cellar dwelling units—requested so as to improve the condition of those units, particularly with regards to access to light and air and the provision of secondary means of egress, such that a grant of the requested relief would be warranted—not result in the reduction in the number of rent-regulated dwelling units or an increase in rent for those units' current tenants; and

WHEREAS, at the public hearing held on September 27, 2016, the applicant agreed, to relocate the two remaining tenants of rent-regulated dwelling units located in the cellars to above-grade dwelling units in the Subject Buildings, or other buildings within the owner's real estate portfolio, without any increase in rent and to consult with landlord-tenant counsel to ensure that cellar dwelling units would be combined so as to not reduce the number of rent-regulated units; and

WHEREAS, the applicant provided revised plans for the cellar dwelling units in the Subject Buildings showing a reduction in the number of units in the cellar of 473 Central Park West from four to two (one studio and one two-bedroom unit), a reduction in the number of units in the cellar of 474/475 Central Park West from seven to four (1 one-bedroom, 2 two-bedrooms and one studio) and a reduction in the number of units in the cellar of 476 Central Park West from four to two (one studio and one two-bedroom); and

WHEREAS, of the eight reconfigured cellar dwelling units, the applicant represented that the following four would remain rent-regulated: both units in the cellar of 473 Central Park West (Units A and B), the two-bedroom unit in the cellar of 474 Central Park West (Unit B) and the studio unit in the cellar of 476 Central Park West (Unit A); and

WHEREAS, the applicant additionally stated that

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one of the last two rent-regulated tenants of cellar dwelling units had successfully been relocated to a formerly fair market apartment at another building under the same ownership as the Subject Buildings', which the applicant represented became rent-regulated as a matter of law, without any increase in rent and that efforts were being made to similarly relocate the final tenant of a cellar dwelling unit in 473 Central Park West; and

WHEREAS, thus, as a result of the reconfiguration of the cellar dwelling units and relocation (and planned relocation) of rent-regulated tenants of these cellar units, the applicant represents that five rent-regulated cellar dwelling units would be retained as follows: four units in the cellars of the Subject Buildings, one new rent-regulated unit in another building under the same ownership as the Subject Buildings and the possibility of a sixth rent-regulated unit, should the final rent-regulated tenant from a cellar unit in 473 Central Park West be relocated to a market rate unit that would become rent-regulated as a matter of law; and

WHEREAS, the applicant agreed to set the first rent for the rent-regulated cellar dwelling units below the current rent threshold at which such units could be eligible for deregulation by the New York State Division of Housing and Community Renewal ("DHCR") and, at the Board's request, provided the rent rolls for the rent-regulated units in the cellars of the Subject Buildings; and

WHEREAS, the applicant satisfactorily addressed the remainder of the Board's concerns, including substantial progress on the correction of outstanding violations, secondary means of egress from the cellar dwelling units, installation of an insulated floor in the cellar dwelling unit located above a boiler room, relocation of the electric and gas meters and reconfiguration of the cellar corridors; and

WHEREAS, nevertheless, the Board notes that the prior owner of the Subject Buildings was greatly enriched by the MDL waivers; the prior owner benefitted, for decades, from rents collected for fifteen cellar dwelling units that that owner failed to maintain in proper and safe condition; and that the current owner initially demonstrated a reluctance to substantially improve these conditions by proposing only to paint and upgrade building systems if required by code; and

WHEREAS, thus, the Board finds that reinstatement of a term is necessary based on the historical lack of maintenance of the cellars at the subject premises; and

WHEREAS, based upon its review of the record, the Board finds that 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 *waives* its Rules of Practice and Procedure,

*reopens* and *amends* the resolution, dated November 21, 1995, as amended through March 18, 2008, so that as amended this portion of the resolution reads: "to grant an extension of time to obtain a Certificate of Occupancy to April 4, 2020; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 16, 2017"-Seven (7) sheets; and *on further condition*:

THAT a Certificate of Occupancy shall be obtained within three (3) years, by April 4, 2020;

THAT the term of years for the waivers is reinstated, to run from the date of this grant, for a term of thirteen (13) years, expiring April 4, 2030;

THAT the rents for each of the rent-regulated dwelling units in the cellar (473 Central Park West Unit A and 473 Central Park West Unit B) shall start at the maximum monthly rent permitted in New York City for such units, based on size, for tenants earning 100 percent Area Medium Income ("AMI"), calculated as of the time the dwelling unit is first occupied;

THAT DOB shall verify that all window openings meet the lighting and ventilation requirements of MDL § 30;

THAT the cellar shall not be occupied until issuance of the Certificate of Occupancy;

THAT there shall be no construction in the cellar until the final occupant of the cellar has been relocated;

THAT a new sprinkler system fully compliant with the New York City Fire Code and New York City Building Code shall be installed throughout the cellar, including individual dwelling units and hallways, and throughout the hallways and common areas, up to bulkheads of the remainder of the building;

THAT in the event that this building is sold separately from the adjacent buildings at 474/475 and 476 Central Park West, an easement permitting the required access to the street must be provided at the time of sale;

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

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 objections(s); and

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

Adopted by the Board of Standards and Appeals, April 4, 2017.

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## 58-95-A

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application February 9, 2015 – Amendment/Time to complete construction filed under Certificate of Occupancy Modification. R7-2 zoning district.

PREMISES AFFECTED – 474/475 Central Park West, West side of Central Park West between West 107th and West 108th Streets, Block 01843, Lot 34, Borough of Manhattan.

### COMMUNITY BOARD #7M

#### THE VOTE TO GRANT –

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

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of time to obtain a Certificate of Occupancy, which expired on September 18, 2008; and

WHEREAS, a public hearing was held on November 24, 2015, after due notice by publication in *The City Record*, with continued hearings on February 2, 2016, April 5, 2016, August 23, 2016, September 27, 2016, and January 31, 2017, and then to decision on April 4, 2017; 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 Central Park West, between West 107th and West 108th Street, in an R7-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 72 feet of frontage along Central Park West, 100 feet of depth, 7,200 square feet of lot area and is occupied by two five-story residential buildings (474/475 Central Park West and 476 Central Park West; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since January 29, 1963, when, under BSA Calendar No. 1937-61-A, the Board granted waivers of Sections 216 and 34(6) of the New York State Multiple Dwelling Law (“MDL”), pursuant to MDL § 310, to permit the creation of Class A apartments in the cellar for a term of five (5) years, expiring January 29, 1968, on condition that a Certificate of Occupancy be obtained; and

WHEREAS, the Board granted waivers of the same MDL sections and for the same purposes for adjacent buildings located at 473 and 476 Central Park West under BSA Cal. Nos. 1874-61-A and 1871-61-A, respectively (referred to herein, together with the subject premises, as

the “Subject Buildings”); and

WHEREAS, on June 18, 1968, December 5, 1972, and January 17, 1978, under BSA Calendar No. 1937-61-A, the Board granted extensions of the term of the MDL waivers for additional five (5) year terms, the last of which expired on January 17, 1983, on condition that a new Certificate of Occupancy be obtained; and

WHEREAS, on October 25, 1983, under BSA Calendar No. 1937-61-A, the Board granted another extension of the term of the MDL waivers for an additional five (5) year term, expiring January 17, 1988, on condition that access to the street through the cellar conform to the Board-approved plans, that, in the event the building was separately sold, an easement permitting the required access to the street must be provided at the time of sale and such easement condition must appear on the Certificate of Occupancy and a new Certificate of Occupancy be obtained within one (1) year; and

WHEREAS, on November 21, 1995, under the subject calendar number, the MDL waivers having lapsed and occupancy of the dwelling units in the cellar having continued, the Board reinstated the waiver for a term of ten (10) years, expiring November 14, 2005, on condition that, in the event the building was separately sold, an easement permitting the required access to the street must be provided at the time of sale and such easement condition must appear on the Certificate of Occupancy, that smoke detectors and exit signs be provided in accordance with the Board-approved plans and a new Certificate of Occupancy be obtained within one (1) year; and

WHEREAS, on March 18, 2008, under the subject calendar number, the Board granted a waiver of its Rules, amended the MDL waivers to eliminate the term of years and extended the time to obtain a Certificate of Occupancy by six months, to be obtained by September 18, 2008, on condition that, in the event the building is sold separately, an easement permitting the required access to the street be provided and all fire safety measures be installed and maintained pursuant to the Board-approved plans; and

WHEREAS, the applicant now seeks an extension of time to obtain a Certificate of Occupancy and a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(d)(2) to permit the filing of this application more than thirty (30) days after the expiration of time to obtain a Certificate of Occupancy; and

WHEREAS, each of the Subject Buildings remains filed under separate calendar numbers, but all three applications were heard together; and

WHEREAS, the photographs submitted with the subject applications raised issues regarding the safety and maintenance of the cellar dwelling units and showed, *inter*

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*alia*, the metal stairs, public corridors, flooring and masonry in the buildings' cellars to be in poor condition, impermissible storage of materials along the fire route and maintenance of unenclosed garbage under the stairs and in front of cellar dwelling unit windows; and

WHEREAS, at the public hearing held on November 24, 2015, the Board also raised concerns regarding the substantial number of outstanding Department of Buildings ("DOB") and Housing Preservation and Development ("HPD") violations at the Subject Buildings and requested that all violations be corrected; and

WHEREAS, by letter dated November 23, 2015, the Fire Department requested that any action by the Board on this applications be conditioned on the installation of a full sprinkler system throughout the cellars of the Subject Buildings; and

WHEREAS, shortly before the public hearing held on February 2, 2016, ownership of the Subject Buildings was transferred and the management company for the purchaser proposed a plan to resolve the open violations, which included the replacement and conversion of the boiler systems, installation of fire stopping in the cellar ceilings, installation of an automatic sprinkler system in the cellars, and gut renovation of the 34 dwelling units (out of a total 75 dwelling units in the Subject Buildings) that were vacant; and

WHEREAS, at that public hearing, the Board requested additional information regarding the timeline for the proposed renovations and plans for correcting violations in occupied dwelling units; the Board additionally discussed reinstatement of the term of the MDL waivers due to the present conditions in the Subject Buildings; and

WHEREAS, at this time, the applicant represented that the vacant dwelling units included two of the four total dwelling units located in the cellar of 473 Central Park West, three of the seven total dwelling units located in the cellar of 474/475 Central Park West and all four of the dwelling units located in the cellar of 476 Central Park West; and

WHEREAS, by letter dated February 25, 2016, in light of the applicant's representation that dwelling units in the Subject Buildings would be gut renovated, the Fire Department revised its recommendation to request that any Board action be conditioned on the installation of sprinklers throughout all dwelling units, hallways and accessory spaces of the Subject Buildings in compliance with the MDL, New York City Building Code and New York City Fire Code; and

WHEREAS, by submission dated March 17, 2016, the applicant voiced its opposition to the Fire Department's request that the Subject Buildings be sprinklered in their entirety on the basis that the Fire

Department had misunderstood the representations previously made by the applicant regarding the scope of the proposed renovation work and that no applicable law or code required full sprinklering; and

WHEREAS, by letter dated March 18, 2016, the Fire Department identified testimony by the applicant's representative from the prior public hearing that, indeed, referenced "gut renovations," acknowledged that strict interpretation of applicable codes did not require sprinklers in the Subject Buildings, but stated that its recommendation was, further, based on the historical mismanagement, lack of proper maintenance and violation history of the subject premises and the Fires Department's interest in ensuring that life safety systems in aging buildings are brought to current code, whenever possible; and

WHEREAS, the Board was further alarmed by the physical conditions of the cellar dwelling units as indicated by additional photos of the premises submitted into the record by the applicant's submission, dated March 17, 2016; in particular, the Board expressed concern that the repair work being undertaken to address the existing violations was minor and failing to address or correct underlying building issues, including, but not limited to, evident plumbing leaks and potential mold; and

WHEREAS, the Board noted that given the substantial number of vacant dwelling units in the Subject Buildings located above grade, and, thus, the potential to relocate tenants from the cellar, continued occupancy of the cellar dwelling units and the grant of the relief requested herein could only be justified if the dwelling units in the cellar were maintained in desirable conditions; and

WHEREAS, the Board also stated, at the public hearing held on April 5, 2016, that the significant number of HPD violations and quantity of vacant dwelling units suggested that tenants vacated the Subject Buildings due to the prior owner's neglect and that rent-regulated dwelling units may have been deregulated as a result of these vacancies; and

WHEREAS, by letter dated July 27, 2016, the Fire Department further revised its recommendation to request that sprinklers be installed throughout the cellars of each of the Subject Buildings, including all public areas, service areas, storage areas and residential units; sprinklers be installed in all public hallways and stairways, cellar to bulkhead inclusive, of the Subject Buildings; hard-wired smoke and carbon monoxide detectors be installed in all residential units, both renovated and currently occupied, of the Subject Buildings; and that no vote be taken by the Board until the sprinkler systems are installed and approved by both the Fire Department and DOB; and

WHEREAS, on September 14, 2016, the Board performed a site visit of the Subject Buildings, gained

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access to the vacant cellar dwelling units, rear and side yards, as well as a recently renovated dwelling unit on an upper floor, but was unable to view any of the occupied cellar dwelling units; at that visit, the project manager in charge of building construction represented that the intention was to retain all demising and interior walls in the cellar apartments, skim coat the walls, paint and install kitchen cabinets, appliances and fixtures, relocate corridor walls and install electrical upgrades, if required by code; and

WHEREAS, at the Executive Session, held on September 26, 2016, the Board stated that these statements contradicted the floorplans submitted with the applicant's submission, dated September 8, 2016, which showed that all interior partitions at the cellar level, including all corridor walls, as new; and

WHEREAS, as a result of these conflicting representations, and the Board's recognition that many of the cellar dwelling units are undersized and non-compliant with MDL regulations regarding minimum unit and room sizes, the Board further stated that it was inclined to deny the subject applications as proposed unless the applicant agreed to comply with the following: gut renovation of the cellars of the Subject Buildings that matches the quality of the renovated units located on the upper floors of the Subject Buildings with full sprinklering in the cellar and hard wired smoke detectors; combination of the cellar units so as to provide units of habitable size and layout in compliance with the MDL; installation of code compliant radiators in lieu of ceiling-mounted coil heating units; relocation of all exposed piping, as necessary, so as to be concealed in the hung ceiling; replacement of all wiring in the cellar; clear route from all cellar units to a second means of egress to the Subject Buildings' side or rear yards via doors rather than windows; installation of a raised insulated floor in the unit located over the boiler room to reduce the extreme heat load currently experienced in that unit and the maintenance of an 8 foot floor to ceiling height in that unit; relocation of electric and gas meters to an enclosed meter closet in a corridor recess so as to not impact the corridor's width or circulation; an uninterrupted and continuous corridor floor without any features that would compromise access or egress; enclosure of corridor walls with finished material; and replacement of stairs to cellar levels with stairs that meet the rise to run and tread width requirements of the Building Code; and

WHEREAS, the Board further requested that tenants of rent-regulated dwelling units located in the cellars be relocated to apartments located above grade without any increase to their rent and that hard-wired smoke detectors be installed in all rent-regulated dwelling units in the Subject Buildings, whether or not they have been renovated; and

WHEREAS, the Board expressed concern that the requested combination of cellar dwelling units—requested so as to improve the condition of those units, particularly with regards to access to light and air and the provision of secondary means of egress, such that a grant of the requested relief would be warranted—not result in the reduction in the number of rent-regulated dwelling units or an increase in rent for those units' current tenants; and

WHEREAS, at the public hearing held on September 27, 2016, the applicant agreed, to relocate the two remaining tenants of rent-regulated dwelling units located in the cellars to above-grade dwelling units in the Subject Buildings, or other buildings within the owner's real estate portfolio, without any increase in rent and to consult with landlord-tenant counsel to ensure that cellar dwelling units would be combined so as to not reduce the number of rent-regulated units; and

WHEREAS, the applicant provided revised plans for the cellar dwelling units in the Subject Buildings showing a reduction in the number of units in the cellar of 473 Central Park West from four to two (one studio and one two-bedroom unit), a reduction in the number of units in the cellar of 474/475 Central Park West from seven to four (1 one-bedroom, 2 two-bedrooms and one studio) and a reduction in the number of units in the cellar of 476 Central Park West from four to two (one studio and one two-bedroom); and

WHEREAS, of the eight reconfigured cellar dwelling units, the applicant represented that the following four would remain rent-regulated: both units in the cellar of 473 Central Park West (Units A and B), the two-bedroom unit in the cellar of 474 Central Park West (Unit B) and the studio unit in the cellar of 476 Central Park West (Unit A); and

WHEREAS, the applicant additionally stated that one of the last two rent-regulated tenants of cellar dwelling units had successfully been relocated to a formerly fair market apartment at another building under the same ownership as the Subject Buildings', which the applicant represented became rent-regulated as a matter of law, without any increase in rent and that efforts were being made to similarly relocate the final tenant of a cellar dwelling unit in 473 Central Park West; and

WHEREAS, thus, as a result of the reconfiguration of the cellar dwelling units and relocation (and planned relocation) of rent-regulated tenants of these cellar units, the applicant represents that five rent-regulated cellar dwelling units would be retained as follows: four units in the cellars of the Subject Buildings, one new rent-regulated unit in another building under the same ownership as the Subject Buildings and the possibility of a sixth rent-regulated unit, should the final rent-regulated tenant from a cellar unit in 473 Central Park West be relocated to a market rate unit that would become rent-



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regulated as a matter of law; and

WHEREAS, the applicant agreed to set the first rent for the rent-regulated cellar dwelling units below the current rent threshold at which such units could be eligible for deregulation by the New York State Division of Housing and Community Renewal (“DHCR”) and, at the Board’s request, provided the rent rolls for the rent-regulated units in the cellars of the Subject Buildings; and

WHEREAS, the applicant satisfactorily addressed the remainder of the Board’s concerns, including substantial progress on the correction of outstanding violations, secondary means of egress from the cellar dwelling units, installation of an insulated floor in the cellar dwelling unit located above a boiler room, relocation of the electric and gas meters and reconfiguration of the cellar corridors; and

WHEREAS, nevertheless, the Board notes that the prior owner of the Subject Buildings was greatly enriched by the MDL waivers; the prior owner benefitted, for decades, from rents collected for fifteen cellar dwelling units that that owner failed to maintain in proper and safe condition; and that the current owner initially demonstrated a reluctance to substantially improve these conditions by proposing only to paint and upgrade building systems if required by code; and

WHEREAS, thus, the Board finds that reinstatement of a term is necessary based on the historical lack of maintenance of the cellars at the subject premises; and

WHEREAS, based upon its review of the record, the Board finds that 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 *waives* its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 21, 1995, as amended through March 18, 2008, so that as amended this portion of the resolution reads: “to grant an extension of time to obtain a Certificate of Occupancy to April 4, 2020; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 3, 2017”- Seven (7) sheets; and *on further condition*:

THAT a Certificate of Occupancy shall be obtained within three (3) years, by April 4, 2020;

THAT the term of years for the waivers is reinstated, to run from the date of this grant, for a term of thirteen (13) years, expiring April 4, 2030;

THAT the rent for the rent-regulated dwelling unit in the cellar (474 Central Park West Unit B) shall start at the maximum monthly rent permitted in New York City for such units, based on size, for tenants earning 100 percent Area Medium Income (“AMI”), calculated as of the time the dwelling unit is first occupied;

THAT DOB shall verify that all window openings

meet the lighting and ventilation requirements of MDL § 30;

THAT the cellar shall not be occupied until issuance of the Certificate of Occupancy;

THAT a new sprinkler system fully compliant with the New York City Fire Code and New York City Building Code shall be installed throughout the cellar, including dwelling units and hallways, and throughout the hallways and common areas, up to the bulkheads, of the remainder of the building;

THAT in the event that this building is sold separately from the adjacent buildings at 473 and 476 Central Park West, an easement permitting the required access to the street must be provided at the time of sale;

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

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 objections(s); and

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

Adopted by the Board of Standards and Appeals, April 4, 2017.

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## 59-95-A

APPLICANT – Mitchell S. Ross, Esq., for Upwest Company, LLC, owner.

SUBJECT – Application February 9, 2015 – Amendment/Time to complete construction filed under Certificate of Occupancy Modification. R7-2 zoning district.

PREMISES AFFECTED – 476 Central Park West, West side of Central Park West between West 107th and West 108th Streets, Block 01843, Lot 34, Borough of Manhattan.

## COMMUNITY BOARD #7M

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of time to obtain a Certificate of Occupancy, which expired on September 18, 2008; and

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WHEREAS, a public hearing was held on November 24, 2015, after due notice by publication in *The City Record*, with continued hearings on February 2, 2016, April 5, 2016, August 23, 2016, September 27, 2016, and January 31, 2017, and then to decision on April 4, 2017; 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 Central Park West, between West 107th and West 108th Street, in an R7-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 72 feet of frontage along Central Park West, 100 feet of depth, 7,200 square feet of lot area and is occupied by two five-story residential buildings (474/475 Central Park West and 476 Central Park West); and

WHEREAS, the Board has exercised jurisdiction over the subject premises since January 29, 1963, when, under BSA Calendar No. 1871-61-A, the Board granted waivers of Sections 216 and 34(6) of the New York State Multiple Dwelling Law (“MDL”), pursuant to MDL § 310, to permit the creation of Class A apartments in the cellar for a term of five (5) years, expiring January 29, 1968, on condition that a Certificate of Occupancy be obtained; and

WHEREAS, the Board granted waivers of the same MDL sections and for the same purposes for adjacent buildings located at 473 and 474/475 Central Park West under BSA Cal. Nos. 1874-61-A and 1937-61-A, respectively (referred to herein, together with the subject premises, as the “Subject Buildings”); and

WHEREAS, on June 18, 1968, December 5, 1972, and January 17, 1978, under BSA Calendar No. 1871-61-A, the Board granted extensions of the term of the MDL waivers for additional five (5) year terms, the last of which expired on January 17, 1983, on condition that a new Certificate of Occupancy be obtained; and

WHEREAS, on October 25, 1983, under BSA Calendar No. 1871-61-A, the Board granted another extension of the term of the MDL waivers for an additional five (5) year term, expiring January 17, 1988, on condition that access to the street through the cellar conform to the Board-approved plans, that, in the event the building was separately sold, an easement permitting the required access to the street must be provided at the time of sale and such easement condition must appear on the Certificate of Occupancy and a new Certificate of Occupancy be obtained within one (1) year; and

WHEREAS, on November 21, 1995, under the subject calendar number, the MDL waivers having lapsed and occupancy of the dwelling units in the cellar having continued, the Board reinstated the waiver for a term of

ten (10) years, expiring November 14, 2005, on condition that, in the event the building was separately sold, an easement permitting the required access to the street must be provided at the time of sale and such easement condition must appear on the Certificate of Occupancy, that smoke detectors and exit signs be provided in accordance with the Board-approved plans and a new Certificate of Occupancy be obtained within one (1) year; and

WHEREAS, on March 18, 2008, under the subject calendar number, the Board granted a waiver of its Rules, amended the MDL waivers to eliminate the term of years and extended the time to obtain a Certificate of Occupancy by six months, to be obtained by September 18, 2008, on condition that, in the event the building is sold separately, an easement permitting the required access to the street be provided and all fire safety measures be installed and maintained pursuant to the Board-approved plans; and

WHEREAS, the applicant now seeks an extension of time to obtain a Certificate of Occupancy and a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(d)(2) to permit the filing of this application more than thirty (30) days after the expiration of time to obtain a Certificate of Occupancy; and

WHEREAS, each of the Subject Buildings remains filed under separate calendar numbers, but all three applications were heard together; and

WHEREAS, the photographs submitted with the subject applications raised issues regarding the safety and maintenance of the cellar dwelling units and showed, *inter alia*, the metal stairs, public corridors, flooring and masonry in the buildings’ cellars to be in poor condition, impermissible storage of materials along the fire route and maintenance of unenclosed garbage under the stairs and in front of cellar dwelling unit windows; and

WHEREAS, at the public hearing held on November 24, 2015, the Board also raised concerns regarding the substantial number of outstanding Department of Buildings (“DOB”) and Housing Preservation and Development (“HPD”) violations at the Subject Buildings and requested that all violations be corrected; and

WHEREAS, by letter dated November 23, 2015, the Fire Department requested that any action by the Board on this applications be conditioned on the installation of a full sprinkler system throughout the cellars of the Subject Buildings; and

WHEREAS, shortly before the public hearing held on February 2, 2016, ownership of the Subject Buildings was transferred and the management company for the purchaser proposed a plan to resolve the open violations, which included the replacement and conversion of the

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boiler systems, installation of fire stopping in the cellar ceilings, installation of an automatic sprinkler system in the cellars, and gut renovation of the 34 dwelling units (out of a total 75 dwelling units in the Subject Buildings) that were vacant; and

WHEREAS, at that public hearing, the Board requested additional information regarding the timeline for the proposed renovations and plans for correcting violations in occupied dwelling units; the Board additionally discussed reinstatement of the term of the MDL waivers due to the present conditions in the Subject Buildings; and

WHEREAS, at this time, the applicant represented that the vacant dwelling units included two of the four total dwelling units located in the cellar of 473 Central Park West, three of the seven total dwelling units located in the cellar of 474/475 Central Park West and all four of the dwelling units located in the cellar of 476 Central Park West; and

WHEREAS, by letter dated February 25, 2016, in light of the applicant's representation that dwelling units in the Subject Buildings would be gut renovated, the Fire Department revised its recommendation to request that any Board action be conditioned on the installation of sprinklers throughout all dwelling units, hallways and accessory spaces of the Subject Buildings in compliance with the MDL, New York City Building Code and New York City Fire Code; and

WHEREAS, by submission dated March 17, 2016, the applicant voiced its opposition to the Fire Department's request that the Subject Buildings be sprinklered in their entirety on the basis that the Fire Department had misunderstood the representations previously made by the applicant regarding the scope of the proposed renovation work and that no applicable law or code required full sprinklering; and

WHEREAS, by letter dated March 18, 2016, the Fire Department identified testimony by the applicant's representative from the prior public hearing that, indeed, referenced "gut renovations," acknowledged that strict interpretation of applicable codes did not require sprinklers in the Subject Buildings, but stated that its recommendation was, further, based on the historical mismanagement, lack of proper maintenance and violation history of the subject premises and the Fire Department's interest in ensuring that life safety systems in aging buildings are brought to current code, whenever possible; and

WHEREAS, the Board was further alarmed by the physical conditions of the cellar dwelling units as indicated by additional photos of the premises submitted into the record by the applicant's submission, dated March 17, 2016; in particular, the Board expressed concern that the repair work being undertaken to address the existing

violations was minor and failing to address or correct underlying building issues, including, but not limited to, evident plumbing leaks and potential mold; and

WHEREAS, the Board noted that given the substantial number of vacant dwelling units in the Subject Buildings located above grade, and, thus, the potential to relocate tenants from the cellar, continued occupancy of the cellar dwelling units and the grant of the relief requested herein could only be justified if the dwelling units in the cellar were maintained in desirable conditions; and

WHEREAS, the Board also stated, at the public hearing held on April 5, 2016, that the significant number of HPD violations and quantity of vacant dwelling units suggested that tenants vacated the Subject Buildings due to the prior owner's neglect and that rent-regulated dwelling units may have been deregulated as a result of these vacancies; and

WHEREAS, by letter dated July 27, 2016, the Fire Department further revised its recommendation to request that sprinklers be installed throughout the cellars of each of the Subject Buildings, including all public areas, service areas, storage areas and residential units; sprinklers be installed in all public hallways and stairways, cellar to bulkhead inclusive, of the Subject Buildings; hard-wired smoke and carbon monoxide detectors be installed in all residential units, both renovated and currently occupied, of the Subject Buildings; and that no vote be taken by the Board until the sprinkler systems are installed and approved by both the Fire Department and DOB; and

WHEREAS, on September 14, 2016, the Board performed a site visit of the Subject Buildings, gained access to the vacant cellar dwelling units, rear and side yards, as well as a recently renovated dwelling unit on an upper floor, but was unable to view any of the occupied cellar dwelling units; at that visit, the project manager in charge of building construction represented that the intention was to retain all demising and interior walls in the cellar apartments, skim coat the walls, paint and install kitchen cabinets, appliances and fixtures, relocate corridor walls and install electrical upgrades, if required by code; and

WHEREAS, at the Executive Session, held on September 26, 2016, the Board stated that these statements contradicted the floorplans submitted with the applicant's submission, dated September 8, 2016, which showed that all interior partitions at the cellar level, including all corridor walls, as new; and

WHEREAS, as a result of these conflicting representations, and the Board's recognition that many of the cellar dwelling units are undersized and non-compliant with MDL regulations regarding minimum unit and room sizes, the Board further stated that it was inclined to deny the subject applications as proposed unless the applicant

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agreed to comply with the following: gut renovation of the cellars of the Subject Buildings that matches the quality of the renovated units located on the upper floors of the Subject Buildings with full sprinklering in the cellar and hard wired smoke detectors; combination of the cellar units so as to provide units of habitable size and layout in compliance with the MDL; installation of code compliant radiators in lieu of ceiling-mounted coil heating units; relocation of all exposed piping, as necessary, so as to be concealed in the hung ceiling; replacement of all wiring in the cellar; clear route from all cellar units to a second means of egress to the Subject Buildings' side or rear yards via doors rather than windows; installation of a raised insulated floor in the unit located over the boiler room to reduce the extreme heat load currently experienced in that unit and the maintenance of an 8 foot floor to ceiling height in that unit; relocation of electric and gas meters to an enclosed meter closet in a corridor recess so as to not impact the corridor's width or circulation; an uninterrupted and continuous corridor floor without any features that would compromise access or egress; enclosure of corridor walls with finished material; and replacement of stairs to cellar levels with stairs that meet the rise to run and tread width requirements of the Building Code; and

WHEREAS, the Board further requested that tenants of rent-regulated dwelling units located in the cellars be relocated to apartments located above grade without any increase to their rent and that hard-wired smoke detectors be installed in all rent-regulated dwelling units in the Subject Buildings, whether or not they have been renovated; and

WHEREAS, the Board expressed concern that the requested combination of cellar dwelling units—requested so as to improve the condition of those units, particularly with regards to access to light and air and the provision of secondary means of egress, such that a grant of the requested relief would be warranted—not result in the reduction in the number of rent-regulated dwelling units or an increase in rent for those units' current tenants; and

WHEREAS, at the public hearing held on September 27, 2016, the applicant agreed, to relocate the two remaining tenants of rent-regulated dwelling units located in the cellars to above-grade dwelling units in the Subject Buildings, or other buildings within the owner's real estate portfolio, without any increase in rent and to consult with landlord-tenant counsel to ensure that cellar dwelling units would be combined so as to not reduce the number of rent-regulated units; and

WHEREAS, the applicant provided revised plans for the cellar dwelling units in the Subject Buildings showing a reduction in the number of units in the cellar of 473 Central Park West from four to two (one studio and one two-bedroom unit), a reduction in the number of units

in the cellar of 474/475 Central Park West from seven to four (1 one-bedroom, 2 two-bedrooms and one studio) and a reduction in the number of units in the cellar of 476 Central Park West from four to two (one studio and one two-bedroom); and

WHEREAS, of the eight reconfigured cellar dwelling units, the applicant represented that the following four would remain rent-regulated: both units in the cellar of 473 Central Park West (Units A and B), the two-bedroom unit in the cellar of 474 Central Park West (Unit B) and the studio unit in the cellar of 476 Central Park West (Unit A); and

WHEREAS, the applicant additionally stated that one of the last two rent-regulated tenants of cellar dwelling units had successfully been relocated to a formerly fair market apartment at another building under the same ownership as the Subject Buildings', which the applicant represented became rent-regulated as a matter of law, without any increase in rent and that efforts were being made to similarly relocate the final tenant of a cellar dwelling unit in 473 Central Park West; and

WHEREAS, thus, as a result of the reconfiguration of the cellar dwelling units and relocation (and planned relocation) of rent-regulated tenants of these cellar units, the applicant represents that five rent-regulated cellar dwelling units would be retained as follows: four units in the cellars of the Subject Buildings, one new rent-regulated unit in another building under the same ownership as the Subject Buildings and the possibility of a sixth rent-regulated unit, should the final rent-regulated tenant from a cellar unit in 473 Central Park West be relocated to a market rate unit that would become rent-regulated as a matter of law; and

WHEREAS, the applicant agreed to set the first rent for the rent-regulated cellar dwelling units below the current rent threshold at which such units could be eligible for deregulation by the New York State Division of Housing and Community Renewal ("DHCR") and, at the Board's request, provided the rent rolls for the rent-regulated units in the cellars of the Subject Buildings; and

WHEREAS, the applicant satisfactorily addressed the remainder of the Board's concerns, including substantial progress on the correction of outstanding violations, secondary means of egress from the cellar dwelling units, installation of an insulated floor in the cellar dwelling unit located above a boiler room, relocation of the electric and gas meters and reconfiguration of the cellar corridors; and

WHEREAS, nevertheless, the Board notes that the prior owner of the Subject Buildings was greatly enriched by the MDL waivers; the prior owner benefitted, for decades, from rents collected for fifteen cellar dwelling units that that owner failed to maintain in proper and safe condition; and that the current owner initially

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demonstrated a reluctance to substantially improve these conditions by proposing only to paint and upgrade building systems if required by code; and

WHEREAS, thus, the Board finds that reinstatement of a term is necessary based on the historical lack of maintenance of the cellars at the subject premises; and

WHEREAS, based upon its review of the record, the Board finds that 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 *waives* its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated November 21, 1995, as amended through March 18, 2008, so that as amended this portion of the resolution reads: “to grant an extension of time to obtain a Certificate of Occupancy to April 4, 2020; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 3, 2017”-Seven (7) sheets; and *on further condition*:

THAT a Certificate of Occupancy shall be obtained within three (3) years, by April 4, 2020;

THAT the term of years for the waivers is reinstated, to run from the date of this grant, for a term of thirteen (13) years, expiring April 4, 2030;

THAT the rent for the rent-regulated dwelling unit in the cellar (476 Central Park West Unit A) shall start at the maximum monthly rent permitted in New York City for such units, based on size, for tenants earning 100 percent Area Medium Income (“AMI”), calculated as of the time the dwelling unit is first occupied;

THAT DOB shall verify that all window openings meet the lighting and ventilation requirements of MDL § 30;

THAT the cellar shall not be occupied until issuance of the Certificate of Occupancy;

THAT a new sprinkler system fully compliant with the New York City Fire Code and New York City Building Code shall be installed throughout the cellar, including individual dwelling units and hallways, and throughout the hallways and common areas, up to the bulkheads, of the remainder of the building;

THAT in the event that this building is sold separately from the adjacent buildings at 473 and 474/475 Central Park West, an easement permitting the required access to the street must be provided at the time of sale;

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

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 objections(s); and

THAT DOB must ensure compliance with all

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

Adopted by the Board of Standards and Appeals, April 4, 2017.

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## **1259-79-BZ**

APPLICANT – Sheldon Lobel, P.C., for 29 West 26<sup>th</sup> LLC, owner.

SUBJECT – Application June 8, 2016 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy for a Variance (§72-21) to convert the fourth and sixth floors of an existing building from manufacturing lofts to residential use which expired on May 8, 2016. M1-6 zoning district.

PREMISES AFFECTED – 29 West 26<sup>th</sup> Street, Block 828, Lot 16, Borough of Manhattan.

## **COMMUNITY BOARD #5M**

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for continued hearing.

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## **234-84-BZ**

APPLICANT – Robert E. Schuster, AIA, for Forest Realty Management, LLC., owner.

SUBJECT – Application April 28, 2015 – Extension of Term (§11-411) of a previously approved Variance which permitted the operation of an Eating and Drinking Establishment (UG 6) which expired on February 12, 2015; Waiver of the Board's Rules. C81-/R3-1 zoning district.

PREMISES AFFECTED – 1076/82 Forest Avenue, Block 1696, Lot 26, Borough of Staten Island.

## **COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for continued hearing.

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## **214-00-BZ**

APPLICANT – Sheldon Lobel, P.C., for Zaliy, LLC, owner.

SUBJECT – Application November 13, 2015 – Extension of Term of a previously approved Special Permit (73-242) which permitted the operation of an eating and drinking establishment (UG 6) which expired on November 16, 2015; Extension of Time to Obtain a Certificate of Occupancy which expired on March 20, 2013; Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2761 Plumb 2<sup>nd</sup> Street, Block 8841, Lot 500, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

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**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.  
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## APPEALS CALENDAR

### 68-15-A

APPLICANT – Pryor Cashman, LLP for 230 West 97<sup>th</sup> Street, LLC, owner.

SUBJECT – Application March 27, 2015 – Variance pursuant to Section 310 of the NYSMDL to allow the 2,708 square foot penthouse enlargement to a non-fireproof Old law Tenement building contrary to the height regulations. C4-6AEc-3 zoning district.

PREMISES AFFECTED – 230 West 97<sup>th</sup> Street, Block 1868, Lot 44, Borough of Manhattan.

### COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted on condition.

#### THE VOTE TO GRANT –

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

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 5, 2015, acting on Alteration Application No. 104599043 reads in pertinent part:

“MDL 211.1” “Proposed increase in bulk and/or height exceeds threshold of 5 stories for non-fireproof tenement”; and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310 to legalize the vertical enlargement of a seven-story, with cellar, non-fireproof old-law tenement, contrary to MDL § 211(1); and

WHEREAS, a public hearing was held on this application on September 20, 2016, after due notice by publication in *The City Record*, with a continued hearing on December 13, 2016, and then to decision on April 4, 2017; and

WHEREAS, former 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 southeast corner of Broadway and West 97th Street, within a C4-6A zoning district and the Special Enhanced Commercial District 3, in Manhattan; and

WHEREAS, the site has approximately 101 feet of frontage along Broadway, 100 feet of frontage along West 97th Street and 10,092 square feet of lot area;

WHEREAS, the site is occupied by an existing seven-story, with cellar, building with a one-story penthouse enlargement; and

WHEREAS, prior to being enlarged, the building contained 56,104 square feet of floor area (5.57 FAR) on seven stories, 75 feet in height with commercial uses in the cellar and on the first floor and 31 residential apartments on the first through seventh floors; and

WHEREAS, the enlarged building currently contains 58,812 square feet of floor area (5.84 FAR) on eight stories, 82 feet in height with an additional three dwelling units on the eighth floor; and

WHEREAS, Certificate of Occupancy No. 107626, issued on July 19, 1995, and Certificate of Occupancy No. 58572, issued on November 1, 1969, indicate that the existing building is an “old-law tenement,” which MDL § 4(11) defines, in pertinent part, as “a tenement existing before April twelfth, nineteen hundred one”; and

WHEREAS, accordingly, the existing building was a tenement built prior to April 12, 1901; and

WHEREAS, the applicant proposes to legalize the eighth-story penthouse enlargement that occurred between 2007 and 2008 pursuant to an invalid building permit issued under Alteration Application No. 104599043; and

WHEREAS, the applicant states that the eighth story contains three apartments and 2,078 square feet of floor area resulting in a building with a total floor area of 58,812 square feet (5.84 FAR); and

WHEREAS, the applicant notes that the enlargement is fully compliant with the zoning district regulations applicable to the subject site, but that it does not comply with MDL § 211(1); and

WHEREAS, MDL § 211(1) prohibits any non-fireproof tenement from being increased in height so that it exceeds five stories without adhering to the MDL provisions applicable to multiple dwellings erected after April 18, 1929; and

WHEREAS, accordingly, the applicant requests that the Board exercise its authority under MDL § 310 to permit the eighth-story enlargement, contrary to MDL § 211(1); and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the building was constructed prior to April 12, 1901, and existed on July

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1, 1948; therefore, the building is subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL § 211(1) specifically relates to the height and bulk of tenements; therefore, the Board has the power to vary or modify the subject provision under MDL § 310(2)(a)(1); and

WHEREAS, turning to the findings under MDL § 310(2)(a), the applicant asserts that practical difficulty and unnecessary hardship would result from strict compliance with the MDL; and

WHEREAS, the applicant states that the eighth-story enlargement would be lawful were it to conform to Article 4 of the MDL, which would require, among other things, the reconstruction of all floors of the building with non-combustible material and the creation of a new stairwell, which would reduce the size of existing apartments throughout the building as evidenced by plans submitted by the applicant comparing the existing enlargement with an enlargement of the building compliant with Article 4; and

WHEREAS, the applicant also represents that demolition of the eighth-story enlargement or compliance with Article 4 of the MDL would both result in extraordinary construction costs and provided cost estimates to that effect; and

WHEREAS, based on the above, the Board agrees that there are practical difficulties or unnecessary hardship in complying with the requirements of the MDL; and

WHEREAS, the applicant states that the requested variance of MDL § 211(1) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, specifically, the applicant states that the proposal includes numerous fire safety improvements to mitigate the existing fire infirmities inherent in the subject building; and

WHEREAS, the Board notes that MDL § 2 (“Legislative Finding”) provides that the intent of the law is to protect against dangers such as “overcrowding of multiple dwelling rooms, inadequate provision for light and air, and insufficient protection against the defective provision for escape from fire . . .”; and

WHEREAS, the applicant represents that the proposed enlargement will not impact existing fire safety measures and will, to the contrary, improve fire

safety at the subject site; and

WHEREAS, specifically, the applicant proposes to provide the following fire safety improvements: (1) full sprinklering of all common areas; (2) installation of a full automatic wet sprinkler system in the basement; (3) addition of emergency lighting, with back-up battery power, in all common areas; (4) addition of 5/8” gypsum board to all hallway walls and ceilings, resulting in a three-hour fire rating for the walls and ceilings; (5) installation of 1-1/2 hour fire-rated doors in all apartments; (6) installation of full automatic wet sprinkler systems in 15 of the existing 31 apartments; and (7) installation of hard-wired smoke and carbon-monoxide detectors in 15 of the existing 31 apartments; and

WHEREAS, the applicant further proposes to install a full automatic wet sprinkler system and hard-wire the existing battery-operated smoke and carbon-monoxide detectors in the remaining 16 of the existing 31 apartments as they become vacant and to install 1-1/2 hour fire-rated doors in all stairwells; and

WHEREAS, in response to concerns from the Board, the applicant further notes that a substantial number of the improvements to fire safety have already been installed throughout the building, including 5/8” gypsum board on the walls and ceilings of common areas, sprinklers and hard-wired smoke detectors in some apartments with existing tenants, and 1-1/2 hour fire-rated doors on all floors; and

WHEREAS, at the Board’s request, the applicant provided an evacuation plan for the subject site, which provides two means of egress for all existing apartments; and

WHEREAS, in response to questions from the Board, the applicant provided additional information about the site’s alternate entrance at 226 West 97th Street, which the applicant represents is not a primary entrance but a convenience opening subject to an egress easement agreement utilized as a fireproof exit from the subject building to the street, and the applicant represents that the area subject to this agreement is sprinklered and of fireproof construction and that the door between the subject site and 226 West 97th Street will be three-hour fire-rated; and

WHEREAS, the Board notes that this use of 226 West 97th Street was the subject of an Order from the State of New York Division of Housing and Community Renewal (“DHCR”), Docket Number DS430004OD, issued May 31, 2016, granting permission to modify the lobby of the subject building to utilize a newly constructed corridor connected to the lobby of 226 West 97th Street pursuant to the terms of a signed Agreement between the owners and the tenants, a copy of which was attached to the order; and

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WHEREAS, the applicant submitted a plan of the first floor of 226 West 97th Street, represents that the convenience opening indicated therein is in compliance with the DHCR Order and attached Agreement, and, accordingly, this plan of the first floor of 226 West 97th Street has been included in the set of plan approved in connection with this application; and

WHEREAS, the applicant also represents that the combustible deck on the roof complies with the Building Code because it covers 15 percent, which is no more than 20 percent as permitted, of the roof area; that the first floor of the building is concrete and fireproof; and that the proposed fire safety measures will result in a substantial increase to the public health, safety, and welfare, which far outweighs any impact from the proposed enlargement; and

WHEREAS, the Board notes that the owner has agreed to record a Restrictive Declaration against the property stating that rents will not be increased for any rent-regulated or rent-stabilized tenant as a result of the safety improvements made in order to legalize the eighth story enlargement and that recordation of such Declaration has been incorporated as a condition of this grant; and

WHEREAS, based on the above, the Board finds that the proposed variance to the height and bulk requirements of MDL § 211(1) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of the height and bulk requirements of MDL § 211(1) is appropriate, with certain conditions set forth below.

*Therefore it is Resolved*, that the decision of the Department of Buildings (“DOB”), dated March 5, 2015, be *modified* under the powers vested in the Board by Section 310 of the Multiple Dwelling Law and that the application be *granted* limited to the objection noted, *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received March 31, 2017”–Twenty-Five (25) sheets, and that all applicable laws, rules and regulations shall be complied with, and *on further condition*:

THAT all work described on the Board-approved drawings, including sprinkler installation, shall be completed prior to the issuance of a certificate of occupancy;

THAT the Board has no objection to the issuance of temporary certificates of occupancy for the eighth-story penthouse enlargement or other dwelling units

within the building provided that, prior to the issuance of any temporary certificate of occupancy for the eighth-story enlargement, the fire escape has been extended and all other fire safety work related to the eighth-story enlargement has been completed;

THAT the Egress Easement Agreement permitting a second means of egress from the subject site through 226 West 97th Street be recorded with the Office of the City Register;

THAT a restrictive declaration, which requires that no rent be increased as a result of any fire safety work completed within the building pursuant to the Board’s variance of MDL § 211(1), shall be placed on the property;

THAT a copy of the restrictive declaration shall be recorded with the Office of the City Register and made part of the Department of Buildings file prior to the issuance of a certificate of occupancy;

THAT the restrictive declaration shall be noted on the certificate of occupancy and on any temporary certificate of occupancy, if any be issued;

THAT the recorded restrictive declaration shall substantially conform to the form and substance of the following:

DECLARATION made this \_\_\_\_ of \_\_\_\_\_, 2017, by 230 West 97th Street, LLC, hereinafter referred to as the “Grantor,” hereinafter referred to as the “Declarant,” with a principal office located at 421 Seventh Avenue, 11th Floor, New York, NY 10001.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Manhattan, designated as Block 1868 Lot 44, on the Tax Map of the City of New York, hereinafter referred to as Parcel A (the “Subject Premises”), more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof:

WHEREAS, the Declarant has requested the New York City Board of Standards and Appeals (the “BSA”) act upon BSA Cal. No. 68-15-A; and

WHEREAS, the BSA, requires Declarant to execute and file this restrictive declaration prior to obtaining a Certificate of Occupancy for the subject Premises.

NOW, THEREFORE, in consideration of BSA approval to allow the 2,708 square foot penthouse enlargement, contrary to the height regulations of Section 211 of the New York State Multiple Dwelling Law, Declarant



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does hereby declare that Declarant and his successors and/or assigns shall be legally responsible for operating and maintaining the Subject Premises in compliance with the following restrictions:

1. Declarant covenants and agrees that it will not increase the rent, as of the date of this agreement, of any rent-regulated or rent-stabilized tenant, as a result of the safety improvements required by the BSA in connection with its approval under BSA Cal. No. 68-15-A.
2. This declaration may not be modified, amended or terminated without the prior written consent of the BSA.
3. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
4. Failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the BSA; and
5. This declaration shall be recorded at the city register's office against the Subject Premises and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to any building located on the subject Premises and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

THAT the dimensions of the proposed dwelling units in the penthouse shall be subject to review by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings related to the Multiple Dwelling Law;

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

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

Adopted by the Board of Standards and Appeals,

April 4, 2017.

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**2016-4139-A**

APPLICANT – Alexander Levkovich, for Zafar Mahmudov, owner.

SUBJECT – Application March 16, 2016 – Proposed construction of 2-story, 2-family semi-detached home not fronting on a legally mapped street contrary to General City Law 36, R3-1 zoning district.

PREMISES AFFECTED – 3737 Cypress Avenue, Block 6791, Lot 58, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 19, 2016, acting on New Building Application No. 321176142, reads in pertinent part:

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

A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law;

B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to Section 501.3.1 of the 2014 NYC Building Code”; and

WHEREAS, this is an application to allow the construction of two single-family semi-detached residences that do not front on a mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on February 28, 2017, after due notice by publication in *The City Record*, and then to decision on April 4, 2017; and

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

WHEREAS, Community Board 13, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located in a private community known as Seagate, on the north side of Cypress Avenue, between Sea Gate Avenue and West 37th Street, within an R3-1 zoning district, in Brooklyn;

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and

WHEREAS, the site has approximately 53 feet of frontage along Cypress Avenue, 100 feet of depth, 5,250 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to construct two single-family semi-detached residences at the premises; and

WHEREAS, the applicant represents that the site is located within Zone AE, a special flood hazard area, notes that the new dwellings will be raised to accommodate the FEMA and DOB requirements for base flood elevation and are designed to comply with the relevant building codes and flood requirements; and

WHEREAS, GCL § 36 provides that no certificate of occupancy shall be issued for any building unless a street or highway giving access to such structure has been officially mapped and adequately improved in respect to the public health, safety and general welfare; and

WHEREAS, GCL § 36 empowers the Board to vary this requirement where its enforcement would entail practical difficulty or unnecessary hardship and where the circumstances of the case do not require the structure to be related to existing or proposed streets or highways; and

WHEREAS, because the subject site is only accessible from Cypress Avenue, which is not a street duly placed on the official map of the City of New York, the applicant seeks the relief requested herein; and

WHEREAS, by letter dated January 31, 2017, the Fire Department states that it has no objection to this application provided that a hydrant be located within 250 feet of the main front entrance and that the proposed structure be fully sprinklered in accordance with Chapter 5 of the New York City Fire Code; and

WHEREAS, in response, the applicant revised the plans to indicate compliance with the Fire Department's conditions; 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 decision of the Department of Buildings, dated December 19, 2016, acting on Application No. 321176142, be *modified* under the powers vested in the Board by Section 36 of the General City Law, and that the appeal be *granted*, limited to the objection noted, *on condition* that construction shall substantially conform to the drawings filed with the application marked "Received March 16, 2017"– One (1) sheet; and that all applicable laws, rules and regulations shall be complied with; and *on further condition*:

THAT the residences shall be fully sprinklered;  
THAT a hydrant shall be located within 250 feet of the main front entrance of each residence;

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

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

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

Adopted by the Board of Standards and Appeals, April 4, 2017.

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## 232-15-A

APPLICANT – Sheldon Lobel, P.C., for Thor 840 West End Avenue LLC, owner.

SUBJECT – Application October 1, 2015 – Proposed vertical enlargement of an existing six story building to allow for a new penthouse floor and roof above the sixth floor which requires a waiver of the Multiple Dwelling Law and Building Code. R8 zoning district. PREMISES AFFECTED – 840 West End Avenue aka 259 West 101 Street, Block 1873, Lot 01, Borough of Manhattan.

## COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Otley-Brown and Commissioner Montanez.....4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for decision, hearing closed.

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## 2016-4256-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Stecher Street LLC, owner.

SUBJECT – Application September 20, 2016 – Proposed construction of a one family, two-story dwelling not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law. R1-2 (SRD) zoning district.

PREMISES AFFECTED – 147 Stecher Street, Block 6565, Lot 11, Borough of Staten Island.

## COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 2016-4152-BZ

#### CEQR #15-BSA-028K

APPLICANT – Law Office of Jay Goldstein, for Midyan Gate Realty No. 3 LLC, owner.

SUBJECT – Application March 28, 2016 – Special Permit (§73-19) to allow a school (UG 3) (*Yeshiva Darche Eres*) to occupy a portion of the first floor and the entirety of the second, third and fourth floors of the Premises, contrary to use regulation (§42-10). M1-1 (OP) zoning district.

PREMISES AFFECTED – 325 Avenue Y, Block 7192, Lot 45, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

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

#### THE VOTE TO GRANT –

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

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 14, 2016, acting on Alteration Application No. 321312263 reads in pertinent part:

“Proposed use group 3 school is not permitted in a Manufacturing Zoning District, as per ZR 42-10”; and

WHEREAS, this is an application, under ZR §§ 73-19 and 73-03, to legalize the operation of a school (Use Group 3) within an M1-1 zoning district and the Special Ocean Parkway District, contrary to ZR § 42-10; and

WHEREAS, the application is filed on behalf of Yehsivat Darche Eres, a non-profit religious corporation (the “School”); and

WHEREAS, a public hearing was held on this application on September 13, 2016, after due notice by publication in *The City Record*, with continued hearings on November 15, 2016, January 31, 2017, and March 7, 2017, and then to decision on April 4, 2017; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application, but noted board members’ concerns regarding traffic during drop off and pick up times; and

WHEREAS, the subject site is located on the north side of Avenue Y, between Shell Road and West 3rd Street, within an M1-1 zoning district and the

Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the subject site has approximately 240 feet of frontage along Avenue Y, 110 feet of depth, 25,800 square feet of lot area and is occupied by a four-story, with cellar, mixed- use commercial and community facility building and accessory attendant parking for 40 cars; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 29, 2014, when, under BSA Calendar Number 311-13-BZ, the Board granted an application to permit, under ZR § 73-36, the operation of a physical culture establishment (“PCE”) for a term of ten (10) years, expiring October 1, 2023, on condition that parking for all uses within the building be as reviewed and approved by DOB, there be no change in ownership or operating control of the PCE without prior Board approval, Local Law 58/87 compliance be as reviewed and approved by DOB and fire safety measures be installed and maintained as shown on the approved plans; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR §§ 73-19 and 73-03, to legalize the existing school on a portion of the first floor and the entirety of the second through fourth floors of the existing four-story building, which has operated at the site since September 2016; and

WHEREAS, ZR § 73-19 provides as follows:

In C8 or M1 Districts, the Board of Standards and Appeals may permit *schools* which have no *residential* accommodations except *accessory* accommodations for a caretaker, provided that the following findings are made:

- (a) that within the neighborhood to be served by the proposed *school* there is no practical possibility of obtaining a site of adequate size located in a district wherein it is permitted as of right, because appropriate sites in such districts are occupied by substantial improvements;
- (b) that such *school* is located not more than 400 feet from the boundary of a district wherein such *school* is permitted as-of-right;
- (c) that an adequate separation from noise, traffic and other adverse effects of the surrounding non-*Residential Districts* is achieved through the use of sound-attenuating exterior wall and window construction or by the provision of adequate open areas along *lot lines* of the *zoning lot*; and

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- (d) that the movement of traffic through the *streets* on which the *school* is located can be controlled so as to protect children going to and from the *school*. The Board shall refer the application to the Department of Traffic for its report with respect to vehicular hazards to the safety of children within the block and in the immediate vicinity of the proposed site.

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, as a threshold matter, the Board notes that the site is located in a zoning district in which a special permit pursuant to ZR § 73-19 is available and the applicant represents that the School meets the ZR § 12-10 definition of “school” that the subject special permit is intended to permit because it provides full-time day instruction and a course of study that meets the requirements of Section 3204, 3205 and 3210 of the New York State Education Law; and

WHEREAS, the School was founded in 2011, has a total enrollment of 867 students of ages 2-17, currently operates its pre-school, boys’ elementary school and boys’ high school at other locations and its girls’ elementary school at the subject site; and

WHEREAS, at full capacity, the subject building is anticipated to accommodate 631 students, in day care through 6th grade, in 33 classrooms along with accessory rooms including an art and music room, a multi-purpose room, a library, learning center computer room, science lab and administrative offices; and

WHEREAS, with regard to ZR § 73-19(a), the applicant submits that there is no practical possibility of obtaining a site of adequate size in the neighborhood to be served because the School’s programmatic needs require, at a minimum, 40,000 square feet of floor space; and

WHEREAS, the applicant provided a survey of sites within the area bound by Avenue S, Avenue Y, Coney Island Avenue and McDonald Avenue, the center point of their student catchment area, located within adjacent R3-1, R4, R5 or R6A zoning districts where a UG 3 school would be permitted as-of-right, able to be developed with a building containing 40,000 square feet of floor space and not occupied with substantial improvements (i.e. with buildings having a floor area ratio (“FAR”) of 1.0 or less); and

WHEREAS, the submitted survey represents that, within an adjacent R6A zoning district, where the maximum FAR for a community facilities is 3.0, one lot having 13,000 square feet of lot area or more exists, but

the existing building, having 0.89 FAR, is owner-occupied; within the adjacent R3-1 zoning district, in which the maximum FAR for a community facility is 1.0, no lots having 40,000 square feet of lot area or more exist; there is one site located partially within an adjacent R3-1 zoning district and partially located within an adjacent R5 zoning district having a lot area of more than 40,000 square feet, but such lot is occupied by an active synagogue; within an adjacent R5 zoning district, where the maximum FAR for a community facility is 2.0, there are no lots having a lot area of 20,000 square feet or more without substantial improvements; and within an adjacent R4 zoning district, where the maximum FAR for a community facility is 2.0, there are five lots having 20,000 square feet of lot area or more, but three are owner-occupied, the fourth is park occupied by athletic fields and the fifth is partially located within a C8-1 zoning district where a UG 3 school is not permitted as-of-right; and

WHEREAS, in light of the foregoing, the Board finds that the requirement of ZR § 73-19(a) has been met; and

WHEREAS, as for the finding required under ZR § 73-19(b), the applicant states that the eastern lot line of the subject site is located on the district boundary between an M1-1 and an R4 zoning district, where the School would be permitted as-of right, and that the site is within 400 feet of such R4 zoning district; and

WHEREAS, the applicant also submitted to the Board a radius map showing that the subject site is less than 400 feet from an R4 zoning district; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(b) are met; and

WHEREAS, in response to the findings set forth in ZR § 73-19(c), the applicant has provided the Board with a noise study that examined both mobile and stationary noise sources and concluded that noise levels at the site fall within an acceptable range; and

WHEREAS, review of the noise study by the New York City Department of Environmental Protection (“DEP”) concluded that the building must provide composite window/wall noise attenuation of 33 dBA and an alternative means of ventilation must be incorporated into the building design and construction; and

WHEREAS, the Board adopts the recommendations of DEP with regards to noise and finds that, with compliance of those recommendations, that the requirements of ZR § 73-19(c) have been met; and

WHEREAS, with regards to meeting the requirements of ZR § 73-19(d), the applicant, in consultation with the New York City Department of Transportation (“DOT”) proposes the following:

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changes to the traffic signal timing at the intersection of 86th Street Shell Road and Avenue X and the intersection of Shell Road and Avenue Y; an increase in width to a nearby traffic lane; the creation of a 280-foot long “no standing” zone along the north side of Avenue Y on school days from 7:00 a.m. to 10:00 a.m. and 3 p.m. to 6 p.m.; funding a Traffic Enforcement Agent to help facilitate traffic movements near the school during peak periods; placement of two school crossing guards at the intersections of Shell Road and Avenue Y and at West 3rd Street and Avenue Y; arrival of buses from the east into the “no standing” zone; using the existing parking lot for the drop off and pick up of children by private transport; and prohibiting bus parking in front of the site; and

WHEREAS, the Board additionally referred the application to the School Safety Engineering Office of DOT, which, by letter dated February 1, 2017, states that the proposed changes to the traffic signal timing, lane restriping, modifications to the parking regulations and placement of a Traffic Enforcement Agent with two school crossing guards appear reasonable and feasible; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

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

WHEREAS, the applicant represents that any hazards or disadvantages to the community at large are outweighed by the advantages to be derived by the grant of this special permit; and

WHEREAS, at hearing, the Board expressed concerns regarding the operational plan for dropping off and picking up students, parking for the PCE currently located in the subject building as well as buses utilized for the School, the number of bathrooms provided, trash storage and HVAC noise protection; and

WHEREAS, in response, the applicant represents, and DOT confirms, that a “no standing” zone was obtained in front of the School; that the School will employ staff members and security guards during hours of student arrival and departure to ensure the safe and efficient transfer of students from buses and private transport to the building; that spaces in the existing parking lot will be made available for drop-offs and pickups from private transport; that the PCE currently leases 30 parking spaces at 599 Avenue Z, one block southeast of the subject site, on a month-to-month basis,

thereby allowing the School’s proposed use of the parking lot for private transport pickup and drop-off; and provided notes on the drawings that the bathrooms are compliant with applicable codes, refrigerated and dry trash storage will be located in the cellar and vinyl fencing with sound attenuation will be installed around the HVAC units located on the roof; and

WHEREAS, the Board notes that it takes no position as to the legal validity or compliance, with zoning regulations or other relevant law under DOB’s jurisdiction, of the PCE’s leasing of off-site parking spaces and, at hearing, expressed doubts that such an arrangement is necessary because the PCE and the School have different hours of peak use of the parking lot; and

WHEREAS, by letter dated August 25, 2016, the Fire Department states that the building is fully protected by existing sprinklers, that the School will include an approved interior fire alarm and that all egress locations, egress paths, egress travel distances and roof access are acceptable; and

WHEREAS, the Board finds that any adverse effects of the School on the neighborhood will be minimized by appropriate conditions; and

WHEREAS, the applicant represents that the subject special permit will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-19 and 73-03 have been met; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 15BSA028K, dated July 11, 2014 and the Technical Memorandum submitted January 20, 2017; and

WHEREAS, the EAS and Technical Memorandum document that the project as proposed would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by letter dated February 1, 2017, DOT states that the proposed changes to the traffic signal timing, lane restriping, modifications to the

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parking regulations and placement of a Traffic Enforcement Agent with two school crossing guards appear reasonable and feasible; and

WHEREAS, DEP reviewed the application with regards to air quality, hazardous material and noise; by letter dated March 8, 2016, DEP states that no significant air quality impact from the proposal are anticipated; by letter dated February 10, 2017, DEP states that it finds the results of the indoor quality survey provided by the applicant to be acceptable; and by letter dated March 30, 2017, DEP concludes that the provision of a composite window and wall noise attenuation of 33 dBA and an alternate means of ventilation incorporated into the building design and construction will be efficient to address the noise effects of the surrounding area and that, based on the number of school buses, vans and cars generated by the proposal, the proposal would not cause a significant mobile source noise impact; 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 to legalize the operation of a school (Use Group 3) within a portion of the first floor and the entirety of the second, third and fourth floors of the existing four-story building, located within an M1-1 zoning district and the Special Ocean Parkway District, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received April 3, 2017”—Twelve (12) sheets; and *on further condition:*

THAT buses shall arrive from the east and pull into the no-standing zone;

THAT a “no standing” zone shall be maintained in front of the School;

THAT the opposite side of the street shall be maintained opened for businesses;

THAT a Traffic Enforcement Agent and two school crossing guards shall be employed to facilitate traffic movements and to improve pedestrian and vehicular safety and operation associated with the subject school;

THAT no parking of buses shall be permitted in front of the site;

THAT the maximum student population of the subject school shall be 631;

THAT the trash shall be stored inside the building interior at all times prior to pick up;

THAT the existing physical culture establishment at the site shall be permitted to use the on-site parking lot when the School is not in session;

THAT a composite window/wall noise attenuation of 33 dBA shall be provided in the existing building;

THAT an alternate means of ventilation shall be incorporated into the building design and construction;

THAT the above condition shall be stated on the certificate of occupancy;

THAT an amended certificate of occupancy shall be obtained within one (1) year, by April 4, 2018;

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

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

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

Adopted by the Board of Standards and Appeals, April 4, 2017.

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## **2016-4168-BZ**

### **CEQR #16-BSA-107R**

APPLICANT – Law Office of Steven Simicich, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application April 8, 2016 – Variance (§72-21) to permit the construction of single family detached home, contrary to side yard and minimum distance regulation (ZR §23-461c). R3A zoning district.

PREMISES AFFECTED – 94 Elm Street, Block 158, Lot 84, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the New York City Department of Buildings (“DOB”), dated March 16,

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2016, acting on Application No. 520263223 reads in pertinent part:

“ZR 23-461(c): The proposed side yard and open area requirements are not provided and contrary to ZR 23-461(c) in that the proposed side yard is less than 8 feet required between buildings containing residences”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3A zoning district and within a Lower Density Growth Management Area, the construction of a two story plus cellar single-family detached residence that does not comply with minimum open area distance between buildings and required side yards, contrary to ZR § 23-461(c); and

WHEREAS, a public hearing was held on this application on March 7, 2017, after due notice by publication in *The City Record*, with continued hearing on April 4, 2017, and then to decision on that date; and

WHEREAS, Commissioner Montanez performed an inspection of the subject site and surrounding neighborhood; and

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

WHEREAS, the subject site is located on the west side of Elm Street, between Richmond Terrace and Henderson Avenue, in an R3A zoning district and a Lower Density Growth Management Area, on Staten Island; and

WHEREAS, the site has approximately 23 feet of frontage along Elm Street, 2,672 square feet of lot area, and is currently vacant; and

WHEREAS, the applicant proposes to develop the subject site with a two-story, plus cellar detached single-family residence with 1,600 square feet of floor area and a floor area ratio (“FAR”) of 0.60, a 3’-0” side yard along the southern lot line resulting in a 6’-7” open area between the subject proposed residence and the residence immediately to the south and a 5’-0” side yard on the north side of the site resulting in a 5’-2” open area between the subject proposal and the residence immediately to the north, contrary to ZR § 23-461(c); and

WHEREAS, the applicant represents that while the subject site meets the minimum lot area requirements for a single-family detached residence pursuant to ZR § 23-32, it does not meet the minimum lot width requirement of that same section (25 feet), yet the subject proposal is permitted, pursuant to ZR § 23-33 because the subject zoning lot was owned separately and individually from all other adjoining tracts of land on December 8, 2005 and will be so separately owned on the date of application for a building permit; and

WHEREAS, at the subject site, pursuant to ZR § 23-461(c)(1), an open area with a minimum total width

of eight feet is required between buildings containing residences on adjacent zoning lots; and

WHEREAS, additionally, pursuant to ZR § 23-461(c)(2), where such open area requirements result in side yards totaling more than 13 feet on the subject zoning lot, the width of such side yards may be reduced to not less than five feet, provided that the total width of both side yards on the subject zoning lot is at least 13 feet; and

WHEREAS, the applicant represents that developing a residence on the subject lot, which is only 23 feet wide, in compliance with ZR § 23-461(c) would result in an uninhabitable residence, only 10 feet; and

WHEREAS, therefore, in order to develop the property as proposed, the applicant seeks a waiver for the minimum open area distance between buildings requirements of ZR § 23-461(c)(1) and the side yard requirements of ZR § 23-461(c)(2); and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in conformance with underlying district regulations: (1) the narrowness of the lot and (2) the close proximity of adjacent residential buildings to the side lot lines; and

WHEREAS, the applicant has provided the Board with a uniqueness study of lots on the subject block as well as the block immediately east of the subject site located in an R3A zoning district (the “Study Area”), consisting of 179 total tax lots, demonstrating that eight other vacant lots exist within the Study Area; five of the eight lots are held under common ownership with an adjacent lot and the remaining three are wider than the subject site with widths of either 50 feet or 70 feet; and

WHEREAS, in addition, the applicant notes that the residence to its immediate south is located only 3’-7” from the subject site’s southern side lot line and the residence to its immediate north is located only 2 inches from the subject site’s northern lot line, meaning that strict compliance with ZR § 23-461(c) would result in a residence that would be too narrow to be practically inhabited; and

WHEREAS, based on the above, the Board finds that the aforementioned unique physical conditions create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulation will result in a habitable home; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character

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# MINUTES

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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 represents that the surrounding area has a mix of residence types; that the proposed detached single-family residence is consistent with the mix of existing single- and two-family detached and semi-detached residences in the neighborhood; and that the proposed 5 foot reduction in side yard width and 1'-5" and 2'-10" reductions in open area between the subject proposed residence and residences located on adjacent lots will not impair the light and air of those adjacent residences; and

WHEREAS, the applicant provided the Board with a 1937 Sanborn Map showing that a residence previously occupied the subject site while residences existed on adjoining lots and that narrow open areas existed among the three residences, existing, and therefore reconstructing a home on the subject site will only replicate a historical condition; and

WHEREAS, the applicant additionally agreed to equip the entire subject proposed residence with an automatic sprinkler system to mitigate concerns of fire spread due to the close proximity of the subject proposal and its neighbors; and

WHEREAS, the Board finds that this action will not alter the essential character of the neighborhood, nor impair the use of development of adjacent properties, nor will it be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the practical difficulties and unnecessary hardship are inherent in the narrow width of the site and that the owner or predecessor has not created any of these conditions; and

WHEREAS, specifically, the applicant submitted a 1917 Sanborn Map showing that the site existed at its current narrow width and the site has not been subdivided since then, therefore the narrowness was not self-created; and

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

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

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

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR

Checklist No. 16-BSA-107R, dated April 8, 2016; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR § 72-21 to permit, in an R3A zoning district, the construction of a two story plus cellar single-family detached residence that does not comply with open area between buildings and side yard requirements, contrary to ZR § 23-461(c); *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 22, 2017"- Twelve (12 sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: side yards with minimum widths of 5 feet and 3 feet, as indicated on the BSA-approved plans;

THAT the subject building shall be fully sprinklered, as indicated on the BSA-approved plans;

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

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

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, April 4, 2017.

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## **2016-4210-BZ**

APPLICANT – Law Office of Steven Simicich, for James De Francesco, owner.

SUBJECT – Application May 26, 2016 – Variance (§72-21) to permit the construction of a single family detached home contrary to ZR §107-42 (Lot Area) and ZR §23-47 (Rear Yard) regulations. R3-1 (SRD) zoning district.

PREMISES AFFECTED – 19 Robinson Avenue, Block 5315, Lot 62, Borough of Staten Island.

## **COMMUNITY BOARD #3SI**

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

**THE VOTE TO GRANT** –



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Affirmative: Vice Chair Chanda and Commissioner Montanez.....2

Negative: Chair Perlmutter and Commissioner Ottley-Brown.....2

## THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 24, 2016, acting on DOB Application No. 520225578 reads in pertinent part:

1. ZR 107-42: Proposed Building is non-compliance [*sic*] of ZR 107-42 for lot area;
2. ZR 23-47: Proposed Building is non-compliance [*sic*] of ZR 23-47 for required 30.00 feet year [*sic*] yard; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R3-1 zoning district and the Special South Richmond Development District, the construction of a two-story single-family detached home that does not comply with minimum lot size and rear yard requirements, contrary to ZR §§ 107-42 and 23-47; and

WHEREAS, a public hearing was held on this application on December 6, 2016, after due notice by publication in *The City Record*, with a continued hearing on February 14, 2017, and then to decision on April 4, 2017; and

WHEREAS, Commissioner Montanez performed an inspection of the subject site and surrounding neighborhood; and

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

WHEREAS, the subject site is located on the north side of Robinson Avenue, between Hylan Boulevard and Tennyson Drive, in an R3-1 zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 40 feet of frontage along Robinson Avenue, a depth of 85 feet, 3,400 square feet of lot area and is currently undeveloped; and

WHEREAS, the applicant asserts that the site was formerly occupied by a residence at least since 1937 until 1979, when it was destroyed by fire and subsequently demolished; and

WHEREAS, the applicant proposes to construct a two-story detached single-family residence on the site with 1,955 square feet of floor area, a floor area ratio of 0.58 and a rear yard of 25 feet; and

WHEREAS, at the subject site, a lot having a minimum of 3,800 square feet of lot area is required for a single-family detached residence pursuant to ZR § 107-42 and a rear yard with a depth of at least 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant represents that the proposal otherwise complies with all zoning regulations

applicable in the subject zoning district and the Special South Richmond Development District; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the narrow width and shallow depth of the site create practical difficulty and unnecessary hardship in redeveloping the site in conformance with the underlying district regulations; and

WHEREAS, specifically, the applicant submits that the subject site is the only similarly-sized vacant lot within the immediately surrounded area that cannot be redeveloped as-of-right and, in support of that contention, provided a study of the area four blocks north and south of the site in the same R3-1 zoning district (the “Study Area”) concluding that there are only six other privately owned vacant lots within the Study Area and, of those six, four are triangular corner lots having lot areas ranging from 180 square feet to 1,300 square feet and are far too undersized to be developed on their own and the remaining two, both previously occupied with residences demolished after Hurricane Sandy, are re-developable as-of-right pursuant to the Special Regulations for Neighborhood Recovery Zoning Text (Article VI, Chapter IV, Appendix A of the Zoning Resolution), which permits, on zoning lots having less than the prescribed minimum lot area or lot width required in the applicable zoning district, reconstruction of single-family or two-family detached residences destroyed by Hurricane Sandy; and

WHEREAS, the applicant further states that residences on lots within the Study Area having a depth of less than 95 feet, similar to the subject site, could be rebuilt or elevated with a rear yard only 25 feet in depth pursuant to ZR § 67-A353, which permits a six inch reduction in the rear yard depth for each foot by which the mean lot depth is less than 95 feet; and

WHEREAS, the applicant also directs the Board’s attention to a portion of ZR § 107-42, which further states:

However, one *single-family detached residence* or, where permitted, one *single* or *two-family residence*, may be built upon a *zoning lot* consisting entirely of a tract of land, that:

- (a) Has less than the minimum *lot area* or *lot width* required pursuant to this Section; and
- (b) Was owned separately and individually from all other adjoining tracts of land, both on December 8, 2005, and on the date of application for a building permit; and

WHEREAS, the applicant states that because the subject site was owned in common with the adjacent lot, Lot 64, on December 8, 2005, the proposed single-family detached residence cannot be constructed as-of-right; and

WHEREAS, prior to an amendment effective December 5, 2005, ZR § 107-42 permitted the

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construction of a single-family detached residence on a tract of land having less than the minimum lot area required if it was owned separately and individually from all other adjoining tracts of land “both on September 11, 1975, and on the date of application for a building permit”; and

WHEREAS, with regards to the history of ownership of the site, the applicant submits that the subject lot was owned separately and individually from all other adjacent tracts of land on September 11, 1975, that the premise has been owned in common with Lot 64 since 1982 and that both lots were sold to the current owner in 1987 and remained in common ownership at the time of hearings; and

WHEREAS, the applicant accordingly submits that prior to the 2005 amendment, construction of a single-family detached residence was permitted as-of-right at the subject site in satisfaction ZR § 107-42; and

WHEREAS, at hearing, some Board commissioners recognized that the change in the text, effective December 8, 2005, prevented the as-of-right development of the subject proposal only insofar as it changed the date upon which the site to be developed was required to be owned separately and individually from all other adjoining tracts of land and did not impose any zoning criteria on the lot that created a new hardship; and

WHEREAS, another commissioner opined that the change in date did impose a zoning criteria that created a new hardship on the site and rendered it undevelopable with a single-family residence as-of-right; and

WHEREAS, all of the commissioners agreed that the applicant conclusively established that the subject site was owned separately and individually from all other adjoining tracts of land on September 11, 1975, and observed that, prior to the 2005 text change, the subject applicant, as owner of Lot 64, could have developed a single-family detached residence on the subject lot on an as-of-right basis as long as ownership of either the subject lot or Lot 64 was transferred, either through gift or sale, to another party as of the date of application for a building permit so as to comply with the separate and individual ownership requirement of ZR § 107-42; and

WHEREAS, some commissioners noted that narrow lot conditions are often remedied by the purchase of an adjacent lot, and that in variance cases, vacant narrow lots are often distinguished from similarly-sized lots located in a particular study area by the fact that they are not owned in common and used in conjunction with adjacent lots and, thus, have no opportunity for as-of-right development without the requested relief; and

WHEREAS, in this case, however, the same Board commissioners observe that because the subject lot is owned in common with Lot 64, directly adjacent and occupied with a single-family detached residence, it may

be developed in connection with Lot 64 as-of-right; and

WHEREAS, in response, the applicant states that an enlargement of the existing residence on Lot 64 is not desired and that such enlargement would be inconsistent with the character of the neighborhood, in contrast with the proposal, which the applicant averred is similar in size to surrounding residences; and

WHEREAS, the same Board commissioners responded that a preference for development different from that permitted as-of-right in the Zoning Resolution cannot serve as the basis for a variance; and

WHEREAS, the applicant directed the Board’s attention to its decision in 165 Woolley Avenue, Staten Island, BSA Cal. No. 213-14-BZ (Oct. 27, 2015) (“Woolley”), wherein the Board granted a variance permitting the development of a single-family detached residence on a 3,600 square foot lot that did not meet the minimum lot area requirements and did not qualify for the exception under ZR § 23-33, which permits the development of single-family detached residences on undersized lots if, among other things, and similar to ZR § 107-42, the lot was owned separately and individually from all other adjoining tracts of land on December 8, 2005, and the date of application for a building permit; and

WHEREAS, the applicant asserts that in Woolley, the site requesting relief was owned in conjunction with an adjacent lot from 1952 to 2008; the site requesting relief could have been developed under applicable zoning regulations at the time the site was acquired by the applicant; all the adjacent lots were developed with residences and, therefore, merger and redevelopment of the site requesting relief with its neighbors would likely result in the demolition of an existing home or a significant alteration resulting in a residence that was out of context with the surrounding area; the site requesting relief existed in the same dimensions since at least 1907; the site requesting relief was only 200 square feet smaller than the minimum required for the proposed development and appeared zoning compliant from the street; and that 100 percent of the lots on the same block were smaller than the minimum lot area requirement and developed with single-family residences; and

WHEREAS, the applicant submits that, similarly, the subject site was owned in common with an adjacent lot from 1982 to the present; when purchased in 1987, the subject site could have been developed with a single-family detached residence as-of-right; merger with the commonly owned adjacent lot would result in its demolition or significant alteration that would be out of context with the neighborhood; the subject site has existed in its current dimensions since at least 1937; the subject site is only 400 square feet smaller than the minimum required for the proposed development and appears zoning

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compliant from the street; 84 percent of the lots on the same block are smaller than the minimum lot area requirement and developed with residences; and

WHEREAS, certain Board commissioners noted that Woolley is distinguished from the subject application in that, in 2008, the zoning of the site was changed from an R3X zoning district (where, pursuant to ZR § 23-32, the minimum lot area required for development with a single-family detached residence is 3,325 square feet) to an R2 zoning district (where the minimum lot area required is 3,800 square feet, pursuant to the same section) and the site was, as a result, no longer able to be developed with a single-family residence as-of-right; therefore, the text change that affected the development potential of the site requesting relief was the rezoning, specifically the change in the minimum lot area requirement, and not any change to the date on which, pursuant to ZR § 23-33, the site requesting relief was required to be owned separately and individually from all adjacent tracts of land; and

WHEREAS, the same Board commissioners also observed that, because the site requesting relief in Woolley was not held in common ownership with any adjacent lots at the time of the application, there was no as-of-right development scenario that would not have required the acquisition of adjacent tracts of land, further distinguishing it from the subject application, where the subject lot may be utilized or developed in connection with Lot 64, with which it is commonly owned; and

WHEREAS, accordingly, two commissioners find that the subject site was neither unique nor subject to practical difficulties or unnecessary hardship in satisfaction of ZR § 72-21(a) and, thus, the variance request must be denied; and

WHEREAS, the remaining two commissioners find Woolley to be instructive, the effect on development potential brought about by a re-zoning (as in Woolley) to be comparable to the change in development potential caused by the change in the operative day of separate ownership in ZR § 107-42 and that the evidence and arguments submitted by applicant enables a finding that ZR § 72-21(a) has been satisfied in this case; and

WHEREAS, pursuant to § 1-11.5 of the Board's Rules of Practice and Procedure a concurring vote of at least three (3) commissioners is necessary for a decision to grant an application and a failure to receive the requisite three (3) votes is to be deemed a denial; and

WHEREAS, in addition, ZR § 72-21(a) is a threshold finding that must be met for a grant of a variance and the absence of a quorum on this finding obviates Board analysis of the remaining findings set forth in ZR § 72-21; and

*Therefore, it is Resolved,* that the decision of the Department of Buildings, dated May 24, 2016, acting on

Department of Buildings Application No. 520225578, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, April 4, 2017.

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**322-13-BZ**

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

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

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

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.

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**91-14-BZ**

APPLICANT – Law Office of Lyra J. Altman, for 3428 Bedford LLC by Jeffrey Mehl, owner.

SUBJECT – Application May 2, 2014 – 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 required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 3420 Bedford Avenue, southwest corner of Bedford Avenue and Avenue M, Block 7660, Lot (tentative) 45, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for adjourned hearing.

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**178-14-BZ**

APPLICANT – Sheldon Lobel, P.C., for NLO Holding Corp., owner.

SUBJECT – Application July 24, 2014 – Variance (§72-21) seek a waiver of Section 22-10 ZR to permit a Use Group 6 retail use on the ground floor with accessory cellar storage a proposed four-story, two unit building located with an R6A zoning district.

PREMISES AFFECTED – 263 McGuinness Boulevard aka 261 McGuinness Boulevard, Block 2559, Lot 32, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for continued hearing.

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## **317-14-BZ**

APPLICANT – Brian Cave LLP, for Acadia 3780-3858 Nostrand Avenue LLC, owner.

SUBJECT – Application December 4, 2014 – Special Permit (§73-44): that would allow the reduction in the number of off street parking spaces for ambulatory diagnostic treatment facilities listed in use group 4 and Uses in Parking Requirement Category Br, located within and C2-2/R4 zoning district.

PREMISES AFFECTED – 3780-3860 Nostrand Avenue, Block 7445, Lot 1, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for adjourned hearing.

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## **128-15-BZ thru 130-15-BZ**

APPLICANT – Law Office of Steven Simicich, for John Massamillo, owner.

SUBJECT – Application May 29, 2015 – Variance (§72-21) to allow for the construction on a three family attached residential building (Use Group 2). R2/SHPD zoning district.

PREMISES AFFECTED – 680, 682 and 684 Van Duzer Street, Block 613, Lot(s) 95, 96 and 97, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for continued hearing.

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## **168-15-BZ**

APPLICANT – Sheldon Lobel, P.C., for Bushwack 7 LLC, owner.

SUBJECT – Application July 28, 2015 – Variance (§72-21) to permit the development of a four-story commercial building contrary to height, setback and parking requirements. M1-1 zoning district.

PREMISES AFFECTED – 58 Grattan Street, Block 3008, Lot 15, Borough of Brooklyn.

### **COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for continued hearing.

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## **200-15-BZ**

APPLICANT – Dennis D. Dell’Angelo, for Baruch M. Wieder, owner.

SUBJECT – Application August 27, 2015 – Special Permit (§ZR 73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1364 East 23<sup>rd</sup> Street, Block 7568 Lot 76, Borough of Brooklyn.

### **COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for continued hearing.

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## **2016-1217-BZ**

APPLICANT – Law Office of Jay Goldstein, for 839-45 Realty LLC, owner.

SUBJECT – Application February 8, 2016 – Variance (§72-21) to allow for the enlargement of an existing two-family home contrary to ZR Sections 23-141(c) (Open Space (“OS”)/Open Space Ratio (“OSR”)/Lot Coverage (“LC”)), 23-45(a) (Front Yard), 23-461(b) (Side Yard), 23-841(Narrow Outer Court) and 25-621(b) (parking). R4 zoning district.

PREMISES AFFECTED – 45 Southgate Court (2344-2354 West 1<sup>st</sup> Street), Block 7174, Lot 49, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., to reopen, and then decision.

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## **2016-4136-BZ & 2016-4137-BZ**

APPLICANT – Sheldon Lobel, P.C., for Astoria Warehouse Enterprises, Inc., owner.

SUBJECT – Application March 15, 2016 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. M1-1 zoning district.

PREMISES AFFECTED – 19-59 & 19-61 49<sup>th</sup> Street, Block 755, Lot(s) 5 and 6; 19-55 & 19-57 49<sup>th</sup> Street, Block 755, Lot(s) 7 & 8, Borough of Queens.

### **COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for adjourned hearing.

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## **2016-4249-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP for Margaret Lee, Youngwoo & Associates LLC, owner.

SUBJECT – Application September 8, 2016 – Variance (§72-21) to allow the development of a commercial building contrary to ZR §22-10 (to allow commercial use (UG 5 & 6) within a R7-2 zoning district, ZR §33-122 (exceed the maximum permitted commercial floor area within a C8-3 zoning district, ZR §33-432 & 33-442 (C8-3 sky exposure plane regulations) and ZR §36-683 (Location of the entry/exit of an accessory loading berth with a C8-3 zoning district). C8-3 & R7-2 zoning district.

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PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot(s) 77 & 83, Borough of Manhattan.

**COMMUNITY BOARD #12M**

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for continued hearing.  
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**REGULAR MEETING**

**TUESDAY AFTERNOON, APRIL 4, 2017**

**1:00 P.M.**

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

**ZONING CALENDAR**

**224-14-BZ/225-14-A**

APPLICANT – Eric Palatnik, P.C., for 1534 Victory Boulevard LLC, owner.

SUBJECT – Application September 15, 2014 – Variance (§72-21) to for ambulatory diagnostic or healthcare treatment facility (medical office) (UG 4) located in an R1-2 zoning district. Also a companion GCL 35 as portion of the roadway is within a mapped street. R1-2 zoning district.

PREMISES AFFECTED – 1534 Victory Boulevard, Block 695, Lot 81, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for continued hearing.  
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**178-15-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Margarita Bravo, owner.

SUBJECT – Application August 6, 2015 – Variance (§72-21) to permit the legalization of a two-family dwelling that exceeds permitted FAR and does not provide required front, side and rear yards. R3-1 zoning district.

PREMISES AFFECTED – 99-47 Davenport Court, Block 14243, Lot 1110, Borough of Queens.

**COMMUNITY BOARD #10Q**

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for continued hearing.  
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**2016-4127-BZ**

APPLICANT – Dennis D. Dell'Angelo, for 1547 East 26<sup>th</sup> Street, LLC, owner; Israel Stern, lessee.

SUBJECT – Application February 26, 2016 – Special

Permit (§73-622) for the enlargement of an existing single-family residence contrary to floor area and lot coverage (ZR 23-141); perimeter wall height (ZR 23-631) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1547 East 26<sup>th</sup> Street, Block 6773, Lot 77, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for continued hearing.  
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*Ryan Singer, Executive Director*

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**\*CORRECTION**

**This resolution adopted on October 16, 2007, under Calendar No. 298-06-A and printed in Volume 92, Bulletin Nos. 39-41, is hereby corrected to read as follows:**

**298-06-A**

APPLICANT – Glen V. Cutrona, AIA, for John Massamillo, owner.

SUBJECT – Application November 13, 2006 – Proposed construction of a four story mixed use (commercial & residential) bldg. located within the bed of mapped street( Victory Boulevard ) contrary to General City Law Section 35 . C4-2 /R5 Zoning District. Companion BZ case under Cal. No. 297-06-BZ.

PREMISES AFFECTED – 130 Montgomery Avenue, between Victory Boulevard and Fort Place, Block 17, Lot 116, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

APPEARANCES –

For Applicant: Glen V. Cutrona.

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

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated November 6, 2006 and updated on August 8, 2007, acting on Department of Buildings Application No. 500855452, reads in pertinent part:

“Objection #1 – Construction proposed in the bed of a final mapped street that is contrary to Article 111, Section 35 of the General City Law”; and

WHEREAS, this application requests permission to build a mixed-use building, partially located within the bed of a mapped street (Victory Boulevard Extension); and

WHEREAS, a separate application was filed under BSA Cal. No. 297-06-BZ, for waivers of rear yard and lot coverage requirements pursuant to ZR § 72-21 and is addressed within a separate resolution; and

WHEREAS, a public hearing was held on this application on September 18, 2007 after due notice by publication in the *City Record*, and then to closure and decision on October 16, 2007; and

WHEREAS, by letter dated February 23, 2007, the Department of Transportation (DOT) states that it has

reviewed the application and requests that the sidewalk and curb adjacent to the proposed development should follow the same width and alignment as currently exists adjacent to the improved properties on the west side of Montgomery Avenue; and

WHEREAS, the Board notes that DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; and

WHEREAS, in response to DOT’s request, the applicant agreed that once the Builder’s Pavement Plan is prepared it will follow the same width and alignment as currently exists adjacent to the improved properties on the west side of Montgomery Avenue, and

WHEREAS, by letter dated July 30, 2007, DOT states that it has reviewed the applicant’s submission and has no further comments; and

WHEREAS, by letter dated September 27, 2007, the Fire Department states that it has reviewed the application and has no objection; and

WHEREAS, by letter dated December 21, 2006, the Department of Environmental Protection (DEP) states that it has reviewed the above application and advises the Board that there is an adopted Drainage Plan PRD-2D, Sheet 7 of 9, which calls for two 10-in. diameter sanitary sewer and a 12-in. diameter storm sewer in the bed of the Victory Boulevard Extension between Montgomery Avenue and Monroe Avenue; and

WHEREAS, therefore, DEP requires that the applicant either amend the drainage plan or provide a Sewer Corridor with a minimum width of 35’-0” in the bed of the Victory Boulevard Extension between Montgomery Avenue and Monroe Avenue for the purpose of installation, maintenance, and/or reconstruction of two 10-in. diameter drainage plan sanitary sewer and a 12-in. diameter drainage plan storm sewer; and

WHEREAS, in response to DEP’s request, the applicant met with DEP and provided evidence of the existing conditions of the sewers at the site; and

WHEREAS, by letter dated March 5, 2007 , DEP states that it has reviewed the evidence submitted and finds that there is no need to modify the drainage plan at this time; and

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

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated November 6, 2006 and updated on August 8, 2007, acting on Department of Buildings Application No 500855452, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 8, 2007,” “A-2b” - one (1) sheet; that the proposal shall

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comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

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

Adopted by the Board of Standards and Appeals, October 16, 2007.

**\*The resolution has been amended.  
Corrected in Bulletin No 15, Vol. 102, dated April 20, 2017.**

## \*CORRECTION

**This resolution adopted on January 31, 2017, under Calendar No. 137-15-BZ and printed in Volume 102, Bulletin No. 6, is hereby corrected to read as follows:**

### **137-15-BZ CEQR #15-BSA-214Q**

APPLICANT – Law Office of Jay Goldstein for Congregation YGS, owner.

SUBJECT – Application – Variance (72-21) change of use and enlargement from existing Use Group 9 trade school to use Group 3 religious school (*Yeshiva Godolah Seminary*) with additional classrooms and dormitories. M1-1 zoning district.

PREMISES AFFECTED – 74-10 88<sup>th</sup> Street, Block 3810, Lot 93, 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, the decision of the Queens Borough Commissioner dated June 8, 2015, acting on DOB Application No. 421079442 reads in pertinent part:

1. Proposed ‘UG 3 Occupancy Group E’ in M1-1 Zoning District is not permitted use as of right to comply with ZR 42-00; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an M1-1 zoning district, the occupancy of a Use Group 3 school and Use Group 3 school dormitory that does not comply with use regulations, contrary to ZR § 42-00; and

WHEREAS, this application is filed on behalf of the United Talmudical Seminary (the “Yeshiva”), a non-profit religious corporation; and

WHEREAS, a public hearing was held on this application on July 19, 2016, after due notice by publication in *The City Record*, with continued hearings on September 27, 2016, and December 13, 2016, and then to decision on January 31, 2017; and

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

WHEREAS, Community Board 5, Queens, recommends disapproval of this application on the

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basis, *inter alia*, that the Yeshiva has not been transparent regarding the presence of the dormitory use at the site and that the proposed enlargement to the facility will place additional pressure on an already overburdened sewer system; and

WHEREAS, by letter dated July 14, 2016, Chaim M. Deutsch, New York City Council Member for the 48<sup>th</sup> District, expressed his support of this application; and

WHEREAS, by letter dated July 18, 2016, Dov Hikind, a member of the New York State Assembly, expressed his support of the subject application; and

WHEREAS, the subject site is located on the west side of 88<sup>th</sup> Street, between 72<sup>nd</sup> Drive and 77<sup>th</sup> Avenue, in an M1-1 zoning district, in Queens; and

WHEREAS, the site has approximately 175 feet of frontage along 88<sup>th</sup> Street, 135,587 square feet of lot area and is occupied by a one-story building; and

WHEREAS, the Yeshiva proposes to enlarge the building and convert its use from a Use Group 9 religious vocational trade school with accessory sleeping accommodations to a Use Group 3 school with accessory sleeping accommodations; and

WHEREAS, the applicant represents that the enlargement is as-of-right and seeks no waivers of the applicable bulk regulations in the subject application; and

WHEREAS, a Use Group 3 school and school dormitory are not permitted in an M1-1 zoning district pursuant to ZR § 42-00; and

WHEREAS, the applicant represents that the requested change in use groups is necessary to reflect the change in function of the Yeshiva, which the applicant represents has operated at the subject site for more than ten (10) years; and

WHEREAS, the Yeshiva is the only post-secondary school of the Satmar community school system, which serves more than 10,000 students across 15 facilities in New York, with a current enrollment of 1,050 students, aged 16 to 22; and

WHEREAS, the applicant states that the subject building was converted from a manufacturing use to a vocational trade school with sleeping accommodations in or around 2006 and received Certificate of Occupancy No. 401634148F, effective January 25, 2008; and

WHEREAS, at the time, the Yeshiva provided post-secondary instruction in a variety of professional trades—including the ritual slaughter of animals, kosher meat preparation, Torah-based supervision of kosher food production and calligraphy—as well as the various religious laws and codes that govern the trades and their associated rituals; and

WHEREAS, the Yeshiva's programming has

changed as a result of an increase in the Satmar community's post-secondary school population and the number of students interested in a scholarly curriculum focused on the study of religious texts and philosophy intended to prepare them for careers as Torah scholars, researchers, instructors, pulpit rabbis, spiritual leaders and Torah-directed lay persons, instead of tradesmen; and

WHEREAS, accordingly, the Yeshiva seeks a variance to change from a Use Group 9 trade school to a Use Group 3 school and school dormitory; and

WHEREAS, the Yeshiva additionally proposes an enlargement of the existing building from 60,366 square feet of floor area (0.45 FAR) to 142,183 square feet of floor area (1.05 FAR) with a three-story addition to the existing easternmost one-story portion of the building and a cellar and four-story enlargement directly adjacent in order to provide additional classroom and dormitory space for its existing student population; and

WHEREAS, the Yeshiva previously utilized trailers on the premises for additional classroom space, but removed them upon DOB instruction and, in their absence, the Yeshiva has had to stagger its class schedule to accommodate lectures, a change that has substantially impacted the Yeshiva's operations and made the proposed expansion to the existing building necessary; and

WHEREAS, the applicant notes that the additional dormitory space is required both because of a change in the demographics of its student population, the majority of which used to come from Williamsburg, Brooklyn, but is increasingly from areas in upstate New York and abroad and require sleeping accommodations onsite and also to provide housing for more local students who prefer to live on site or wish to participate in early morning group study sessions; and

WHEREAS, the existing dormitories currently accommodate 286 students with the remaining students travelling to and from the site via 15 school buses and the proposed expansion in dormitory space, which will increase the number of beds onsite to 710, is anticipated to ultimately reduce the number of school buses travelling to and from the site daily to 6 buses; and

WHEREAS, the Yeshiva states that the waiver sought is essential to its ability to meet its programmatic needs, including providing sufficient classroom and dormitory space for its existing student population as well as the provision of religious instruction, at the same site from which it has operated for more than a decade; and

WHEREAS, the Yeshiva states that the site was originally chosen because of its simultaneous proximity to and distance from the Hassidic community located in



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Williamsburg and the Yeshiva's desire to provide a space that enables its students to fully devote themselves to the curriculum and fully concentrate on their studies without the distractions of everyday life and family; and

WHEREAS, the Yeshiva notes that the Satmar community heavily subsidizes the costs of tuition and boarding on site, that students are allowed to enroll and provided with on-site housing regardless of their ability to pay and that it is prohibitively expensive to acquire an additional location to accommodate its current spatial needs; and

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

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

WHEREAS, based on the above, the Board finds that the programmatic needs of the Congregation create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant states that the site is surrounded by warehouse and accessory office uses and proposes that a garden on the premises will act as a buffer between the building and 88th Street; additionally, the applicant represents that its use of the premises is self-contained—its students eat all of their meals onsite and students rarely venture off campus—and, thus, does not interfere with neighboring uses; and

WHEREAS, in response to the Board's concerns regarding the storage and collection of trash at the premises, the applicant changed its original proposal to enclose the trash compactor with 8 foot walls surrounded by landscaping at the exterior of the

building, so as to shield the compactor from the public, to one in which they will relocate the trash compactor to a refrigerated room on the building's interior accessed by a roll-up door; the applicant also agreed to provide an indoor refrigerated storage room for perishable trash; and

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

WHEREAS, the Yeshiva states that, per ZR § 72-21(d), the hardship was not self-created; and

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

WHEREAS, the Yeshiva represents that, consistent with ZR § 72-21(e), the proposal represents the minimum variance needed to accommodate its programmatic needs; and

WHEREAS, the Yeshiva provided an analysis of the findings required for a special permit pursuant to ZR § 73-19, whereby the Board may permit schools in C8 or M1 zoning districts and which provides, in pertinent part:

"In C8 or M1 Districts, the Board of Standards and Appeals may permit *schools* which have no *residential* accommodations except *accessory* accommodations for a caretaker, provided that the following findings are made . . . ."; and

WHEREAS, the Yeshiva states, and the Board agrees, that it is ineligible for the special permit because of the proposed onsite residential accommodations and that the requested use waiver is, therefore, the minimum variance; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to allow the Yeshiva to fulfill its programmatic needs; and

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

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

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment ("EAS") CEQR No. 15-BSA-214Q, dated June 30, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources;

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Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, by letter dated August 12, 2016, the New York City Department of Environmental Protection (“DEP”) states that, upon review, the March 2016 Remediation Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) submitted in connection with this application is acceptable and recommends that, upon the completion of construction, a Remedial Closure Report certified by a Professional Engineer indicating that all remedial requirements have been implemented properly be submitted to DEP for review and approval; and

WHEREAS, at the Board’s request, in consideration of the fact that a school and dormitory use proposed herein is in a manufacturing district, the applicant submitted an indoor air quality study, dated September 2016, reporting that no VOCs at a concentration above the New York State Department of Health (“DOH”) Air Guideline Value or the range of anticipated background were detected in the indoor air samples; and

WHEREAS, in addition, the applicant submitted, at the Board’s request, an air permit search to DEP and found that none of the active permits for uses within 400 feet of the premises were for existing industrial sources; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site located in an M1-1 zoning district, the occupancy of a Use Group 3 school and Use Group 3 school dormitory that does not comply with use regulations, contrary to ZR § 42-00, *on condition* that all work will substantially conform to drawings filed with this application marked “Received January 11, 2017”- Twenty-Two (22) sheets; and *on further condition*:

THAT no overnight parking of buses shall be

permitted on the premises;

THAT no parking of the buses on the street shall be permitted;

THAT buses are to be utilized for pick up and drop off only and returned to a storage location off-site;

THAT composite window wall noise attenuation of 28 dBA shall be provided along the 88th Street frontage of the site;

THAT a trash compactor and refrigerated trash storage shall be installed, as shown on the BSA-approved plans;

THAT lighting and landscaping shall be installed, maintained and replaced, as needed, as shown on the BSA-approved plans;

THAT, consistent with the recommendation of the New York City Department of Environmental Protection, a Remedial Closure Report certified by a Professional Engineer indicating that all remedial requirements have been implemented properly shall be submitted to DEP for review and approval upon the completion of construction;

THAT the above conditions shall be listed on the Certificate of Occupancy;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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 shall be considered approved only for the portion 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, January 31, 2017.

**\*The resolution has been amended.**

**Corrected in Bulletin No 15, Vol. 102, dated April 20, 2017.**

# 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.

Volume 102, Nos. 16-18

May 4, 2017

### DIRECTORY

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2016-4181-BZ	1981 East 14 <sup>th</sup> Street, Brooklyn

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# DOCKETS

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New Case Filed Up to April 25, 2017

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## 2017-101-BZ

104-06 Rockaway Beach Boulevard, located on the northeast corner of Beach 105th Street, Block 16176, Lot(s) 1, Borough of **Queens, Community Board: 14**. Special Permit (§73-36) to permit a physical culture establishment (Burn Fitness) within an existing commercial building. C2-3/R5D zoning district. C2-3/R5D district.

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## 2017-102-BZ

2015 East 5th Street, located on the east side of East 5th Street between Avenues S and T., Block 07108, Lot(s) 116, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) a to permit the enlargement of a single-family residence, contrary to floor area requirements (ZR §23-41); perimeter wall height (ZR §23-631); proposed front yard setback (ZR §23-45); and side yards (ZR §23-461). R2X (Special Ocean Parkway District). R2X (SOPD) district.

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## 2017-103-A

4 Triumph Lane, located on the east side of Victory Boulevard between Simmons and Towers Lanes, Block 02620, Lot(s) 126, Borough of **Staten Island, Community Board: 2**. Proposed construction of a single family residential building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3A zoning district R3A district.

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## 2017-104-A

6 Triumph Lane, located on the east side of Victory Boulevard between Simmons and Towers Lanes, Block 02620, Lot(s) 126, Borough of **Staten Island, Community Board: 2**. Proposed construction of a single family residential building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3A zoning district R3A district.

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## 2017-105-A

8 Triumph Lane, located on the east side of Victory Boulevard between Simmons and Towers Lanes, Block 02620, Lot(s) 128, Borough of **Staten Island, Community Board: 2**. Proposed construction of a single family residential building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3A zoning district R3A district.

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## 2017-106-A

721 Sharrotts Road, located on the north side of Sharrotts Road, 271.87 ft. west of Arthur Kill Road, Block 07385, Lot(s) 215, Borough of **Staten Island, Community Board: 3**. Proposed construction of a warehouse building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. M3-1 (SRD) zoning district M3-1 (SRD) district.

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## 2017-107-A

232 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 325, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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## 2017-108-A

234 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 324, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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## 2017-109-A

235 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 323, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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## 2017-110-A

238 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 322, Borough of **Staten Island, Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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# DOCKETS

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**2017-111-A**

240 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 321, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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**2017-112-A**

242 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 320, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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**2017-113-A**

246 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 319, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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**2017-114-A**

248 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 318, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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**2017-115-A**

250 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 317, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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**2017-116-A**

252 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 316, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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**2017-117-A**

254 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 315, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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**2017-118-A**

256 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 314, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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**2017-119-A**

260 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 313, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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**2017-120-A**

262 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 312, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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# DOCKETS

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## 2017-121-A

264 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 311, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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## 2017-122-A

266 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 310, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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## 2017-123-A

268 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 309, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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## 2017-124-A

270 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 308, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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## 2017-125-A

274 Avidita Place, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 307, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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## 2017-126-A

471 Fourberie Lane, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 206, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district.

Mount Manresa R3-2 district.

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## 2017-127-A

473 Fourberie Lane, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 205, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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## 2017-128-A

475 Fourberie Lane, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 204, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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## 2017-129-A

477 Fourberie Lane, located at the northwest corner of the intersection formed by Fingerboard Road and Lincoln Place., Block 03019, Lot(s) 203, Borough of **Staten Island**, **Community Board: 1**. Proposed construction of a single family residence, not fronting on a legally mapped street, contrary to General City Law 36. R3-2 zoning district. Mount Manresa R3-2 district.

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## 2017-130-BZ

47-01 Barnett Avenue, south side of Barnett Avenue between 48th and 45th Street, Block 00142, Lot(s) 238, Borough of **Queens**, **Community Board: 2**. Special Permit (§73-36) to permit the legalization of a physical culture establishment (Crossfit Sunnyside) within an existing commercial building. M1-1 zoning district. M1-1 district.

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## 2017-131-BZ

77-85 Gerry Street, located on the north side of Gerry Street between Throop and Harrison Avenues, Block 02266, Lot(s) 46, 47, 48 & 49, Borough of **Brooklyn**, **Community Board: 1**. Variance (§72-21) to permit the construction of a mixed residential and community facility (Congregation Divrei Yoel) contrary to ZR §23-153 (Maximum Lot Coverage) and ZR §§23-36 & 24-47 (Required Rear Yards). R7A zoning district. R7A district.

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# DOCKETS

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**2017-132-BZ**

1847 Victory Boulevard, located on Victory Boulevard between Greenleaf Avenue and Westcott Boulevard, Block 00373, Lot(s) 35, Borough of **Staten Island, Community Board: 1**. Special Permit (§73-44) to allow the reduction of required parking for commercial office (Use Group 6B) (Parking Category PRC B1). C2-1/R3-1 zoning district. C2-1/R3-1 district.

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



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# MINUTES

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## REGULAR MEETING MAY 23, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, May 23, 2017, 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**

### 581-56-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Salamander Realty Corp., owner.

SUBJECT – Application May 16, 2016 – Amendment (§11-413) of a previously approved variance which permitted the operation of a Storage Warehouse (UG 16). The amendment seeks to change the use to a trade school, meeting hall and offices (Use Groups 6 & 9). R5 zoning district.

PREMISES AFFECTED – 24-01 to 24-11 36<sup>th</sup> Avenue aka 35-45 to 35-57 24<sup>th</sup> Street, Block 338, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

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### 58-96-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 277 Park Avenue, LLC., owner; Manhattan Athletic Club LLC, lessee.

SUBJECT – Application November 28, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (*Manhattan Athletic Club*) which expires on December 10, 2016. C5-2A (DB) zoning district. C5-3 & C6-6 (Special Midtown District) zoning district.

PREMISES AFFECTED – 277 Park Avenue, Block 1302, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### 7-04-BZ

APPLICANT – Eric Palatnik, P.C., for Co-Op City BC, owner.

SUBJECT – Application November 7, 2016 – Extension of Time to Complete Construction of a UG4 Church/Community Outreach Center (*Co-Op City Baptist Church*) which expired August 19, 2011; Waiver of the Rules. R3A zoning district

PREMISES AFFECTED – 2208 Boller Avenue, Block 5135, Lot 1, Borough of the Bronx.

**COMMUNITY BOARD #10BX**

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### 117-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Rosebud Owner LLC, owner; Crunch LLC, lessee.

SUBJECT – Application December 9, 2016 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Crunch*) in an existing 21-story mixed-use building which expires on July 24, 2017. C1-9A (TA) zoning district.

PREMISES AFFECTED – 222 East 34<sup>th</sup> Street, Block 914, Lot 36, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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## REGULAR MEETING MAY 23, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, May 23, 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**

### 20-15-BZ

APPLICANT – Alexander Levkovich, for Steven Israel, owner; Mishkan Yerushalayim, lessee.

SUBJECT – Application February 5, 2015 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship community facility at the premises contrary to floor area ratio, open space, lot coverage, wall height, front yard, side yards, rear yard, sky exposure plane, and parking regulations. R4 (OP) zoning district.

PREMISES AFFECTED – 461 Avenue X, Block 7180, Lot 75, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### 2016-4176-BZ

APPLICANT – Akerman, LLP, for Islamic Center of Jackson Heights, Inc., owner.

SUBJECT – Application April 20, 2017 – Variance (§72-21) to permit the construction of a new three-story house of worship (UG 4A) building contrary to ZR §24-34 (front yard) and ZR §24-35 (side yard) requirements. R4 zoning district.

PREMISES AFFECTED – 78-04 31<sup>st</sup> Avenue, Block 1149, Lot 1, Borough of Queens.

**COMMUNITY BOARD #3Q**

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# MINUTES

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**2016-4242-BZ**

APPLICANT – Eric Palatnik, P.C., for Robert and Judy Weiss, owners.

SUBJECT – Application August 25, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to open space (ZR §23-142); side yards (ZR 23-461) and less than the required rear yard (ZR §23-47). R-32 zoning district.

PREMISES AFFECTED – 1671 East 29<sup>th</sup> Street, Block 6792, Lot 50, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**2016-4251-BZ**

APPLICANT – Jesse Masyr, Esq., Fox Rothschild LLP, for Neptune South Commercial LLC, owner.

SUBJECT – Application September 13, 2016 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for ambulatory diagnostic and treatment health care facility use (UG 4A) and office use (UG 6B). C8-2 (Special Ocean Parkway District) zoning district.

PREMISES AFFECTED – 626 Sheepshead Bay Road, Block 7279, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

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**2016-4262-BZ**

APPLICANT – Pryor Cashman LLP, for ZCAM, LLC, owner; Lyons Den Power Yoga, owner.

SUBJECT – Application October 3, 2016 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Lyons Den Power Yoga*) on the second and third floors of an existing building. C6-2A (Tribeca East Historic District) zoning district.

PREMISES AFFECTED – 279 Church Street, Block 175, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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*Ryan Singer, Executive Director*

**SPECIAL MEETING  
MAY 25, 2017, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Thursday morning, May 25, 2017, 10:00 A.M., at 250 Broadway, 29<sup>th</sup> Floor, New York, N.Y. 10007, on the following matters:

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**2017-133-A**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 206 Beach 42<sup>nd</sup> Street, Block 15850, Lot 30, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**2017-134-A**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 118 East 7<sup>th</sup> Road, Block 15455, Lot 11, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**2017-135-A**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3X zoning district.

PREMISES AFFECTED – 14-50 Gipson Street, Block 15655, Lot 33, Borough of Queens.

**COMMUNITY BOARD #14Q**

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**2017-136-A**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 310 East 8 Road, Block 15655, Lot 33, Borough of Queens.

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# MINUTES

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## COMMUNITY BOARD #14Q

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### 2017-137-A

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 580 Lincoln Avenue, Block 3884, Lot 28, Borough of Staten Island.

### COMMUNITY BOARD #2SI

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### 2017-138-A

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 3089 Alan Place, Block 5529, Lot 446, Borough of Bronx.

### COMMUNITY BOARD #10BK

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### 2017-139-A

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3A zoning district.

PREMISES AFFECTED – 197 Beach 25 Street, Block 15817, Lot 59, Borough of Queens.

### COMMUNITY BOARD # 14Q

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### 2017-153-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 18, 2017 - Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 14A Mesereau Court, Block 8797, Lot 47. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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### 2017-154-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 7A Lake Avenue, Block 8796, Lot 139. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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### 2017-155-BZ & 2017-156-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 26 & 31 Lincoln Terrace, Block 8796, Lot 154 & 149. Brooklyn of Brooklyn.

### COMMUNITY BOARD # 15BK

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### 2017-157-BZ & 2017-177-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – Various locations, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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### 2017-178-BZ thru 2017-186-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – Various locations, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, APRIL 25, 2017  
10:00 A.M.**

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

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**SPECIAL ORDER CALENDAR**

**528-64-BZ**

APPLICANT – Gerald Caliendo, RA, AIA, for 240-02 Realty LLC/Tim Brolieb, owner.

SUBJECT – Application November 4, 2013 – Amendment of a previously approved Variance (§72-21) which permitted the erection of a two story enlargement of an auto showroom (UG 16B). The amendment seeks to enlarge the existing automobile showroom and include an addition of a parking deck to the existing automobile dealership (*East Hills Chevrolet*). R1-2 zoning district.

PREMISES AFFECTED – 240-02 Northern Boulevard, southwest corner of Alameda Avenue and Northern Boulevard, Block 08167, Lot 1, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Application dismiss for lack of prosecution.

**THE VOTE TO DISMISS –**

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

**THE RESOLUTION –**

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 21, 2013, acting on Alteration Application No. 420532472, reads in pertinent part:

- “1. The proposed enlargement of an existing automobile showroom and addition of a parking deck in an R1-2 zoning district does not comply with section 22-10 of the Zoning Resolution.
- “2. This premises was previously the subject of a variance granted under Cal. No. 528-64-BZ and must be referred back to the Board of Standards and Appeals for its determination. Proposed changes do not comply with the Board of Standards and Appeals Resolution and approved plans granted under BSA Cal. No. 528-64-BZ. Applicant to refer to the Board of Standards and Appeals for amendment pursuant to the NYC Zoning Resolution”; and

WHEREAS, this is an application, pursuant to ZR §§72-01 and 72-22, to reopen and amend a variance, previously granted by the Board, to permit an enlargement of the automobile showroom and addition of a parking deck;

and

WHEREAS, a public hearing was held on this application on November 24, 2015, after due notice by publication in *The City Record*, with a continued hearing on July 19, 2016, and then to decision on April 25, 2017; and

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

WHEREAS, Community Board 11, Queens, recommends approval of the subject application; and

WHEREAS, the subject site is located on the southwest intersection of Northern Boulevard and Alameda Avenue, within an R1-2 zoning district, in Queens; and

WHEREAS, the site has approximately 321 feet of frontage along Northern Boulevard, 158 feet of depth, 62,213 square feet of lot area and is occupied by a one-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 15, 1956, when, under BSA Calendar No. 415-55-BZ, the Board granted a variance to permit parking within the residential area in connection with an automobile showroom in a local retail district on condition, *inter alia*, that planting areas be maintained, with curbing not less than 10 inches in height for protection and such planting to the south and east be dense planting with sizeable trees so as to act as complete screen for Hanford Street and the residential property to the south and such planting be continued within the three-foot strip along Northern Boulevard with suitable planting of suitable dense hedge type which need not exceed five feet in height and that the areas in front of the building, to the east of the showroom, also be properly planted; and

WHEREAS, on February 13, 1957, under BSA Calendar No. 415-55-BZ, the Board amended its resolution to permit two 550 gallon lubricating tanks and one 550 gallon oil tank for the lubrication system of cars to be located at the site; and

WHEREAS, on May 1, 1962, under BSA Calendar No. 415-55-BZ, the Board granted a further variance to permit, at the existing auto showroom with service of new and used cars and trucks, car conditioning storage and sale of parts with auto repairs, the construction of a one-story extension for car conditioning and roof parking extending into the residence portion of the site; and

WHEREAS, on July 21, 1964, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a one- and two-story enlargement to the existing auto showroom and service station on condition, *inter alia*, that the planting on Alameda Avenue and Hanford Street be put in good condition and maintained; and

WHEREAS, on November 17, 1964, under the subject calendar number, the Board amended its resolution to allow the owner to change the arrangement of the ramp from Northern Boulevard and the entrance, exit and curb-cut facilities on 234th Street, and to provide additional roof parking over the southerly portion of the new extension; and

WHEREAS, on December 7, 1965, under the subject

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# MINUTES

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calendar number, the Board amended its resolution to permit the owner to redesign and rearrange the building, including a reduction in floor area; and

WHEREAS, on May 11, 1965, under the subject calendar number, the Board extended the time to complete construction; and

WHEREAS, on January 4, 1967, under the subject calendar number, the Board granted another extension of time to complete construction and amended its resolution to permit the reduction in area and rearrangement of the building and premises; and

WHEREAS, on January 16, 1968, under the subject calendar number, the Board granted an additional extension of time to complete construction in view of the applicant's statement that a building permit had been obtained and work was in progress; and

WHEREAS, the applicant now seeks an amendment of the variance to enlarge the existing auto showroom and add a parking deck to the existing auto dealership; and

WHEREAS, on January 8, 2014, the Board's staff issued a Notice of Comments to the applicant requesting, *inter alia*, a detailed narrative explaining the need for the proposed enlargement and the addition of a parking deck as well as an explanation of violations or complaints against the site with a plan to bring the site into compliance; and

WHEREAS, by letters dated December 29, 2015, April 7, 2016, February 16, 2016, May 12, 2016, September 26, 2016, January 27, 2017, and April 17, 2017, the applicant requested adjournments of continued public hearings; and

WHEREAS, over the course of the three years since the filing of the subject application, the applicant has failed, time and again, to respond to the Board's requests for additional information or to make any progress towards bringing the site into compliance with the conditions of the Board's prior grants; and

WHEREAS, additionally, the Board's inspections of the premises revealed that the subject site is in a state of disrepair, that planting areas have not been maintained and that no dense planting of sizeable trees exist to completely screen the site's commercial uses from view of nearby residential properties, as contemplated by the Board's conditions; and

WHEREAS, photographs submitted by the applicant reveal that, rather than looking upon lush screening, nearby residences see the site's parked automobiles through a rusty, dilapidated fence adorned with sparse vines sinking downward into the dead-alive beds of spiritless shrubs; and

WHEREAS, the Board notes that, under ZR § 72-22, failure to comply with the Board's conditions or restrictions "shall constitute a violation of this [Zoning] Resolution, and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies"; and

WHEREAS, because of the applicant's failure to prosecute the subject application, it must be dismissed in its entirety.

*Therefore it is Resolved*, that the application filed

under BSA Calendar No. 528-64-BZ is hereby *dismissed* for failure to prosecute.

Adopted by the Board of Standards and Appeals, April 25, 2017.

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## **1129-64-BZ**

APPLICANT – Davidoff Hatcher & Citron, LLP, for 147-36 Brookville Boulevard Corp., owner.

SUBJECT – Application January 11, 2016 – Extension of Term of a previously approved Variance (72-21) permitting the operation of an Auto Supplies Sales Establishment (UG 6) which expired on June 10, 2015; Amendment to legalize interior layout changes, permit general Use Group 6 Use and eliminate the term of the variance; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 147-36 Brookville Boulevard, Block 13729, Lot(s) 30, 33, Borough of Queens.

### **COMMUNITY BOARD #13Q**

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to May 2, 2017, at 10 A.M., for decision, hearing closed.

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## **374-71-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 205-11 Northern Boulevard LLC, owner.

SUBJECT – Application May 7, 2014 – Extension of Term of a previously granted Variance (72-21) for the continued operation of an automobile showroom with open display of new and used cars (UG16) with accessory customer and employee parking in a previously unused vacant portion of the premises which expired on July 18, 2011. C2-2 (R3-2) zoning district.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 06269, Lot 20, Borough of Queens.

### **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for adjourned hearing.

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## **146-79-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Estate of Georgia Koufakis, owner.

SUBJECT – Application October 24, 2014 – Extension of term of a previously variance and an Amendment/Waiver: to permit a change in use to automotive sales (UG9) from automotive repair and parts installation(UG 16). C2-2(R3-2) district.

PREMISES AFFECTED – 210-11 Jamaica Avenue aka 210-01/21 Jamaica Avenue, Block 10543, Lot 3, Borough of Queens.

### **COMMUNITY BOARD #13Q**

**ACTION OF THE BOARD** – Off Calendar.

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# MINUTES

## 716-82-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP for Cigarette Realty Co., LLC, owner.

SUBJECT – Application November 9, 2015 – Extension of term of variance (72-21) which permitted retail stores, offices and accessory parking at the rear of the building which expired on June 13, 2013; Extension of Time to Obtain a Certificate of Occupancy which expired on June 13, 2003; Waiver of the Rules. C2-2/R6 & R4 zoning district.

PREMISES AFFECTED – 209-30 Northern Boulevard, Block 7309, Lot 15, Borough of Queens.

### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for adjourned hearing.

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## 377-88-BZ

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Application – Compliance Hearing of a previously approved Variance (§72-21) which permitted the legalization of a one (1) story enlargement to a one (1) story blacksmith and welding shop (UG 16) which increased the degree on non-conformance contrary to ZR §52-22 in a then R4 zoning district. C2-4/R6A zoning district.

PREMISES AFFECTED – 145-64 Liberty Avenue, southwest corner of Liverpool Street. Block 10049, Lot 11. Borough of Queens.

### COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for continued hearing.

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## 36-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 65-75 Owners Corp., owner; World Gym, Inc., lessee.

SUBJECT – Application December 5, 2014 – Extension of Term and Waiver (§72-01): to extend the term of a previous grant permitting a physical culture establishment (*World Gym*) within an existing cellar and one-story commercial building. C1-2/R3-1 zoning district.

PREMISES AFFECTED – 65-75 Woodhaven Boulevard aka 85-01 66<sup>th</sup> Avenue, Block 3139, Lot 1, Borough of Queens.

### COMMUNITY BOARD #6Q

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for continued hearing.

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## 189-96-BZ

APPLICANT – John C. Chen, R.A., for Ping Yee, owner; Club Flamingo, lessee.

SUBJECT – Application October 24, 2016 – Extension of Term for a previously granted Special Permit (§73-244) of a UG12 Eating and Drinking establishment with entertainment and dancing (*Flamingos*) which expires on May 19, 2016; Waiver of the Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 85-10/12 Roosevelt Avenue,

Block 1502, Lot 3, Borough of Queens.

### COMMUNITY BOARD #4Q

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for continued hearing.

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## 227-02-BZ

APPLICANT – Stanley K. Schlein, Esq., for 4201 Webster Corp., owner.

SUBJECT – Application August 21, 2015 – Extension of Term (§§72-01 and 72-22) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with an accessory convenience store which expired on December 12, 2013; Amendment to the condition of term since the term expired in excess of 2 years but less than ten years; Extension of Time to Obtain a Certificate of Occupancy which expired on December 10, 2006; Waiver of the Board's Rules. R7-A zoning district.

PREMISES AFFECTED – 527 East 233<sup>rd</sup> Street, Block 3395, Lot 80, Borough of Bronx.

### COMMUNITY BOARD #12BX

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 108-15-A thru 110-15-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Glebe Partners LLC, owners.

SUBJECT – Application May 13, 2015 – Appeal seeking determination that property owner has acquired common law vested right to complete construction of three, three-family residential buildings commenced under prior zoning district regulations. R6A zoning district.

PREMISES AFFECTED – 2317, 2319, 2321 Glebe Avenue, Block 3971, Lot(s) 167, 166, 165, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for adjourned hearing.

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### 238-15-A thru 243-15-A

APPLICANT – Jeffrey Geary, for Ed Sze, owner.

SUBJECT – Application October 8, 2015 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – 102-04, 08, 12, 16, 20, 24 Dunton Court, Block 14240, Lot(s) 1306, 1307, 1308, 1309, 1310, 1311, Borough of Queens.

### COMMUNITY BOARD #14Q

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

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26, 2017, at 10 A.M., for adjourned hearing.

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**264-15-A thru 268-15-A**

APPLICANT – Diffendale & Kubec, for Leonello Savo, owner.

SUBJECT – Application December 7, 2015 – Proposed construction of two family detached residence not fronting on a legally mapped street, contrary to General City Law 36. R3X (SSRD) zoning district

PREMISES AFFECTED – 5, 11, 17, 23 Herbert Street and 14 Holtein Avenue, Block 6681, Lot(s) 30, 31, 40, 41, 34, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for adjourned hearing.

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**2016-2-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Vincent Theurer, owner.

SUBJECT – Application January 4, 2016 – Appeal seeking determination that the Department of Buildings improperly denied an application for a permit for construction of cabana based on erroneous determination that the cabana should be considered a dwelling unit and not an accessory structure, requiring compliance with minimum required distance between buildings (ZR 23-711(f)) and minimum distance between lot lines and building walls (ZR 23-881) in the lower density growth management area. R1-1(NA-1).

PREMISES AFFECTED – 74 Buttonwood Road, Block 877, Lot 32, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for adjourned hearing.

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**ZONING CALENDAR**

**41-14-BZ**

**CEQR #14-BSA-123K**

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** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montane.....4  
Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 26, 2014, acting on Alteration Application No. 320888544, reads in pertinent part:

“BSA approval [required] for use group 3A (school) in M1-2 zoning district” “42-30 Uses permitted by Special Permit” “42-31 – By the BSA as per Art. 7 Chap. 3 – M1 #Schools#, provided they have no living or sleeping Accommodations”; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to legalize, in an M1-2 zoning district, a school without residential accommodations; and

WHEREAS, this application is filed on behalf of United Talmudical Academy Torah V’yirah Rabbinical, Inc., a not-for-profit corporation (the “School”); and

WHEREAS, a public hearing was held on this application on January 6, 2015, after due notice by publication in The City Record, with continued hearings on January 22, 2015, February 24, 2015, March 10, 2015, April 28, 2015, June 16, 2015, September 22, 2015, November 17, 2015, January 22, 2016, February 23, 2016, May 24, 2016, September 13, 2016, December 6, 2016, and then to decision on April 25, 2017; and

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

WHEREAS, Community Board 2, Brooklyn, recommends disapproval of this application due to, among other things, specific complaints regarding the management of the School and supervision of its students; and

WHEREAS, New York State Senator Daniel Squadron, New York State Assemblyman Joseph Lentol and New York City Councilmember Laurie Cumbo submitted testimony in support of this application; and

WHEREAS, the subject site is located on an L-shaped lot having frontages on Waverly Avenue and Washington Avenue, between Flushing Avenue and Park Avenue, in an M1-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 182 feet of frontage along Waverly Avenue, 75 feet of frontage along Washington Avenue, 25,690 square feet of lot area and is occupied by a three-story industrial building with commercial uses on the first floor and the School on the second and third floors; and

WHEREAS, the School has operated at the premises for 20 years and represents that it meets the requirements of the special permit authorized by ZR § 73-19 to legalize the school use in an M1-2 zoning district; and

WHEREAS, ZR § 73-19 provides as follows:

In C8 or M1 Districts, the Board of Standards and Appeals may permit *schools* which have no *residential* accommodations except *accessory* accommodations for a caretaker, provided that the following findings are made:

(a) that within the neighborhood to be served by

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the proposed *school* there is no practical possibility of obtaining a site of adequate size located in a district wherein it is permitted as of right, because appropriate sites in such districts are occupied by substantial improvements;

- (b) that such *school* is located not more than 400 feet from the boundary of a district wherein such *school* is permitted as-of-right;
- (c) that an adequate separation from noise, traffic and other adverse effects of the surrounding *non-Residential Districts* is achieved through the use of sound-attenuating exterior wall and window construction or by the provision of adequate open areas along *lot lines* of the *zoning lot*; and
- (d) that the movement of traffic through the *streets* on which the *school* is located can be controlled so as to protect children going to and from the *school*. The Board shall refer the application to the Department of Traffic for its report with respect to vehicular hazards to the safety of children within the block and in the immediate vicinity of the proposed site.

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

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 located in a zoning district in which a special permit pursuant to ZR § 73-19 is available; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant represents that the School accommodates approximately 575 persons on a daily basis, made up of 514 students and 61 employees, in approximately 51,380 square feet of floor space; and

WHEREAS, the applicant represents that, within R5B and R6B zoning districts within the neighborhood, which permit community facility buildings with a floor area ratio ("FAR") of up to 2.0 as-of-right, the School would need a site with more than 25,000 square feet of floor area to develop a school and that none of the nearby sites have sufficient lot area; and

WHEREAS, in response to the Board's request, the applicant conducted an evaluation of sites within a half-mile radius, concluding that, of 28 sites with more than 10,000 square feet of lot area, three would not permit development

of floor area sufficient for the School's needs with the remainder either already developed with substantial improvements or in development for residential use; and

WHEREAS, the applicant maintains that the site search establishes that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19(a) are met; and

WHEREAS, ZR § 73-19(b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant submitted a map demonstrating that the subject site is located within 400 feet of an R6B zoning district located south of Park Avenue, where the School would be allowed as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19(b) are met; and

WHEREAS, ZR § 73-19(c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant represents that adequate separation from noise, traffic and other adverse effects of the surrounding M1-2 zoning district has already been achieved for the frontage along Waverly Avenue, which does not require any additional work to maintain an interior noise level of 45 dBA, but that additional layers of glazing will be applied to existing windows or windows will be replaced in order to achieve a composite window and wall noise attenuation of 28 dBA for the building's Washington Avenue frontage; and

WHEREAS, as to air quality, the applicant submitted an indoor air sampling assessment, which did not identify any readings that would require further testing or mitigation measures; and

WHEREAS, the Board finds that the conditions surrounding the site and the building's construction will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-2 zoning district; thus, the Board finds that the requirements of ZR § 73-19(c) are met; and

WHEREAS, ZR § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant submitted a traffic study indicating that neither Washington Avenue nor Waverly Avenue operate at their full capacity with low levels of traffic on both and that neither student arrivals, at or around 6:30 a.m., nor departures, at or around 7:30 p.m., occur during peak traffic hours; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, by letter dated May 29, 2014, the DOT School Safety Engineering Office states that it has no



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objection to the School but suggested the development of a safe route plan; and

WHEREAS, in response, the applicant submitted an operational plan providing for morning drop-off and evening pick-up procedures so as to safeguard students going to and from the School; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19(d) are met; and

WHEREAS, at hearing, the Board expressed concerns about open violations on the site, fire safety, egress and the presence of a bus garage on the first floor of the subject building; and

WHEREAS, in response, the applicant submitted additional information about steps being taken to mitigate outstanding building violations and upgrade existing fire-safety systems and explained how the garage schedules bus maintenance work so as to minimize the impact on the public street system; and

WHEREAS, the applicant has, among other things, installed all required panic hardware and safety lighting, provided 3-hour fire rating fire proofing between the first floor and the upper floors, dismantled a seven-story abandoned elevator shaft and converted it into a new staircase with roof access, and replaced all of the ¾" piping for the existing sprinkler system with 1" piping to comply with updates to the Building Code and the change in use of the building to a school; and

WHEREAS, the Fire Department represents that installation of the sprinkler system is in progress and that it has no objection to the subject application; and

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

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

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 14BSA123K, submitted October 8, 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse

Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, the Department of Environmental Protection ("DEP") reviewed the subject application with regards to hazardous materials, air quality and noise; and

WHEREAS, by letter dated May 29, 2015, DEP states that the proposed project would not result in any potential for significant adverse impacts in regards to air quality but that a composite window and wall noise attenuation of 28 dBA is required for the building's Washington Avenue frontage with an alternate means of ventilation to be incorporated into the building's design and construction; and

WHEREAS, by letter dated June 14, 2016, DEP states that it finds the indoor air quality assessment acceptable and has no objection to this project; 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 to legalize, in an M1-2 zoning district, a school without residential accommodations, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received April 17, 2015"—Seven (7) sheets; and *on further condition*:

THAT all storage drums on the subject site shall be properly stored, recycled and disposed of in accordance with all applicable federal, state and local regulations;

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

THAT an amended certificate of occupancy shall be obtained within one (1) year of the issuance of this Resolution, by May 19, 2018

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

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

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

Adopted by the Board of Standards and Appeals, April 25, 2017.

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# MINUTES

**274-15-BZ**

**CEQR #16-BSA-058Q**

APPLICANT – Michio Sanga, for Nohar Sumasar, owner.  
SUBJECT – Application December 15, 2015– Variance (§72-21) to permit the construction of a 2-story two-family residence contrary to ZR §23-461c (open area between buildings containing residences) and ZR §23-141 (Lot Coverage) R4-1 zoning district.

PREMISES AFFECTED – 144-29 South Road aka Tuskegee Airmen Way, Block 10045, Lot 18, Borough of Queens.

**COMMUNITY BOARD #12Q**

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

**THE VOTE TO GRANT** –

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

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 21, 2017, acting on New Building Application No. 421187281, reads in pertinent part:

“Proposed front yard is contrary to ZR 23-45”;  
and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R4-1 zoning district, the construction of a two-story, two-family residence, contrary to ZR § 23-45 (front yards); and

WHEREAS, a public hearing was held on this application on February 14, 2017, after due notice by publication in *The City Record*, with a continued hearing on April 25, 2017, and then to decision on that date; and

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

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

WHEREAS, the subject site is located on the southwest corner of South Road and Inwood Street, in an R4-1 zoning district, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage along South Road, 100 feet of frontage along Inwood Street, 2,503 square feet of lot area and is vacant; and

WHEREAS, initially, the applicant proposed to construct a two-story, two-family residence along the southwestern lot line at a distance of 3’-2” from the adjacent building south of the subject site on South Road; and

WHEREAS, in response to concerns raised by the Board, the applicant modified the proposal to provide a 4’-10” side yard on the lot line shared with the neighbor to the southwest and a front yard of 5’-2” along Inwood Street; and

WHEREAS, because a front yard of at least 10 feet is required pursuant to ZR § 23-45, the applicant seeks the subject variance; and

WHEREAS, the applicant represents that, in

accordance with ZR § 72-21(a), the narrow width of the lot creates a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations; specifically, a complying building on the lot, which has a width of 25 feet, would result in an uninhabitable residence totaling 10’-2” in width with an interior wall-to-wall width of 9 feet; and

WHEREAS, the applicant states that, while the surrounding area is characterized by lots having similar widths of 25 feet, the majority of those lots are developed with residences built prior to the 1961 Zoning Resolution and, thus, contain legal non-compliant yards; and

WHEREAS, the applicant provided the Board with a uniqueness study of the area demonstrating that, within 400 feet of the subject site, there are no vacant corner lots and that within 1,000 feet of the subject site, there are four vacant corner lots. but two are held in common ownership with an adjacent tract of land and the other two are used as community gardens and subject to deed restrictions; and

WHEREAS, the applicant also provided evidence that, unlike the other vacant corner lots, the subject site is and has been owned separately and individually from all other adjoining tracts of land; and

WHEREAS, based upon a review of the record, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable zoning regulations; and

WHEREAS, the Board agrees that because of the site’s unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

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

WHEREAS, the applicant submitted a study of corner lots within 1,000 feet of the subject site, which evidences that all but one of the 41 corner lots with widths of 25 feet have non-complying front yards; and

WHEREAS, the applicant conducted a neighborhood character study, showing that the 16 lots on the same side of South Road are occupied by buildings between 17 and 20 feet in width with between 5 and 8 feet of open area between buildings, which is comparable to the subject proposal to construct a building 15 feet in width with an 8-foot open area along the southwestern lot line; and

WHEREAS, the neighborhood character study further demonstrates that 10 of 12 nearby corner lots along Inwood Street have buildings constructed at or near the lot line with non-complying front yards along the lots’ wide sides; and

WHEREAS, lastly, as requested by the Board, the applicant provided evidence that 70 percent of the homes within a 400-foot radius are two- or three-family residences, showing that the applicant’s proposed two-family residence is consistent with the surrounding area; and

WHEREAS, the applicant also submitted photographic

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streetscape diagrams and illustrations of the surrounding neighborhood; and

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

WHEREAS, based on the documentation submitted by the applicant, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title; and

WHEREAS, as to the minimum variance requirement set forth at ZR § 72-21(e), the applicant represents that the inclusion of the complying front yard along South Road and two complying side yards limit the degree of the variance, which has been reduced from the applicant's original proposal, which included additional waivers for open area between buildings and lot coverage, and that the front-yard waiver reflects the minimum necessary to afford the applicant relief; and

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

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 16-BSA-058Q, dated December 15, 2015; and

WHEREAS, accordingly, the Board found that the applicant had substantiated a basis to warrant exercise of discretion to grant under ZR § 72-21, and is therefore entitled to relief on the grounds of practical difficulty or unnecessary hardship.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and that the application be *granted* to permit, within an R4-1 zoning district, the construction of a two-story, two-family residence, contrary to ZR § 23-45 (front yards), *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 3, 2017"—Nine (9) sheets, and *on further condition*:

THAT the following shall be the bulk parameters of the site: minimum front yard depth of 5'-2" along Inwood Street, as reflected on the BSA-approved plans;

THAT a certificate of occupancy shall be obtained within four (4) years;

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

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

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

relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 25, 2017.

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**30-14-BZ**

APPLICANT – Eli Katz of Binyan Expediting, for Cong. Machine Chaim, owner; Yeshiva Bais Sorah, lessee.

SUBJECT – Application February 11, 2014 – Variance (§72-21) proposed enlargement to an existing school (Use Group 3) is contrary to §§42-00 & 43-43. M1-1 zoning district.

PREMISES AFFECTED – 6101 16<sup>th</sup> Avenue aka 1602 61<sup>st</sup> Street aka 1601 62<sup>nd</sup> Street, north east corner of 62nd Street and south east side of 16th Avenue, Block 5524, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for continued hearing.

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**56-02-BZ**

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Application June 21, 2016 – Compliance Hearing of a previously approved Variance (§72-21) which permitted the construction of a four-story plus cellar school, which created non-compliances with respect to floor area ratio, lot coverage, side, front and rear yards, and which is contrary to ZR §24-11, §24-34, §24-35, §24-36 and §24-521. R5 zoning district.

PREMISES AFFECTED – 317 Dahill Road, Block 5369, Lot(s) 82, 83, 84 and 85 (tentative Lot 82), Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to May 9, 2017, at 10 A.M., for continued hearing.

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**1-96-BZ**

APPLICANT – New York City Board of Standards and Appeals.

SUBJECT – Application August 2, 2016 – Amendment for an extension of an existing school building to add 3<sup>rd</sup> and 4<sup>th</sup> floors. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue, southwest corner of Avenue "C", Block 5369, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to May 9, 2017, at 10 A.M., for continued hearing.

# MINUTES

## 174-14-BZ

APPLICANT – Jim Kusi, for Robert Calcano, owner.  
SUBJECT – Application July 23, 2014 – Re-instatement (§11-411) of a previously approved variance permitting the operation an Automotive Service Station (UG 16B) with accessory uses which expired November 6, 1994; Waiver of the Rules. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 820 East 182<sup>nd</sup> Street aka 2165-75 Southern Boulevard, Block 3111, Lot 59, Borough of Bronx.

### COMMUNITY BOARD #2BX

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for adjourned hearing.

## 2016-4165-BZ

APPLICANT – Glen V. Cutrona, for Shore to Shore Foster, LLC, owner.

SUBJECT – Application April 6, 2016 – Variance (§72-21) to permit the construction of an eating and drinking establishment (UG 6) (*Tim Horton's*) with an accessory drive thru contrary to ZR §22-10. R3X (SRD) zoning district.

PREMISES AFFECTED – 5801 Amboy Road, Block 6896, Lot 53, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for continued hearing.

## 2016-4166-BZ

APPLICANT – Eric Palatnik, P.C., for 2577 East 17<sup>th</sup> Street, LLC, owner.

SUBJECT – Application April 6, 2016 – Special Permit (§73-44) to reduce the required number of accessory parking spaces contrary to §36-21 for ambulatory diagnostic or treatment facility use and Use Group 6 uses with Parking Requirement Category B1. C8-1 zoning district.

PREMISES AFFECTED – 2579 East 17<sup>th</sup> Street, Block 7438, Lot 46, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for continued hearing.

## 2016-4178-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 350 Lafayette Owner LP, owner.

SUBJECT – Application April 25, 2016 – Variance (§72-21) to allow retail (Use Groups 6 and 10) below the floor level of the second story contrary to ZR §42-14(D)(2)(b), and Use Group 10 retail use, contrary to ZR §42-12. M1-5B zoning district.

PREMISES AFFECTED – 11-13 Bond Street, aka 348-354 Lafayette Street, Block 529, Lot 15, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for continued hearing.

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**REGULAR MEETING**  
**TUESDAY AFTERNOON, APRIL 25, 2017**  
**1:00 P.M.**

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

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**ZONING CALENDAR**

## 2016-4133-BZ

APPLICANT – Law Office of Lyra J. Altman, for BD 2018 East 4<sup>th</sup> LLC, owner.

SUBJECT – Application March 10, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141) and perimeter wall height (§23-631). R2X (OP) zoning district.

PREMISES AFFECTED – 2018 East 4<sup>th</sup> Street, Block 7106, Lot 176, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 11, 2016, acting on Alteration Application No. 321239290, reads in pertinent part:

“The proposed enlargement of the existing one family residence in an R2X zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
  2. Creates non-compliance with respect to perimeter wall height by exceeding allowable perimeter wall height and is contrary to Section 23-631(b) of the Zoning Resolution”;
- and

WHEREAS, the Board notes that since the filing of this application, the Zoning Resolution has been amended and the text formerly found in ZR § 23-141, setting for the maximum floor area ratio, minimum required open space and maximum lot coverage permitted in an R3-2 zoning district, is now found in ZR § 23-142; thus, the Board treats the citation to ZR § 23-141 in DOB’s objection as a citation to ZR § 23-142; and

WHEREAS, this is an application under ZR § 73-622 to permit, within an R2X zoning district in the Special Ocean Parkway District, the enlargement of an existing two-story, with cellar, single-family detached residence, contrary

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# MINUTES

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ZR § 23-142 (floor area ratio) and ZR § 23-631 (perimeter wall height); and

WHEREAS, a public hearing was held on this application on April 25, 2017, after due notice by publication in *The City Record*, and then to decision on the same day; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 4th Street, between Avenue S and Avenue T, within an R2X zoning district in the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along East 4th Street, 100 feet of depth and 4,000 square feet of lot area; and

WHEREAS, the site is occupied by an existing two-story, with cellar, single-family detached residence with 2,282 square feet of floor area, a floor area ratio ("FAR") of 0.57, side yards measuring 3'-6" and 15'-5", a rear yard of 26'-11", a building height of 31 feet and a perimeter wall height of 22'-3"; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

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 detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing dwelling to 4,553 square feet of floor area (1.14 FAR), maintain the existing 3'-6" side yard, decrease the existing 15'-5" to 8'-5", decrease the existing 26'-11" rear yard to 20 feet, increase the existing 31-foot building height to 34'-11" and decrease the existing 22'-3" perimeter wall height to 21'-7"; and

WHEREAS, at the subject site, a maximum of 3,400 square feet of floor area (0.85 FAR) is permitted under ZR § 23-142, and a maximum perimeter wall height of 21 feet is permitted under ZR § 23-631(b); and

WHEREAS, the applicant submits that the proposed perimeter wall height would comply with ZR § 73-622(3)

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# MINUTES

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because the subject site is within an R2X zoning district and the proposed perimeter wall height is equal to that of an adjacent single-family detached residence's street-facing perimeter wall, which is also non-complying; and

WHEREAS, the applicant presented analyses of the floor area ratio of single- and two-family residences on the same social block of the subject site to demonstrate that the proposed enlargement is consistent with the character of the surrounding neighborhood; and

WHEREAS, the floor area analysis concludes that 11 homes have FARs equal to or greater than 0.85, ranging from 0.85 to 1.43, including six on the same side of the street as the subject site, with FARs ranging from 1.01 to 1.36, and a residence directly across the street from the subject site with an FAR of 1.37; and

WHEREAS, in addition to the floor area analysis, the applicant also submitted a photographic study of the residences with FARs greater than 0.85, a photographic streetscape diagram of the social block and a comprehensive photographic study of the subject site to support the contention that the enlarged building would not alter the neighborhood's built character and, with its similar design, architectural features and building materials, would instead pay homage to the character of the subject block; and

WHEREAS, in response to the Board's regarding the building's floor-to-ceiling heights changing as between the existing conditions and the proposed, the applicant confirmed that there would be no change in the existing building's floor joists and clarified that this change resulted from the addition of radiant flooring to the proposed home; and

WHEREAS, the Board questioned whether the side yards comply with ZR § 23-461(c)(4), and the applicant further confirmed that the proposed building would comply with all zoning regulations, including those applicable within the Special Ocean Parkway District; and

WHEREAS, at hearing, the applicant provided further explanation as to how the dormers of the proposed building are visually consistent with numerous others on the existing social block and testified that the other buildings on the social block appear to constitute lawful conditions, based on publicly available records from DOB; and

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

WHEREAS, the applicant represents that the proposed modification of bulk regulations will not interfere with any public improvement project; and

WHEREAS, the Board also finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of parking regulations is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 and 73-03 to permit, within an R2X zoning district in the Special Ocean Parkway District, the enlargement of an existing two-story, with cellar, single-family detached residence, contrary ZR § 23-142 (floor area) and ZR § 23-631 (perimeter wall height); *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 February 7, 2017"-Twelve (12) sheets; and *on further condition*:

THAT following shall be the bulk parameters of the building: maximum floor area of 4,553 square feet (1.14 FAR) and a maximum perimeter wall height of 21'-7", as illustrated on the BSA-approved plans;

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

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

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

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

Adopted by the Board of Standards and Appeals, April 25, 2017.

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**161-15-BZ**

APPLICANT – Sheldon Lobel, P.C., for Church of Pentecost U.S.A., Inc., owner.

SUBJECT – Application July 23, 2015 – Variance (§72-21) to permit the enlargement of an existing house of worship (UG 4) contrary to lot coverage and rear yard requirements. R6A/R5A zoning district.

PREMISES AFFECTED – 621 East 216<sup>th</sup> Street, Block 4649, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #12BX**

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.  
-----

**2016-4122-BZ**

APPLICANT – Eric Palatnik, P.C., for 902 Quentin Road, LLC, owner.

SUBJECT – Application February 19, 2016 – Special Permit (§73-44) to reduce the required number of accessory parking spaces contrary to §36-21 for ambulatory diagnostic or treatment facility use (UG 4) from eighty seven (87) to forty four (44) parking spaces. C8-2/C4-2 zoning district.

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# MINUTES

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PREMISES AFFECTED – 902-912 Quentin Road, Block 6666, Lot(s) 1, 5, 8, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for continued hearing.

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**2016-4181-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Alber Bukai and Subhi Bukai, owners.

SUBJECT – Application May 2, 2016 – Special Permit (§73-622) for the enlargement and conversion of an existing two family dwelling to a single family dwelling, contrary to side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R5 zoning district.

PREMISES AFFECTED – 1981 East 14<sup>th</sup> Street, Block 7293, Lot 54, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for continued hearing.

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*Ryan Singer, Executive Director*

# 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.

Volume 102, No. 19

May 11, 2017

### DIRECTORY

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# DOCKETS

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New Case Filed Up to May 2, 2017  
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**2017-133-A**

206 Beach 42nd Street, located on Beach 42nd Street off of Rockaway Beach Boulevard, Block 15850, Lot(s) 30, Borough of **Queens, Community Board: 14**. General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R4 district.  
-----

**2017-134-A**

118 East 7th Road, located on East 7th Road between Church and Walton Road, Block 15455, Lot(s) 11, Borough of **Queens, Community Board: 14**. General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-2 district.  
-----

**2017-135-A**

14-50 Gipson Street, located on Gipson Street off of Enright Road, Block 15655, Lot(s) 33, Borough of **Queens, Community Board: 14**. General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3X district.  
-----

**2017-136-A**

310 East 8th Road, located on East 8th Street off of Lanark Road, Block 15466, Lot(s) 14, Borough of **Queens, Community Board: 14**. General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-2 district.  
-----

**2017-137-A**

580 Lincoln Avenue, located on Lincoln Avenue between Olympia Boulevard and Colony Avenue, Block 3884, Lot(s) 28, Borough of **Staten Island, Community Board: 2**. General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-1 district.  
-----

**2017-138-A**

3089 Alan Place, located on Alan Place off of Pennyfield Avenue, Block 05529, Lot(s) 446, Borough of **Bronx, Community Board: 10**. General City Law 36 Waiver for the reconstruction of properties located on unmapped streets, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-1 district.  
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**2017-139-A**

197 Beach 25th Street, located on Beach 25th Street off of Seagirt Avenue, Block 15817, Lot(s) 59, Borough of **Queens, Community Board: 14**. General City Law 36 Waiver for the reconstruction of properties located on unmapped streets, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3A district.  
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**2017-140-BZ**

55 Prospect Street, located on the north side of Prospect Street between Adams and Pearl Street, Block 00063, Lot(s) 1, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to permit the legalization of physical culture establishment (Yoga Vida Dumbo) on a portion of the cellar and first floor of an existing building. M1-6 zoning district. M1-6 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 JUNE 6, 2017, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 6, 2017, 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**

#### **139-95-BZ**

**APPLICANT** – Rothkrug Rothkrug & Spector LLP, for 54<sup>th</sup> Street, LLC, owner.  
**SUBJECT** – Application October 11, 2016 – Extension of Term for a Special Permit (§73-36) to allow the operation of a Physical Cultural Establishment (Equinox) which expired on October 8, 2016. C1-9 (TA) zoning district.  
**PREMISES AFFECTED** – 250 East 54<sup>th</sup> Street, Block 1327, Lot 7502, Borough of Manhattan.  
**COMMUNITY BOARD #2M**

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#### **187-08-BZ**

**APPLICANT** – Sheldon Lobel, P.C., for Congregation & Yeshiva Maschzikei Hadas, owner.  
**SUBJECT** – Application April 22, 2016 – Amendment to a variance (§72-21) to allow a five-story school (*Congregation & Yeshiva Maschzikei Hadas*). The application seeks to increase the zoning lot contrary to the previous Board approval. M1-2/R6B zoning district.  
**PREMISES AFFECTED** – 1247 38<sup>th</sup> Street, Block 5295, Lot(s) 52 & 109, Borough of Brooklyn.  
**COMMUNITY BOARD #12BK**

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#### **46-10-BZ**

**APPLICANT** – Eric Palatnik, P.C., for 1401 Bay LLC, owner.  
**SUBJECT** – Application November 5, 2015 – Extension of Time to Complete Construction of an offsite parking lot to accommodate the required parking, which expires, November 15, 2015, located within an C4-2 zoning district.  
**PREMISES AFFECTED** – 1401 Sheepshead Bay Road, intersection of Sheepshead Bay Road and Avenue Z. Block 7459, Lot 1. Borough of Brooklyn.  
**COMMUNITY BOARD #15BK**

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#### **228-13-BZ**

**APPLICANT** – Pryor Cashman LLP, for 45 West 67<sup>th</sup> Street Development Company, owner; Crossfit, NYC lessee.  
**SUBJECT** – Application June 20, 2016 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (Cross Fit) located in the cellar level of an existing 31-story building which expired on May 20, 2016. C4-7 (SLSD) zoning

district.  
**PREMISES AFFECTED** – 157 Columbus Avenue, Block 1120, Lot 7501, Borough of Manhattan.  
**COMMUNITY BOARD #7M**

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### **APPEALS CALENDAR**

#### **2016-4263-A**

**APPLICANT** – Rothkrug Rothkrug & Spector, LLP, for R.A. Properties, LLC, owner.  
**SUBJECT** – Application October 3, 2016 – Proposed development of a two-story building with warehouse use on the first floor (UG 16B) and office use on the second floor (UG 6) not fronting on a mapped street contrary to General City Law 36. M3-1(SRD)  
**PREMISES AFFECTED** – 235 Industrial Loop, Block 7206, Lot 314, Borough of Staten Island.  
**COMMUNITY BOARD #3SI**

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## **REGULAR MEETING JUNE 6, 2017, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 6, 2017, 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**

#### **2016-4167-BZ**

**APPLICANT** – Eric Palatnik, P.C., for Ocean Services, Inc., owner.  
**SUBJECT** – Application April 6, 2016 – Special Permit (§73-622) for the enlargement of an existing two story single family home contrary to floor area, lot coverage and open space (ZR 23-141(b)); and less than the required rear yard (ZR 23-47). R3-1 zoning district.  
**PREMISES AFFECTED** – 4180 Ocean Avenue, Block 8737, Lot 92, Borough of Brooklyn.  
**COMMUNITY BOARD #15BK**

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#### **2016-4243-BZ**

**APPLICANT** – Sheldon Lobel, P.C., for Silver Capital, LLC, owner.  
**SUBJECT** – Application August 25, 2016– Variance (§72-21) to permit a supermarket (UG 6A) on the ground floor and office use (UG 6B) on the second floor of an existing building contrary to ZR §22-10. R8 zoning district.  
**PREMISES AFFECTED** – 151 East Tremont Avenue, Block 2808, Lot 4, Borough of Bronx.  
**COMMUNITY BOARD #5BX**

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# CALENDAR

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**2016-4464-BZ**

APPLICANT – Law Office of Jay Goldstein, for Noah S. Smith, owner.

SUBJECT – Application December 8, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space ratio (ZR 23-141); side yard (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1350 East 28<sup>th</sup> Street, Block 7663, Lot 60, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**2017-35-BZ**

APPLICANT – Law Office of Jay Goldstein, for Geloda Briarwood Corp., owner; Fhitting Room, lessee.

SUBJECT – Application February 6, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*The Fhitting Room*) on the first floor of an existing building. C1-9 and R7-2 zoning district.

PREMISES AFFECTED – 580 Columbus Avenue, Block 1219, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #7M**

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*Ryan Singer, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, MAY 2, 2017 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 395-60-BZ

APPLICANT – Eric Palatnik, P.C., for Ali Swati, owner.  
SUBJECT – Application March 11, 2016 – Extension of  
Term (§11-411) of a previously approved variance  
permitting the operation of an Automotive Repair Facility  
(UG 16) which expired on December 9, 2015; Waiver of the  
Rules. R5 zoning district.

PREMISES AFFECTED – 2557 Linden Boulevard, Block  
4461, Lot 27, Borough of Brooklyn.

#### COMMUNITY BOARD #5BK

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

#### THE VOTE TO GRANT –

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

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the  
Board’s Rules of Practice and Procedure and an extension of  
the term of the variance previously granted by the Board,  
which expired on December 9, 2015; and

WHEREAS, a public hearing was held on this  
application on March 7, 2017, after due notice by  
publication in *The City Record*, with a continued hearing on  
May 2, 2017, and then to decision on that date; and

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

WHEREAS, Community Board 5, Brooklyn,  
recommends approval of this application on condition that  
there be no storage of automobiles awaiting service on the  
street; and

WHEREAS, the subject site is located on the northeast  
corner of Linden Boulevard and Euclid Avenue, within an  
R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 221 feet of  
frontage along Linden Boulevard, 130 feet of frontage along  
Euclid Avenue, 15,172 square feet of lot area and is  
occupied by a one-story, industrial building used as an  
automobile service station; and

WHEREAS, the subject site coincides with Lot 27 as  
shown on the official tax map of the City of New York and  
does not include Lot 25; and

WHEREAS, the Board has exercised jurisdiction over  
the subject site since November 1, 1960, when, under the  
subject calendar number, the Board granted a variance to  
permit the construction of a gasoline service station with

accessory uses for a term of fifteen (15) years, expiring  
November 1, 1975, on condition that flood lights be directed  
toward the station only and not into the streets and that all  
walls, both the walls of the accessory building and the fence  
wall, be faced with brick; and

WHEREAS, on October 31, 1961, and December 4,  
1962, under the subject calendar number, the Board granted  
extensions of time to complete construction pursuant to the  
previously approved variance; and

WHEREAS, on December 9, 1975, under the subject  
calendar number, the Board granted an extension of the term  
of the variance for ten (10) years, expiring December 9,  
1985, on condition that the façade of the building be cleaned  
and that the sidewalk in front of the site along Euclid  
Avenue be paved for its full width in accordance with the  
rules and regulations of the New York State Department of  
Highways; and

WHEREAS, on February 25, 1986, under the subject  
calendar number, the Board granted an extension of the term  
of the variance for ten (10) years, expiring December 9,  
1995, and amended its resolution to legalize the installation  
of the existing 6 foot high wrought iron fences and gates and  
to permit the window openings on the east wall of the  
accessory building to remain sealed on condition that there  
be no parking of vehicles on the sidewalk or in such a  
manner as to obstruct pedestrian or vehicular traffic; and

WHEREAS, on January 19, 1999, under the subject  
calendar number, the Board granted an extension of the term  
of the variance for ten (10) years, expiring December 9,  
2005, and amended its resolution to permit the legalization  
of an enlargement of the accessory building for use as a  
convenience store on condition that the premises remain  
graffiti free at all times, that the hours of operation be  
Sunday through Saturday 7:00 a.m. to 10:00 p.m. and that  
signs be maintained in accordance with the BSA-approved  
plans; and

WHEREAS, on November 17, 2009, under the subject  
calendar number, the Board amended the resolution to  
permit a change from Use Group 16 gasoline service station  
to Use Group 16 auto repair shop and Use Group 6  
convenience store and to extend the term of the variance for  
ten (10) years, expiring December 9, 2015, on condition that  
approval by the New York City Department of  
Environmental Protection be obtained for any work  
associated with the termination of the gasoline service  
station use at the site, that the site be maintained free of  
debris, that all graffiti be removed within 48 hours, that  
signage comply with C1 zoning district sign regulations, that  
fencing be maintained in good condition and that the  
parking lot be paved and maintained in good condition; and

WHEREAS, on November 9, 2010, under the subject  
calendar number, the Board granted an extension of time to  
obtain a certificate of occupancy; and

WHEREAS, on December 3, 2012, the Board issued a  
letter of substantial compliance to allow minor modifications  
to the approved plans depicting the approved auto repair  
shop; and

WHEREAS, on January 3, 2014, a certificate of

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# MINUTES

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occupancy was issued; and

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

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of § 1-07.3(b)(2) to permit the filing for an extension of term less than two (2) years after the expiration of the term; and

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

WHEREAS, in response to the Board's concerns at hearing, the applicant submitted evidence of improved site maintenance and repairs to the site—including the removal of graffiti, razor wire, debris and a refrigerator and the relocation of a dumpster—and improved landscaping, including newly planted trees along the site perimeter; and

WHEREAS, the Board finds the requested waiver and a ten (10) year extension of the term of the variance are appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and *reopens* and *amends* the resolution, dated November 1, 1960, as amended through November 9, 2010, so that as amended this portion of the resolution reads: "to grant an extension of the term of the variance for a term of ten (10) years from the expiration of the last grant, to expire December 9, 2025; *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received November 22, 2016' - Four (4) sheets; and on further condition:

THAT this grant shall be limited to a term of ten (10) years from December 9, 2015, expiring December 9, 2025;

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

THAT all fencing and landscaping shall be maintained in good condition, as indicated on the BSA-approved plans, and replaced as needed;

THAT there shall be no storage of automobiles awaiting service on the street;

THAT no sales of automobiles shall be permitted on the site;

THAT this approval shall be for the subject site (Lot 27) only, and the adjacent site (Lot 25) shall not be considered part of this approval or used in conjunction with the subject site;

THAT Department of Environmental Protection approval shall be obtained for any work associated with the termination of the gasoline service station use at the site;

THAT all graffiti shall be removed within 48 hours;

THAT the hours of operation shall be limited to Sunday through Saturday 7:00 a.m. to 10:00 p.m.;

THAT all signage shall comply with C1 zoning district sign regulations;

THAT the parking lot shall be paved and maintained in good condition;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; 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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 2, 2017.

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## 1129-64-BZ

APPLICANT – Davidoff Hatcher & Citron, LLP, for 147-36 Brookville Boulevard Corp., owner.

SUBJECT – Application January 11, 2016 – Extension of Term of a previously approved Variance (72-21) permitting the operation of an Auto Supplies Sales Establishment (UG 6) which expired on June 10, 2015; Amendment to legalize interior layout changes, permit general Use Group 6 Use and eliminate the term of the variance; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 147-36 Brookville Boulevard, Block 13729, Lot(s) 30, 33, Borough of Queens.

## COMMUNITY BOARD #13Q

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, an extension of the term of the variance, previously granted by the Board pursuant to ZR § 72-21, which expired on June 10, 2015, and an amendment to permit uses in Use Group 6 and eliminate the term of years; and

WHEREAS, a public hearing was held on this application on August 16, 2016, after due notice by publication in *The City Record*, with continued hearings on January 24, 2017 and April 25, 2017, and then to decision on May 2, 2017; and

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

WHEREAS, Community Board 13, Queens, recommends approval of this application, without elimination of the term, and seeks assurances that customers will not perform car repairs in the parking lot; and

WHEREAS, the subject site is located on the west side of Brookville Boulevard, between 147th Road and 147th Drive, in an R3-2 zoning district, in Queens; and

WHEREAS, the site has approximately 45 feet of frontage along Brookville Boulevard, between 113 and 135 feet of depth, 10,743 square feet of lot area and is occupied by a one-story commercial building; and

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WHEREAS, the Board has exercised jurisdiction over Lot 33 alone since July 3, 1956, when, under BSA Calendar No. 176-55-BZ, the Board granted a variance to permit in the existing building the continuation of factory use on condition that the building not be increased in height and area and that such portable fire-fighting appliance be maintained as directed by the Fire Department for a term of five (5) years, expiring July 3, 1961; and

WHEREAS, on April 4, 1961, under BSA Calendar No. 176-55-BZ, finding no justification for the exercise of discretion, the Board denied an application to permit, on both Lots 30 and 33, the construction of a one-story extension of the existing factory building for the assemblage of automobile transmissions and extend the use to include minor auto repairs limited to the installation and servicing of transmissions and parking of cars awaiting service; and

WHEREAS, on March 2, 1965, under the subject calendar number, the Board granted a variance for both Lots 30 and 33 to permit the construction of a one-story enlargement to an existing building used for the sale of auto supplies for a term of ten (10) years, expiring March 2, 1975, on condition that the screening around the parking area be done in accordance with ZR § 25-77, that there be no repairs or installation of parts conducted on the subject site and that all work be done and a certificate of occupancy obtained within one (1) year; and

WHEREAS, on April 13, 1966, under the subject calendar number, the Board granted an application to reopen and extend the time to complete construction and to obtain a certificate of occupancy by one (1) year; and

WHEREAS, on June 10, 1975, under the subject calendar number, the Board granted an extension of the term of the variance for a term of ten (10) years, expiring June 10, 1985, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on November 19, 1985, under the subject calendar number, the Board granted a further extension of term for a subsequent ten (10) years, expiring June 10, 1995, on condition that a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, on October 16, 1996, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring June 10, 2005, on condition that exterior lighting be directed down and away from residential properties, that landscaping and fencing be maintained, that gates to the parking area be secured during non-business hours and that a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, on June 7, 2005, under the subject calendar number, the Board granted an extension of term of the variance for a term of ten (10) years, expiring June 10, 2015, on condition that all mechanical work and replacement of auto parts take place on-site with no work done on the streets surrounding the site, as specified in signage posted to that effect, that any and all abandoned vehicles be removed from the parking not, that general maintenance and improvement be performed on-site, including trim painting, litter removal and clean-up of

bushes and shrubs, that gates to the parking area be closed at all times except when in actual use and that signs affixed to the building be updated, removed and replaced in compliance with the Building Code; and

WHEREAS, the term of the variance having expired, the instant application seeks a further extension of the term of the variance for an additional ten (10) years and an amendment to permit Use Group 6 uses at the site and eliminate the term of the variance; and

WHEREAS, additionally, the applicant seeks a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Rules"), of Rule § 1-07.3(b)(2) to permit the filing of the application less than two (2) years after the expiration of term; 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, the applicant submits that the requested amendment would provide much needed flexibility, that the building has been a continuous commercial presence in the area, previously for the sale of auto supplies, and that other commercial uses in Use Group 6 would be consistent with the historic use of the site; and

WHEREAS, the applicant further represents that the elimination of the term is consistent with the longstanding commercial use of the site, which has existed continuously for more than 50 years; and

WHEREAS, in response to the Community Board's concerns, the Board notes that certain conditions and safeguards have been imposed in order to protect the character of the surrounding neighborhood and that violations of the Board's conditions or of the Zoning Resolution may subject the applicant to appropriate enforcement action, including fines, revocation of the variance under ZR § 11-62 or criminal prosecution under ZR § 11-61, which renders any such violator guilty of a misdemeanor; and

WHEREAS, the applicant further represents that certain modifications to the plans—including construction of an access ramp to the rear space, installation of accessories in the toilet room for persons with disabilities, repair of the exit stair from the rear and fire stopping at the demising partition wall—are necessary improvements to comply with the New York City Construction Codes and Fire Code; and

WHEREAS, in response to requests from the Board, the applicant repaved the sidewalk and curb cut, replaced the wooden staircase with a metal staircase and railing, brought the signage into compliance with the size restrictions applicable in the zoning district, repaired and painted the fence, replaced dead plantings with bushes expected to grow to six feet in height and painted the building façade; and

WHEREAS, the applicant also installed new interior curbs around the planting beds as well as concrete bumpers; and

WHEREAS, in response to the Community Board and the Board's concerns about parking, the applicant revised



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the drawings to demonstrate the adequacy of the parking configuration and compliance with C1-2 zoning district parking regulations; and

WHEREAS, the Board finds that the requested waiver of the Rules, extension of term and amendments will not impair the essential character or the future use or development of the surrounding area and, accordingly, are appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and *reopens* and *amends* the resolution, dated July 3, 1956, as amended through June 7, 2005, so that as amended this portion of the resolution reads: “to eliminate the term of the variance, *on condition* that all work shall substantially conform to the drawings as they apply to the objection above-noted, filed with this application marked ‘Received April 27, 2017’ - Four (4) sheets, *and on further condition*:

THAT the ADA accessible ramp shall be installed as shown on the Board-approved plans;

THAT any Use Group 6 use on the site shall be within Parking Category B (PRC-B) or less, requiring at least 1 space per 400 square feet of floor area;

THAT all mechanical work and replacement of auto parts shall take place on the site and no work shall be done on the streets surrounding the site; signs shall be posted to that effect;

THAT any and all abandoned vehicles shall be removed from the parking lot;

THAT general maintenance and improvements shall be performed on the property, including trim painting, litter removal, and the clean-up of bushes and shrubs;

THAT the gates to the parking area shall be closed at all times except when in actual use;

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

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

THAT the signs affixed to the building shall be updated, removed and replaced in compliance with the Building Code;

THAT a certificate of occupancy shall be obtained within one (1) year, by May 2, 2018;

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

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

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

Adopted by the Board of Standards and Appeals, May 2, 2017.

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## 80-05-BZ

APPLICANT – Aura Wellness Spa Corp., for Erol Devli, owner; Rockford Chun, lessee.

SUBJECT – Application December 15, 2015 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (Aura Wellness Spa Corp.) which expired on November 15, 2015.

C6-6 and C6-4.5 zoning district.

PREMISES AFFECTED – 49 West 33<sup>rd</sup> Street, Block 835, Lot 9, Borough of Manhattan.

### COMMUNITY BOARD #5M

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit, previously granted by the Board pursuant to ZR § 73-36, which expired on November 15, 2015; and

WHEREAS, a public hearing was held on this application on June 2, 2016, after due notice by publication in *The City Record*, with continued hearings on June 2, 2016 and March 28, 2017, and then to decision on May 2, 2017; and

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

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

WHEREAS, the subject site is located on the north side of West 33<sup>rd</sup> Street, between Broadway and Fifth Avenue, partially within a C6-6 zoning district and partially within a C6-4.5 zoning district in the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 45 feet of frontage along West 33<sup>rd</sup> Street, 99 feet of depth, 4,398 square feet of lot area and is occupied by a four-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 15, 2005, when, under the subject calendar number, the Board granted an application to permit a physical culture establishment (“PCE”) on a portion of the cellar, first floor and second floor of the building for a term of ten (10) years, expiring November 15, 2015, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that massages be performed only by New York State-licensed masseurs or masseuses, that Local Law 58/87 compliance be as reviewed by the Department of Buildings (“DOB”), that fire safety measures, including a sprinkler system, be installed and maintained and that an interior fire alarm system be provided; and

WHEREAS, on May 13, 2014, the Board issued a

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letter of substantial compliance permitting the change in ownership and operating control of the PCE from “Nikko Spa and Health Corp.” to “Aura Wellness Spa Corp.”; and

WHEREAS, the applicant seeks an extension of the term of the special permit for an additional ten (10) years; and

WHEREAS, at hearing, the Board requested that the applicant revise the plans to reflect the current layout and provide additional information about the hours of operation, staffing plan and fire-safety systems; and

WHEREAS, in response, the applicant provided revised plans, clarifying, among other things, that the locker room facilities are separated by gender, and submitted an operational plan; and

WHEREAS, the applicant states that the facility operates from 10:00 a.m. to 2:00 a.m., seven days a week, accepts walk-in clients until 11:00 p.m. only, after which time service is by appointment only; and

WHEREAS, the Fire Department represents that it has no objection to the subject application; and

WHEREAS, the Board finds that a ten (10) year extension is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens and amends* the resolution, dated November 15, 2005, so that as amended this portion of the resolution reads: “to grant an extension of the term of the special permit for a term of ten (10) years, to expire November 15, 2025, *on condition that* all work and site conditions shall comply with drawings filed with this application marked ‘Received April 13, 2017’-Three (3) sheets, and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years from November 15, 2015, expiring November 15, 2025;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed only by New York State-licensed masseurs or masseuses;

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

THAT an amended certificate of occupancy shall be obtained within one (1) year, by May 2, 2018;

THAT Local Law 58/87 compliance shall be as reviewed and approved by the Department of Buildings;

THAT fire safety measures, including a sprinkler system, shall be maintained as illustrated on the Board-approved plans;

THAT an interior fire alarm system shall be as provided as set forth on the Board-approved plans and as reviewed and approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, May 2, 2017.

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## 301-13-BZ

APPLICANT – Eric Palatnik, P.C., for Rabbi Mordechai Jofen, owner.

SUBJECT – Application September 6, 2016 – Amendment of a previously approved Variance (§72-21) permitting the addition of three floors to an existing one story and basement UG 4 synagogue for a religious-based college and post graduate (UG 3) with 10 dormitory rooms, contrary to sections 24-11, 24-521, 24-52,24-34(a),24-06. The amendment seeks a correction that the original DOB objection did not include a waiver of ZR §24-551 (side yard) and ZR §24-11 (Lot Coverage) R5B zoning district. PREMISES AFFECTED – 1502 Avenue N, Block 6753, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application to amend a variance, previously granted by the Board pursuant to ZR § 72-21, to correct errors in the original application, specifically, the lot coverage calculation and the absence of a waiver reflected in the previously approved plans; and

WHEREAS, a public hearing was held on this application on March 28, 2017, after due notice by publication in *The City Record*, with a continued hearing on May 2, 2017, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda, 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 southeast corner of the intersection of Avenue N and East 15th Street, in an R5B zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along Avenue N, 100 feet of frontage along East 15th Street, 4,000 square feet of lot area and is occupied by a one-story plus basement UG 4 synagogue; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 16, 2015, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a four-story plus basement UG 3 seminary and UG 4 synagogue contrary to

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zoning regulations for floor area, lot coverage, height, sky exposure plane, front yards, side yards and parking, contrary to ZR §§ 24-11, 24-34, 24-35(a), 24-521, 24-52 and 25-31 (the “2015 Resolution”); and

WHEREAS, as a condition of that grant, the building parameters were defined as: a maximum floor area of 16,711.19 square feet (4.18 FAR), a maximum lot coverage of 87 percent, a maximum building height of 54 feet, no front yard, a single side yard of 10 feet, eight bicycle parking spaces and one motor vehicle parking space; and

WHEREAS, the applicant now seeks to correct the calculation of the approved building’s lot coverage, which is 89 percent, rather than 87 percent as stated in the 2015 Resolution, and recognize an additional waiver of ZR § 24-551, which was evident in the previously approved plans but absent from the Department of Buildings (“DOB”) objection and the Board Resolution; and

WHEREAS, the applicant represents that there are no changes proposed to the previously approved plans and that the Yeshiva’s program has not changed since the Board’s 2015 approval; and

WHEREAS, accordingly, the revised DOB decision, dated December 2, 2016, acting on Application No. 320832248 adds in pertinent part:

Proposed plans are contrary to ZR 24-551 in that the proposed side setback exceeds a height of 35 feet and exceeds the sky exposure plane of 2:1; and

WHEREAS, in the course of reviewing this application, the Board noted that the subject site had open Environmental Control Board (“ECB”) violations and fines and requested that such fines be paid and certificates of correction filed, as necessary, prior to the Board’s vote on this application; and

WHEREAS, at hearing, the applicant indicated that all outstanding ECB fines had been paid; and

WHEREAS, the Board also noted that the proposed plans submitted with this application included additional detailing on the roof—including bulkheads, air conditioning units and acoustical fencing—absent from the plans approved in connection with the 2015 Resolution and requested that these proposed plans be amended to pull the air conditioning units and fencing to the center of the roof in order to be less visible from the street and to better incorporate the bulkheads into the overall design of the building; and

WHEREAS, the applicant made these requested changes in satisfaction of the Board’s request; and

WHEREAS, based on the foregoing, the Board finds that the requested amendment does not alter the Board’s findings made for the original variance, specifically, the proposed variance, as amended, continues to reflect the minimum variance, and has determined that the request to amend the 2015 Resolution to correct the maximum lot coverage calculation and recognize an additional waiver of ZR § 24-551 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 June 16, 2015, so that as amended this portion of the resolution shall read: “to permit a four-story and basement building to be occupied by a rabbinical seminary (college and post-graduate)

(Use Group 3) and synagogue (Use Group 4), which does not comply with the underlying zoning regulations for floor area, lot coverage, height, sky exposure plane, front yards, side yards, parking and side yard setback, contrary to ZR §§ 24-11, 24-34, 24-35(a), 24-521, 24-52, 25-31 and 24-551, *on condition* that any and all work shall substantially conform to drawings as filed with this application, marked ‘Received April 14, 2017’ – Eighteen (18) sheets; and *on further condition*:

THAT the building parameters will be: a maximum floor area of 16,711.19 sq. ft. (4.18 FAR); a maximum lot coverage of 89 percent; a maximum building height of 54’-0”; no front yard; a single side yard of 10’-0”; eight bicycle parking spaces and a single motor vehicle parking space, all as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a rabbinical seminary (college and post-graduate) (Use Group 4) with accessory synagogue (Use Group 3);

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

THAT construction shall proceed in accordance with ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years of this amendment;

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;

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.”

Adopted by the Board of Standards and Appeals, May 2, 2017.

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## 418-50-BZ

APPLICANT – Law Office of Stuart Klein, for WOTC Tenants’ Corp., owner.

SUBJECT – Application November 21, 2014 – Amendment seek to modify the grant to allow for the addition of 98 parking spaces and the development of a clubhouses which will provide additional amenities and recreation space for the sole use and enjoyment of the residents at the premises, located in an R3-2 zoning district.

PREMISES AFFECTED – 73-69 217<sup>th</sup> Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74<sup>th</sup> Avenue (Block 7754, Lot 3); 73-10 220<sup>th</sup> Street (Block 7755, Lot 3), Borough of Queens.

## COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for continued hearing.

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## 240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties LLC, owner.

SUBJECT – Application December 24, 2015 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair facility (UG 16B) which is set to expire on November 3, 2018; Amendment (§11-413) to permit a change in use from automotive repair facility (UG 16B) to automotive sales (UG 9A); Extension of Time to Obtain a Certificate of Occupancy which expired on April 1, 2015; Waiver of the Rules to permit the filing for an Extension of Term in excess of 1 year prior to the expiration and for filing in excess of 30 day but less than 1 year of the expiration of the time to obtain a Certificate of Occupancy. C2-2/R6B & R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Block 7305, Lot 19, Borough of Queens.

### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for adjourned hearing.

## 949-57-BZ

APPLICANT – Akerman, LLP, for Pelham Bridges Realities, LLC, owner; NY Dealers Stations, LLC, owner.

SUBJECT – Application July 7, 2015 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on October 29, 2014; Waiver of the Rules. R5D zoning district.

PREMISES AFFECTED – 2100 Williamsbridge Avenue, Block 4310, Lot 30, Borough of Bronx.

### COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.

## 1255-80-BZ

APPLICANT – Gerald J. Caliendo, RA. AIA, for Brett Morgan LLP, owner.

SUBJECT – Application November 23, 2014 – Extension of Term; Amendment and Waiver 72-01: request an extension of term for a previously expired variance that expired on 6/2/2011 and Amendment to change from the use (UG 17) to (UG6) and also require Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 35-33 31<sup>st</sup> Street, Block 00604, Lot 1, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for adjourned hearing.

## 235-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2009 Mermaid, LLC, owner.

SUBJECT – Application May 11, 2016 – Extension of Term of a previously approved Special Permit (§73-27) permitting the operation of funeral establishment (UG 7) which expired on May 12, 2014; Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 2009 Mermaid Avenue, Block 7018, Lot 42, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for adjourned hearing.

## APPEALS CALENDAR

### 2016-4232-A thru 2016-4235-A

APPLICANT – Eric Palatnik, P.C., for Anthony Gallo, owner.

SUBJECT – Application August 3, 2016 – Proposed three-story two and cellar residential development which is within the unbuilt portion of the mapped street, contrary to General City Law 35. R5 zoning district.

PREMISES AFFECTED – 139-12, 139-16, 139-19 and 139-22 Atlantic Avenue, aka 95<sup>th</sup> Avenue, Block 10006, Lot(s) 5, 7, 8, 9, Borough of Queens.

### COMMUNITY BOARD #12Q

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”), dated July 18, 2016, acting on Application Nos. 421234088, 421234079, 421234060 and 421229799 read in pertinent part:

“Proposed construction located in the bed of a mapped street is contrary to section 35 of the General City Law. Therefore, Board of Standards and Appeals approval is required”; and

WHEREAS, this is an application to allow the construction of a residential development 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 February 14, 2017, after due notice by publication in *The City Record*, with a continued hearing on March 28, 2017, and then to decision on May 2, 2017; and

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

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

WHEREAS, the subject site is located on the southwest corner of 95th Avenue and Brisbin Street, in an R5 zoning district, in Queens; and

WHEREAS, the subject site is comprised of three lots (presently identified as Lots 5, 6 and 10), which the applicant proposes to subdivide into four tax lots (Lot 5 and tentative Lots 7, 8 and 9), with approximately 101 feet of frontage along 95th Avenue, 92 feet of frontage along Brisbin Street, 9,661 square feet of lot area and is vacant; and

WHEREAS, the site is traversed by a mapped but unbuilt portion of 95th Avenue; and

WHEREAS, the applicant proposes to construct four three-story, with cellar, three-family multiple dwellings on the site; and

WHEREAS, by letter dated March 23, 2017, the Department of Transportation (“DOT”) confirms that Atlantic Avenue (aka 95th Avenue) is mapped at irregular widths and that the City of New York (“City”) has a Corporation Counsel Opinion of Dedication (“CCO”) for a width of 66 feet and no title for 34 feet; and

WHEREAS, DOT further states that it has no objection to the subject application, but requested that the applicant complete and submit the SL-11D Form to the DOT Director of Street Lighting, and this request that has been incorporated as a condition of this grant; and

WHEREAS, by letter dated February 23, 2017, the Department of Environmental Protection (“DEP”) states that, based on its maps, there is a 10-inch diameter sanitary sewer, a 12-inch diameter sanitary sewer, a 36-inch diameter storm sewer and an 8-inch diameter City water main in the bed of Atlantic Avenue the subject location, but based on the plot plan submitted with this application, showing a 15 foot wide easement for DEP inside of the subject property line along Atlantic Avenue for the maintenance and/or reconstruction of the existing 8-inch diameter City water main, it has no objection to the subject application; and

WHEREAS, by letter dated January 31, 2017, the Fire Department states that it has no objection to the subject application provided that the entire development be fully sprinklered and a hydrant be located within 250 feet of all main front entrances; and

WHEREAS, the applicant purchased the site from the City of New York (the “City”) and the deed is subject to a restrictive covenant, requiring that the applicant provide the City with a Certificate of Occupancy by a date certain; and

WHEREAS, the date of delivery for the Certificate of Occupancy was extended, by a letter from the Department of Citywide Administrative Services (“DCAS”) dated August 20, 2015, to August 20, 2018, on conditions, including that this extension inured to the benefit of the present owner only and will not pertain to and/or benefit any other assignee, purchaser, or transferee of the subject site, whether by direct conveyance or by stock transfer without written consent of DCAS; and

WHEREAS, in response to the Board’s questions at

hearing about the restrictive covenant on the property, compliance with zoning regulations for predominantly built up areas and the locations of utility poles and trees, the applicant submitted additional information, including a maneuverability study, and revised the drawings and zoning calculations demonstrating that the proposal complies with applicable zoning regulations, including the maximum permitted floor area ratio, and will not utilize any predominantly building up area provisions; and

WHEREAS, the applicant also submits that any work performed would be at the applicant’s own risk of the City’s exercising its rights under the restrictive covenant; and

WHEREAS, at hearing the Board expressed concerns with maintenance of the site, including debris-strewn sidewalks and fencing in disrepair, which the Board witnessed during its inspection of the site; and

WHEREAS, the applicant represents that, since the Board’s inspection, the site has been cleaned up; and

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

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

*Therefore it is Resolved*, that the decisions of the Department of Buildings (“DOB”), dated July 18, 2016, acting on Application Nos. 421234088, 421234079, 421234060 and 421229799, be *modified* under the powers vested in the Board by Section 35 of the General City Law, and that the appeal be *granted*, limited to the objections noted, *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received April 14, 2017”– Six (6) sheets; and that all applicable laws, rules and regulations shall be complied with; and *on further condition*:

THAT the SL-11D Form shall be completed and submitted with DOT in the manner requested;

THAT the dwellings shall be fully sprinklered;

THAT a hydrant shall be located within 250 feet of the main front entrances of the dwellings;

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 within four (4) years, by May 2, 2021;

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 a Certificate of Occupancy;

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

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

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

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Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configurations(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 2, 2017.

## 166-12-A

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

### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for continued hearing.

## 107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.  
SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.

PREMISES AFFECTED – 638 East 11<sup>th</sup> Street, south side of East 11<sup>th</sup> Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for continued hearing.

## ZONING CALENDAR

### 2016-1217-BZ

#### CEQR #16-BSA-074K

APPLICANT – Law Office of Jay Goldstein, for 839-45 Realty LLC, owner.

SUBJECT – Application February 8, 2016 – Variance (§72-21) to allow for the enlargement of an existing two-family home contrary to ZR Sections 23-141(c) (Open Space (“OS”)/Open Space Ratio (“OSR”)/Lot Coverage (“LC”)), 23-45(a) (Front Yard), 23-461(b) (Side Yard), 23-841(Narrow Outer Court) and 25-621(b) (parking). R4 zoning district.

PREMISES AFFECTED – 45 Southgate Court (2344-2354 West 1<sup>st</sup> Street), Block 7174, Lot 49, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice Chair Chanda,

Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 21, 2017, acting on Department of Buildings (“DOB”) Application No. 320596734 reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141(c) in that the proposed lot coverage exceeds the permitted 55%;
2. Proposed plans are contrary to ZR 23-141(c) in that the proposed open space ratio (OSR) is less than the required 45%;
3. Proposed plans are contrary to ZR 23-461(a) in that the existing minimum side yard is less than the required 5’;
4. Proposed plans are contrary to ZR 23-45(a) in that the front yard is less than the required 10’;
5. Proposed plans are contrary to ZR 23-841 in that the outer court width is more than its depth;
6. Proposed plans are contrary to ZR 25-621(b) in that the proposed parking space is located between the street line and street wall; and

WHEREAS, the Board notes that since the time of this application, the Zoning Resolution has been amended and the text formerly found in ZR § 23-141(c), setting forth the required open space ratio and maximum lot coverage permitted in an R4 zoning district, is now found at ZR § 23-142; thus the Board treats the citation to ZR § 23-141(c) in DOB’s objection as a citation to ZR § 23-142; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R4 zoning district and the Special Ocean Parkway District, the enlargement and conversion of a two-family residence to a single-family residence that does not comply with the underlying regulations pertaining to lot coverage, open space ratio, side yards, front yards, outer courts and parking, as set forth in ZR §§ 23-142, 23-461(a), 23-45(a), 23-841 and 25-621(b); and

WHEREAS, a public hearing was held on this application on November 15, 2016, after due notice by publication in *The City Record*, with a continued hearing on February 14, 2017, and then to decision on April 4, 2017; and

WHEREAS, the record was re-opened on May 2, 2017, to revise a revised objection from DOB, closed and voted again on the same date; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the northwest corner of Southgate Court and West 1st Street, in an R4 zoning district and the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 30 feet of

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frontage along Southgate Court, 100 feet of frontage along West 1st Street, 3,000 square feet of lot area and is occupied by a two-family residence with 2,225 square feet of floor area, a floor area ratio ("FAR") of 0.74, a total height of 27'-7", a 63'-1" front yard fronting Southgate Court and no front yard along West 1st Street, two side yards of 0 feet and 3'-8", 29 percent lot coverage, 71 percent open space and a one-story one-car garage; and

WHEREAS, the applicant proposes to enlarge the existing residence to 3,838 square feet of floor area, 1.28 FAR, 64 percent lot coverage, 36 percent open space, two side yards of 3'-4" and 3'-8", a total height of 30'-11", a 23 foot front yard fronting Southgate Court and no front yard fronting West 1st Street and demolish the existing garage but maintain a single accessory off-street parking space; and

WHEREAS, at the subject site, the minimum open space required is 55 percent and the maximum lot coverage and FAR permitted are 45 percent and 1.35, respectively, pursuant to ZR § 23-143; the maximum total height is 35 feet, pursuant to ZR § 23-631; two front yards of at least 18 feet and 10 feet are required pursuant to ZR § 23-45 and two side yards of at least 20 feet and 5 feet are required pursuant to ZR § 23-461; and

WHEREAS, the applicant submits that the subject site is located within a "predominantly built-up area" and that ZR § 23-143 is applicable at the subject site because the subject block is located entirely within an R4 zoning district, the area of the block does not exceed four acres, buildings on zoning lots comprise more than 50 percent of the block area, residences on the block received certificates of occupancy between 1920 and 1950 and submitted a Predominantly Built-Up Area Study demonstrating that the aggregate length of street frontages occupied by single- or two-family detached or semi-detached residences on each side of West 1st Street and each side of Southgate Court constitutes less than 75 percent of the aggregate length of those blocks; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the small size of the lot and the small size, orientation to the street and the functional obsolescence of the existing residence for modern living create a practical difficulty and unnecessary hardship in redeveloping the site in conformance with the underlying district regulations; and

WHEREAS, specifically, the applicant submits that the subject site is only 30 feet wide, whereas in the subject zoning district, the minimum lot width required for a single-family detached residence is now 40 feet pursuant to ZR § 23-32; that the existing residence, which was constructed in or around 1920, has undersized rooms, is positioned on the northern portion of the lot and flush along the site's eastern lot line fronting West 1st Street, within both a required side yard and front yard, compared to other residences on Southgate Court, which are positioned closer to their southern lot lines; and

WHEREAS, the applicant provided a study of all lots located within 400 feet of the subject site (the "Study Area") illustrating that the existing residence is the only dwelling with the complained of lot orientation within the Study Area and that, of the 18 other corner lots within the Study Area, 15 are developed with semi-attached dwellings required to provide only one side yard; and

WHEREAS, in response to Board inquiry on the history of development of the existing residence, the applicant submits that the residence was legally constructed in or around 1920 and subsequently converted to a two-family dwelling in or around 1950, when a new Certificate of Occupancy was issued for such use at the subject site; and

WHEREAS, with regards to obsolescence, the applicant makes reference to the 2014 New York City Building Code, which sets forth a minimum ceiling height of 8 feet and a minimum dimension of 8 feet for habitable rooms and spaces, and notes that almost half of the existing residence's floor area is located at the basement where the floor to ceiling height is 6'-6", that nearly three-quarters of the floor area in the attic has a floor to ceiling height of less than 8 feet and that the existing first floor living room and one first floor bedroom have plan dimensions of 6'-11" and 7'-11", respectively, rendering more than half of the total floor area of the existing residence unsuitable for modern living; and

WHEREAS, in response to inquiry from the Board regarding whether the existing residence was simply obsolete as a two-family residence, but could meet contemporary modern living standards as a one-family dwelling without the subject variance, the applicant represents that an as-of-right vertical enlargement is impracticable because of the existing structures front yard and side yard non-compliances and the requirement that the vertical enlargement provide a 10 foot front yard and 20 foot side yard in compliance with underlying yard regulations; the applicant additionally represents that an as-of-right horizontal enlargement is similarly frustrated by the existing structure's placement along the lot line fronting West 1st Street, placement that requires compliance with court regulations that, in the subject zoning district, require the width of a court to be equal to its depth and, thus, enables the development at the subject site of a one-story enlargement measuring only 15 feet by 5 feet, which, even with the redesigning of partitions, still results in an obsolete dwelling with undersized habitable spaces unsuitable for modern living; and

WHEREAS, based on the above, the Board finds that the functional obsolescence of the existing residence for modern living and its orientation to the street create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home, in satisfaction of ZR § 72-21(b); and

WHEREAS, the applicant notes that the proposed enlargement complies with floor area, FAR, wall height and building height regulations and that the requested waivers of lot coverage and open space are consistent with the existing conditions of corner lots located within the Study Area and, therefore, the subject proposal 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

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with ZR § 72-21(c); and

WHEREAS, the applicant submits that the existing dwelling's location at the lot line fronting West 1st Street and non-compliant front yard has existed and been part of the neighborhood's character since 1920, thus a straight-line extension of the dwelling will maintain the character of both the dwelling and the surrounding neighborhood; and

WHEREAS, in hearing, the Board questioned the extent to which the proposed enlargement exacerbated the non-compliant front yard by elongating the side of the dwelling located along the lot line by more than 34 feet and suggested that the lesser variance scenario submitted by the applicant—which would elongate the side of the dwelling located along the lot line by a little more than 24 feet and result in an enlarged dwelling having 3,300 square feet of floor area, 1.1 FAR, 55 percent lot coverage, 45 percent open space, two side yards of 3'-4" and 3'-8", a total height of 30'-11", a 33'-1" front yard fronting Southgate Court and no front yard fronting West 1st Street (the "Lesser Variance")—was more in scale with the neighborhood; and

WHEREAS, in the course of hearing, the applicant abandoned the original proposal and amended the application to pursue the Lesser Variance, which is compliant with underlying zoning regulations relating to lot coverage and open space ratio; and;

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

WHEREAS, the applicant state that, per ZR § 72-21(d), the hardship was not self-created; and

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

WHEREAS, in response to inquiry from the Board regarding the subject site's eligibility for a special permit pursuant to ZR § 73-622 in lieu of the proposed variance, the applicant states that the existing residence is a "zero lot line building," as defined in ZR § 12-10 and, thus, ineligible for the special permit, which is only available to "detached" and "semi-detached" residences; and

WHEREAS, the applicant additionally submits that the special permit does not permit enlargements that create new non-compliances and the subject proposal creates a non-compliant court, an alternative basis for the disqualification of the subject premises from consideration for a special permit pursuant to ZR § 73-622; and

WHEREAS, accordingly, and in light of the applicant's submission that the Lesser Variance is the minimum relief required to provide the owner with rooms commonly found in other new or enlarged homes, the Board finds that the subject proposal is the minimum necessary to afford the owner relief, consistent with ZR § 72-21(e); and

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

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 16-BSA-074K, dated October 11, 2016; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to permit, in an R4 zoning district and the Special Ocean Parkway District, the enlargement and conversion of a two-family residence to a single-family residence that does not comply with the underlying regulations pertaining to side yards, front yards, outer courts and parking, as set forth in ZR §§ 23-461(a), 23-45(a), 23-841 and 25-621(b); *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 5, 2017" - Twelve (12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the site: minimum side yard widths of 3'-4" and 3'-8", no front yard along West 1st Street, a maximum outer court width of 36'-9" and a maximum of one (1) open parking space located between the street line and street wall, as reflected on the BSA-approved plans;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, May 2, 2017.

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## 2016-4121-BZ

### CEQR #16-BSA-077K

APPLICANT – Eric Palatnik, P.C., for Fifteen and Fifth LLC, owner; Crunch LLC, lessee.

SUBJECT – Application February 19, 2016– Special Permit (§73-36) to operate a physical culture establishment (*Crunch*) within an existing building. C4-3A zoning district. PREMISES AFFECTED – 555 5<sup>th</sup> Avenue, Block 1042, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

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

### THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –



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WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 5, 2017, acting on Alteration Application No. 321549570, reads in pertinent part:

“Proposed Physical Culture Establishment (PCE) located in Zoning District C4-3 requires a Special Permit pursuant to ZR section 73-36”; and

WHEREAS, this is an application pursuant to ZR §§ 73-36 and 73-03 to permit, in a C4-3A zoning district, the operation of a physical culture establishment (“PCE”), contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 7, 2017, after due notice by publication in *The City Record*, with a continued hearing on May 2, 2017, and then to decision on the same date; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application on condition that there be acoustical separation between the proposed PCE and the existing retail space in the building; and

WHEREAS, the subject site is located on the northeast corner of 5th Avenue and 15th Street, within a C4-3A zoning district, in Brooklyn; and

WHEREAS, the site has approximately 74 feet of frontage along 5th Avenue, 100 feet of frontage along 15th Street, 7,350 square feet of lot area and is occupied by a two-story plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 proposed PCE will occupy a total of 7,351 square feet of floor area (12,841 square feet of gross floor space) as follows: 5,490 square feet of floor space in the cellar consisting of a group-fitness area, lounge, child care facilities, locker rooms, storage and office space; 1,518 square feet of floor area on the first floor with a reception area and training room; and 5,833 square feet of floor area on the second floor, which will house an equipment-filled fitness floor and restrooms; and

WHEREAS, the PCE will be operated as Crunch Fitness with proposed hours of operation of Monday to Saturday, 5:00 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the commercial character of the

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surrounding area and that the PCE is fully contained in an existing structure, generates little noise and is not a nuisance to other uses in the building; and

WHEREAS, with regards to sound attenuation in the PCE, the applicant represents that attenuation measures—including resilient flooring, rubber matting, batt insulation and acoustic tiles—will be provided to ensure that sound levels in other portions of the building will not exceed 45 dBA; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to the use of the premises, the applicant states that the PCE provides facilities for classes, instruction and programs for physical improvement, specifically group fitness; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant has submitted plans to the Board indicating that an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to a Fire Department-approved central station—shall be installed in the entire PCE space and that the PCE will be fully sprinklered; and

WHEREAS, the Fire Department represents that, based on its review of the drawings and supporting documentation for the proposed PCE, it has no objection to this application; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 16-BSA-077K, dated February 19, 2016; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.3 and 617.5, §§ 5-02(a) and 5-02(b)(2) 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*, in a C4-3A zoning district, the operation of a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 12, 2017”- Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring May 2, 2027;

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

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the BSA-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the BSA-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

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

THAT a Certificate of Occupancy shall be obtained within four (4) years, by May 2, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, May 2, 2017.

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## 2016-4163-BZ

APPLICANT – Sheldon Lobel, P.C., for George Arsoff, owner.

SUBJECT – Application April 1, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space ZR 23-141. R2 zoning district.

PREMISES AFFECTED – 8120 Colonial Road, Block 5994, Lot 45, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner,

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dated December 2, 2016, acting on Department of Buildings (“DOB”) Application No. 340291339 reads in pertinent part:

“Proposed enlargement of an existing Residential Building (cited above) exceeds floor area [and open space ratio] permissible pursuant to Z.R. Section 23-10 et seq. A Special Permit is available through the Board of Standards and Appeals pursuant to ZR 73-622 – ZR 23-141 which addresses the proposed Floor Area Non-compliance”; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district and the Special Bay Ridge District, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area and open space ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on March 21, 2017, after due notice by publication in *The City Record*, with a continued hearing on May 2, 2017, and then to decision on the same date; and

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

WHEREAS, Community Board 10, Brooklyn, recommends disapproval of the application on the basis that Community Board 10, at the time of the filing of this application, was in the process of filing a zoning text change with the New York City Department of City Planning (“DCP”) to remove Community Board 10 from the areas in which a special permit pursuant to ZR § 73-622 is available and, thus, support of this application would be inconsistent with the request for this text change; and

WHEREAS, the Board notes that this application is expressly mentioned in the amended text of ZR § 73-622(c), adopted October 27, 2016; and

WHEREAS, the subject site is located on the northwest corner of Colonial Road and 82nd Street, within an R2 zoning district and the Special Bay Ridge District, in Brooklyn; and

WHEREAS, the site has approximately 109 feet of frontage along Colonia Road, 50 feet of frontage along 82nd Street and 5,467 square feet of lot area; and

WHEREAS, the site is occupied by a two-story single-family detached residence with 3,117 square feet of floor area, a floor area ratio (“FAR”) of 0.57 and an open space ratio of 122; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27,

2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

WHEREAS, the Board notes that in addition to the

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# MINUTES

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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 subject special permit is available to the subject site as indicated in ZR § 73-622(c); and

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

WHEREAS, the applicant proposes to enlarge the existing dwelling on the second floor and attic level resulting in a dwelling with 4,044 square feet of floor area, an FAR of 0.74 and an open space ratio of 94; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted and an open space ratio of at least 150 is required pursuant to ZR § 23-141; and

WHEREAS, the applicant notes that the open space ratio is decreasing as a result of the enlargement only because of the increase in total floor area and that no changes to the amount of open space on the lot are herein proposed; and

WHEREAS, in support of the application, the applicant submitted an FAR study of single- and two-family dwellings located within 400 feet of the subject site (the "Study Area") illustrating that 61 of the 94 other residences in the Study Area (65 percent) have FARs greater than 0.50, including all seven of the developed sites located across Colonial Road from the subject premises, which have FARs ranging from 0.69 to 0.84; 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 NYCRR 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, in an R2 zoning district and the Special Bay Ridge District, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area and open space ratio, contrary to ZR § 23-141; *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 April 13, 2017"- Fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,044 square feet (0.74 FAR) and an open space ratio of at least 94, as illustrated on the BSA-approved plan; and

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

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 special 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 2, 2017.

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**216-15-BZ**

APPLICANT – Eric Palatnik, P.C., for Gasteria Oil Corp., owner.

SUBJECT – Application September 2, 2015 – Special Permit (§73-211): to authorize the construction of an automotive service station and accessory convenience store on an irregularly shaped lot, located within an C2-4 zoning district.

PREMISES AFFECTED – 205 West Fordham Road, West 6 Frame Road bordering Sedgwick Avenue. Block 3236, Lot 0220. Borough of the Bronx.

**COMMUNITY BOARD #7BX**

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for continued hearing.

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**REGULAR MEETING**  
**TUESDAY AFTERNOON, MAY 2, 2017**  
**1:00 P.M.**

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

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**ZONING CALENDAR**

**215-14-BZ/214-14-A**

APPLICANT – Sheldon Lobel, P.C., for Fernando Fernandez, owner.

SUBJECT – Application September 3, 2014 – Variance (§72-21) to permit four-three-story three family semi-detached residential building at the existing premises in an R5 zoning district, also building in the bed of mapped street pursuant to GCL 35. R5 zoning district.

PREMISES AFFECTED – 50-11 & 50-15 103<sup>rd</sup> Street, 103-10 & 103-16 Alstyne Avenue, Block 1930, Lot 50, Borough of Queens.

**COMMUNITY BOARD #4Q**

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for continued hearing.

-----  
**88-15-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Lisa Wortman and Bruce Wortman, owners.

SUBJECT – Application April 20, 2015 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2

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# MINUTES

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zoning district.

PREMISES AFFECTED – 1834 East 21<sup>st</sup> Street, Block 6803, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for decision, hearing closed.

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*Ryan Singer, Executive Director*

**2016-4211-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Chanie Edelstein and Shimon Edelstein, owners.

SUBJECT – Application June 1, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space ratio (ZR §23-141); side yards (ZR §23-461) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1052 East 23<sup>rd</sup> Street, Block 7604, Lot 66, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to May 16, 2017, at 10 A.M., for continued hearing.

**2016-4336-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 645 East Tremont LLC, owner; Blink East Tremont Avenue, Inc., lessee.

SUBJECT – Application November 21, 2016 – Special Permit (73-36) to allow the operation of a physical culture establishment (*Blink*) at the subject premises. C4-5X zoning district.

PREMISES AFFECTED – 643 East Tremont Avenue, Block 3079, Lot 2, Borough of the Bronx.

**COMMUNITY BOARD #6BX**

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for continued hearing.

**2017-61-BZ**

APPLICANT – Sheldon Lobel, P.C., for CA Plaza, LLC, owner.

SUBJECT – Application March 10, 2017 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-20. C4-2 & C4-3 zoning district. Waiver of section §1-05.3 of the Rules of Practice and Procedure to allow filing of a Department of Buildings Objection form more than 30 days after the final determination by the Commissioner of Buildings.

PREMISES AFFECTED – 36-18 Main Street, Block 4971, Lot 15, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.

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# MINUTES

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**SPECIAL MEETING  
TUESDAY MORNING, MAY 9, 2017  
10:00 A.M.**

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

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## **ZONING CALENDAR**

### **56-02-BZ**

APPLICANT – NYC Board of Standards and Appeals.  
SUBJECT – Application June 21, 2016 – Compliance  
Hearing of a previously approved Variance (§72-21) which  
permitted the construction of a four-story plus cellar school,  
which created non-compliances with respect to floor area  
ratio, lot coverage, side, front and rear yards, and which is  
contrary to ZR §24-11, §24-34, §24-35, §24-36 and §24-  
521. R5 zoning district.  
PREMISES AFFECTED – 317 Dahill Road, Block 5369,  
Lot(s) 82, 83, 84 and 85 (tentative Lot 82), Borough of  
Brooklyn.

#### **COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to July 18,  
2017, at 10 A.M., for continued hearing.

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### **1-96-BZ**

APPLICANT – New York City Board of Standards and  
Appeals.  
SUBJECT – Application August 2, 2016 – Amendment for  
an extension of an existing school building to add 3<sup>rd</sup> and 4<sup>th</sup>  
floors. R5 zoning district.  
PREMISES AFFECTED – 600 McDonald Avenue,  
southwest corner of Avenue “C”, Block 5369, Lot 6,  
Borough of Brooklyn.

#### **COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to July 18,  
2017, at 10 A.M., for continued hearing.

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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 102, No. 20-21

June 1, 2017

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

EILEEN MONTANEZ

VACANT

*Commissioners*

Ryan Singer, *Executive Director*

Loreal Monroe, *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>
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75-95-BZ	1635 Third Avenue, Manhattan
2016-4253-A	565 St. John's Place, Brooklyn
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88-15-BZ	1834 East 21 <sup>st</sup> Street, Brooklyn
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# DOCKETS

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New Case Filed Up to May 16, 2017  
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**2017-141-A**

126 Industrial Loop, located on a private road that connects to Arthur Kill Road., Block 07206, Lot(s) 165, Borough of **Staten Island, Community Board: 3**. Proposed construction of a commercial building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1 zoning district M3-1 district.  
-----

**2017-142-BZ**

3000 Coney Island Avenue, located on Coney Island Avenue between Brighton 8th Court and Guider Avenue, Block 07264, Lot(s) 58, Borough of **Brooklyn, Community Board: 13**. Variance (§72-21) to permit the construction of a House of Worship (Use Group 4A) (Congregation Iglesia Misioneras De Evangelizacion De Jovanes Cristianos) contrary to ZR §24-11 (Open Space and Lot Coverage). R6 (Special Ocean Parkway District) R6 (Special Ocean Parkway District) district.  
-----

**2017-143-A**

25-32 44th Street, property is located on the north side fo 44th Street, 325 ft from the intersection formed by West 44th Street and 25th Avenue, Block 00702, Lot(s) 57, Borough of **Queens, Community Board: 1**. Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy. R5 district.  
-----

**2017-144-A**

25-30 44th Street, property is located on the north side fo 44th Street, 300 ft from the intersection formed by West 44th Street and 25th Avenue, Block 00702, Lot(s) 56, Borough of **Queens, Community Board: 1**. Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy. R5 district.  
-----

**2017-145-BZ**

241 East 59th Street, locaton East 59th Street between 2nd and 3rd Avenue, Block 01414, Lot(s) 17, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to permit a physical culture establishment (Tracy Anderson Method) in the cellar, ground floor and ground floor mezzanine of floor of an existing building. C2-8, C1-5 and R8B zoning district. C2-8, C1-5 and R8B district.  
-----

**2017-146-BZ**

3722 Neptune Avenue, , Block 07003, Lot(s) 25, Borough of **Brooklyn, Community Board: 13**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R3-1 district.  
-----

**2017-147-A**

71-12 Main Street, located on the westerly side of Main Street, 90 feet southerly from the intersection formed by Main Street and 71st Avenue, Block 06619, Lot(s) 132, Borough of **Queens, Community Board: 8**. Appeal of a NYC Department of Buildings denial. C1-2/R4 district.  
-----

**2017-148-BZ**

64-25 Central Avenue, located on Central Avenue bound by Central Avenue, 64th Place and Otto Road., Block 03641, Lot(s) 18, Borough of **Queens, Community Board: 5**. Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. M1-1 zoning district. M1-1 district.  
-----

**2017-149-BZ**

510 Quincy Street, premises is bounded by Quincy Street to the north, Marcus Garvey Boulevard to the east, Gates Avenue to the south and Throop Avenue to the west., Block 01811, Lot(s) 19, Borough of **Brooklyn, Community Board: 3**. Special Permit (§73-433) to permit the reduction of 88 accessory off-street parking spaces required for existing income-restricted housing units. C2-4/R6A, C2-4/R6B, R6A & R6B zoning district. C2-4/R6A, C2-4/R6B, R6A & R6B district.  
-----

**2017-150-BZ**

77 Thompson Street, located on the north side of Thompson Street between Wright and Bay Streets, Block 00524, Lot(s) 60, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to permit the construction of a cellar and four story residential building which does not provide non-residential use on the ground floor contrary to ZR §32-433. C4-2 zoning district C4-2 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING JUNE 20, 2017, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 20, 2017, 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

#### 558-51-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America Inc., owner.

SUBJECT – Application August 14, 2015 – Extension of Term (§11-411) to seek the term of a previously granted variance for a gasoline service station and maintenance which expired December 21, 2016. C2-2/R5D zoning district.

PREMISES AFFECTED – 68-22 Northern Boulevard, Block 1186, Lot 19, Borough of Queens.

**COMMUNITY BOARD #19Q**

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#### 822-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application January 8, 2016 – Extension of Time to Complete Construction of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 9, 2015. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1774 Victory Boulevard, Block 709, Lot 28, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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#### 344-03-BZ

APPLICANT – Howard Goldman, for City of New York, owner; Nick’s Lobster House, lessee.

SUBJECT – Application August 12, 2015 – Application for an extension of term of the legalization of the reconstruction and extension of an existing building operating as an eating and drinking establishment in a C3 district, contrary to ZR 32-00. C3 zoning district.

PREMISES AFFECTED – 2777 Flatbush Avenue, Block 8591, Lot 980, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

-----

#### 164-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for 2241 Westchester Avenue Realty Corp., owner; Castle Hill Fitness Group, LLC, lessee.

SUBJECT – Application March 16, 2017 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*Planet Fitness*) which expired on March 17, 2017. C2-4/R6 zoning district.

PREMISES AFFECTED – 2241 Westchester Avenue aka 21-1 Glede Avenue, Block 3963, Lot 57, Borough of Bronx.

**COMMUNITY BOARD #10BX**

-----

#### 159-08-BZ

APPLICANT – Eric Palatnik, P.C., for 68-70 Spring Partners, LLC, owners.

SUBJECT – Application February 7, 2017 – Extension of time to complete construction of a previously approved Variance (§72-21) to permit the construction of a seven-story and penthouse residential building, with twelve (12) dwelling units and ground floor retail use, contrary to ZR42-10 and 42-10(D)(2)(b) set to expire on October 28, 2017. M1-5B zoning district.

PREMISES AFFECTED – 68-70 Spring Street, Block 482, Lot 19, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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### APPEALS CALENDAR

#### 19-12-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 38-30 28<sup>th</sup> Street, LLC, owner.

SUBJECT – Application October 7, 2016 – Application for an extension of time to complete construction of the building and obtain a Certificate of Occupancy on a previously approved grant granted common law vested right of complete construction and permitting in an M1-3 zoning district which expired on October 7, 2016. M1-2/R5B (LIC) zoning district.

PREMISES AFFECTED – 38-30 28<sup>th</sup> Street, Block 386, Lot 27, Borough of Queens.

**COMMUNITY BOARD # 1Q**

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# CALENDAR

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**REGULAR MEETING  
JUNE 20, 2017, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 20, 2017, 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**

**10-15-BZ**

APPLICANT – Goldman Harris LLC, for Steven Elghanayan/Epic Lafayette LLC, owner; Kevin P. McGrath/Five Points Academy, lessee.

SUBJECT – Application January 15, 2015 – Special Permit (§73-36) to allow a physical culture establishment (*Five Points Academy*) in the cellar and ground floor of the premises, located within an M1-5B zoning district.

PREMISES AFFECTED – 148 Lafayette Street, Block 233, Lot 26, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**2016-4224-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Elie Fein, owner.

SUBJECT – Application July 1, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1869 East 21<sup>st</sup> Street, Block 6804, Lot 63, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**2016-4301-BZ**

APPLICANT – Eric Palatnik, P.C., for Robertas A Urbonas, owner.

SUBJECT – Application November 9, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-142); side yard (ZR 23-48); lot area and width (ZR 23-32) and less than the required rear yard (ZR 23-47). R5-OP zoning district.

PREMISES AFFECTED – 136 Oxford Street, Block 8757, Lot 97, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**2016-4470-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 140 BW LLC, owner; Crunch LLC, lessee.

SUBJECT – Application December 22, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Crunch Fitness*) within an existing building. C5-5 (Lower Manhattan Special District) within the Marine Midland Bank Building (New York City Landmark).

PREMISES AFFECTED – 140 Broadway, Block 48, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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**2017-13-BZ**

APPLICANT – Jay B. Itkowitz, Esq., for Harvey Axelrod, owner; Rescue Spa New York LLC, lessee.

SUBJECT – Application January 17, 2017 – Special Permit (§73-36) to operate a physical culture establishment (*Rescue Spa*) within the cellar and first floor of an existing building. M1-5M zoning district. (Ladies' Mile Historic District)

PREMISES AFFECTED – 29 East 19<sup>th</sup> Street, Block 848, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD # 5M**

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*Ryan Singer, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, MAY 16, 2017  
10:00 A.M.**

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

**SPECIAL ORDER CALENDAR**

**129-97-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for  
Whitestone Plaza Associates Inc., owner.

SUBJECT – Application February 21, 2014 – Amendment  
to permit the proposed conversion of an existing lubricatorium  
to a commercial retail establishment (use group 6) and  
enlargement of the basement level. C1-2/R3-2 zoning  
district.

PREMISES AFFECTED – 150-65 Cross Island Parkway,  
west side of Clintonville Street distant 176.60' north of  
intersection of Cross Island Parkway and Clintonville Street,  
Block 04697, Lot 11, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Application withdrawn  
without prejudice.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, May  
16, 2017.

**120-93-BZ**

APPLICANT – Sheldon Lobel, P.C., for Harry McNulty,  
owner.

SUBJECT – Application March 14, 2016 – Extension of  
Term (§11-411) of a previously approved variance which  
permitted an Automotive Repair Facility (UG 16B) with the  
sale of used automobiles which expired on May 10, 2014;  
Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 222-19 Linden Boulevard, Block  
11323, Lot 1, Borough of Queens.

**COMMUNITY BOARD #13Q**

**ACTION OF THE BOARD** – Laid over to June 6,  
2017, at 10 A.M., for adjourned hearing.

**169-98-BZ**

APPLICANT – Robert J. Stahl for Herbert D. Freeman,  
Albany Crescent Holding, LLC, owner.

SUBJECT – Application April 10, 2015 – Extension of  
Term (§11-411) of a previously approved variance  
permitting the operation of an Automotive Service Station  
(UG 16B) which expired on July 20, 2009; Amendment  
(§11-413) to permit a change of use to Automotive Repair  
Facility (UG 16B); Waiver of the Rules. C2-3/R6 zoning

district.

PREMISES AFFECTED – 3141 Bailey Avenue, Block  
3267, Lot 38, Borough of Bronx.

**COMMUNITY BOARD #8BX**

**ACTION OF THE BOARD** – Laid over to August 22,  
2017, at 10 A.M., for continued hearing.

**183-85-BZ**

APPLICANT – Eric Palatnik, P.C., for 206 20<sup>th</sup> Street LLC,  
owner.

SUBJECT – Application September 27, 2016 – Extension  
of Term of a previously approved Variance (§72-21) for the  
operation of a (UG 16) open storage yard for building  
materials and accessory parking for four cars with an  
accessory office and showroom building, which expires on  
November 18, 2016. R6B zoning district.

PREMISES AFFECTED – 206/8 20<sup>th</sup> Street, Block 640, Lot  
21, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

**ACTION OF THE BOARD** – Laid over to June 25,  
2017, at 10 A.M., for continued hearing.

**1-95-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for 117  
Seventh Avenue South Properties, LLP, owner TSI  
Sheridan, LLC dba New York Sports Club, lessee.

SUBJECT – Application February 25, 2016 – Extension of  
Term for a previously granted special permit (§73-36) for a  
physical culture establishment (*New York Sports Club*)  
which expired on June 13, 2015; Waiver of the Rules. C4-5  
zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South,  
Block 610, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Laid over to July 18,  
2017, at 10 A.M., for continued hearing.

**75-95-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for The  
Rupert Yorkville Towers Condominium, owner; TSI East  
91<sup>st</sup> Street LLC dba New York Sports Club, lessee.

SUBJECT – Application August 18, 2016 – Extension of  
Term for a special permit (§73-36) permitting the operation  
of a Physical Culture Establishment (*New York Sports Club*)  
which expired on January 28, 2016; Waiver of the Rules.  
C2-8 zoning district.

PREMISES AFFECTED – 1635 Third Avenue, Block 1537,  
Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Laid over to July 18,  
2017, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 2016-4253-A

APPLICANT – Eric Palatnik, P.C., for Zev Johns, LLC, owner.

SUBJECT – Application September 14, 2016 – Appeal seeking a determination that the owner has acquired common law vested rights for a development commenced under the prior R7-1 district regulations. R3 Zoning district.

PREMISES AFFECTED – 565 St. John’s Place, Block 1175, Lot 87, Borough of Brooklyn

### COMMUNITY BOARD #8BK

**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 44-15-BZ

#### CEQR #15-BSA-168M

APPLICANT – Akerman, LLP, for 145 CPN, LLC., owner.

SUBJECT – Application March 6, 2015 – Variance (§72-21) to permit the construction of a conforming fourteen-story, (UG 2) residential building containing 24 dwelling units contrary to the maximum building height and front setback requirements (§23-633) and rear setback requirements (§23-633(b)). R8 zoning district.

PREMISES AFFECTED – 145 Central Park North, between Adam Clayton Powell and Lenox Avenue, Block 01820, Lot 0006, Borough of Manhattan.

### COMMUNITY BOARD #10M

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

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

Negative: .....0

Adopted by the Board of Standards and Appeals, May 16, 2017.

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### 56-15-BZ

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

SUBJECT – Application March 13, 2015 – Special Permit (§73-622) to permit the enlargement of an existing three story one family home contrary to floor area (ZR 23-141 (b)). R2 zoning district.

PREMISES AFFECTED – 2124 Avenue J, Block 7603, Lot 49, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

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

THE VOTE TO GRANT –

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

Negative: .....0

## THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 11, 2017, acting on Application No. 321066877, reads in pertinent part:

Proposed plans are contrary to:

ZR 23-141 . . . in that the proposed floor area (F.A.R.) exceeds the maximum permitted;

ZR 23-141 in that the proposed open space ratio is less than the minimum required; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area and open space ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on March 7, 2017, after due notice by publication in *The City Record*, with a continued hearing on May 16, 2017, and then to decision on the same date: and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval on condition that no mechanical equipment be placed in the west side yard; and

WHEREAS, the subject site is located on the southwest corner of Avenue J and East 22nd Street, within an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 50 feet of frontage along Avenue J, 100 feet of frontage along East 22nd Street and 5,000 square feet of lot area; and

WHEREAS, the site is occupied by a three-story single-family detached dwelling with 3,461 square feet of floor area, a floor area ratio (“FAR”) of 0.69, an open space ratio of 95 and side yards measuring 5.1 feet and 18.3 feet; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit

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shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

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 detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing dwelling with second floor additions to the one-story

portions of the existing dwelling and a two-story enlargement at the front, resulting in a dwelling with 4,679 square feet of floor area, an FAR of 0.93 and an open space ratio of 65; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted and an open space ratio of at least 150 is required pursuant to ZR § 23-141 and two side yards of at least 5 feet each and a single side yard with a width of at least 20 feet are required pursuant to ZR § 23-461; and

WHEREAS, in response to an inquiry by the Board regarding the legality of a non-compliant side yard and the presence, in that required side yard, of a garage and one-story extension to the existing dwelling, the applicant submitted a 1929 Sanborn map of the subject area showing that both the garage and the extension existed on the premises prior to 1961 and are, therefore, along with the 18.3 feet wide side yard, legal non-compliances; and

WHEREAS, in support of the subject special permit application, the applicant additionally submitted a survey of one- and two-family residences within 400 feet of the subject site and an R2 zoning district (the "Study Area") demonstrating that of the 76 residences in the Study Area, 20 (25 percent) have FARs greater than 0.75, ranging from 0.76 to 2.08; and

WHEREAS, in addition, the applicant submits that the streetscape of the subject block is characterized by two- and three-story residences with pitched roofs and that the proposal is consistent with this existing character; and

WHEREAS, in response to testimony from a neighbor in opposition to the proposal on the basis that the proposed enlargement would leave the neighbor's home in shadow, the applicant submitted a shadow study illustrating that the proposal will not substantially adversely affect the neighboring residence with regards to light access; 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 NYCRR 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, in an R2 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area and open space ratio, contrary to ZR § 23-141; *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 April 28, 2017"- Twelve (12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,679 square feet (0.93 FAR) and an open space ratio of at least 65 as illustrated on the BSA-approved plan; and

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

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

# MINUTES

THAT the approved plans shall be considered approved only for the portions related to the special 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 16, 2017.

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## 88-15-BZ

APPLICANT – Law Office of Lyra J. Altman, for Lisa Wortman and Bruce Wortman, owners.

SUBJECT – Application April 20, 2015 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1834 East 21<sup>st</sup> Street, Block 6803, Lot 21, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 20, 2015, acting on Application No. 320915159, reads in pertinent part:

1. ZR 23-47: The proposed rear yard depth is contrary to ZR 23-47;
2. ZR 23-141: The proposed floor area is contrary to ZR 23-141(b);
3. ZR 23-461: The proposed side yard is contrary to ZR 23-461(a); and

WHEREAS, the Board notes that since the filing of this application, the Zoning Resolution has been amended and the text formerly found in ZR § 23-141(b), setting forth the maximum floor area ratio permitted in an R3-2 zoning district, is now found in ZR § 23-142; thus, the Board treats the citation to ZR § 23-141(b) in DOB’s objection as a citation to ZR § 23-142; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-2 zoning district, the proposed enlargement of single-family detached residence that does not comply with the zoning requirements for rear yard, floor area and side yards, contrary to ZR §§ 23-47, 23-142 and 23-461(a); and

WHEREAS, a public hearing was held on this application on May 2, 2017, after due notice by publication in *The City Record*, with a continued hearing on May 16, 2017, and then to decision on the same date; and

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

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 21st Street, between Quentin Road and Avenue R, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along East 21st Street, 100 feet of depth and 4,000 square feet of lot area; and

WHEREAS, the site is occupied by a two-story single-family detached dwelling with 1,584 square feet of floor area, a floor area ratio (“FAR”) of 0.40, side yards measuring 3’-10” and 12’-9” and a rear yard of 36’-8”; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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*

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- 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 23-631, 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; and

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 detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing dwelling with a two-story plus cellar enlargement at the rear and an enlargement at the front of the dwelling at the second floor, resulting in a dwelling with 2,661 square feet of floor area, 0.66 FAR, side yards of 3'-10" side yard and 10 feet and a rear yard of 22'-3"; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted pursuant to ZR § 23-142; two side yards at least 5 feet wide each and a total combined width of at least 13 feet are required pursuant to ZR § 23-461(a); and a rear yard of at least 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant presented an analysis of the floor area ratios of the one-and two-family residences on the same block as the subject lot within an R3-2 zoning district and on the block immediately to the east (Block 6804) demonstrating that 32 of the 65 dwellings (49 percent) have FARs ranging from 0.52 to 0.78, including 17 of the dwellings on the same street as the subject lot, one of which has an FAR of 0.55 and is located immediately north of the subject site, and 19 of those dwellings (59 percent) have FARs of 0.60 or greater; and

WHEREAS, the applicant additionally notes that the rear property line of the subject site is on a district boundary line separating an R3-2 zoning district and an R7-A zoning district,

in which the maximum permitted FAR is 4.00, and a building that shares its rear lot line with the subject site is occupied by a six-story building having an FAR of 4.55; and

WHEREAS, the applicant also presented the Board with analyses of the rear yard depths of buildings located on the same social block as the subject lot showing that, of the 20 buildings on the social block located in an R3-2 zoning district, 8 (40 percent) have rear yards of less than 30 feet and ranging in depth from 19 feet to 25 feet, including the dwelling located immediately north of the subject site, which has a rear yard of 25 feet; and of the total 40 buildings on the social block (20 of which are located in an R7-2A zoning district), 21 (53 percent) have rear yards of less than 30 feet and ranging in depth from 11 feet to 27 feet; and

WHEREAS, at hearing, the Board mentioned a general preference for the subject proposal to match the rear yard depth of the dwelling to its immediate north, but understood that a reduction in the proposed extension at the rear of the existing dwelling would significantly compromise the depth of the new bedrooms proposed on the second floor and further noted that the remainder of the existing dwellings was not planned to be gutted and, thus, be reconfigured to compensate for such reduction; and

WHEREAS, with regards to the proposed enlargement at the front of the existing dwelling, the Board notes that there is a wide variety of typologies on the subject block and that the proposal, is consistent with this variety; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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, in an R3-2 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for rear yard depth, floor area ratio and side yards, contrary to ZR §§ 23-47, 23-142, 23-461; *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 February 14, 2017"-Eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,661 square feet (0.66 FAR), side yards of at least 3'-10" and 10 feet and a rear yard of at least 22'-3", as illustrated on the BSA-approved plan; and

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

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



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THAT the approved plans shall be considered approved only for the portions related to the special 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 16, 2017.

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## 2016-4211-BZ

APPLICANT – Law Office of Lyra J. Altman, for Chanie Edelstein and Shimon Edelstein, owners.

SUBJECT – Application June 1, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space ratio (ZR §23-141); side yards (ZR §23-461) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1052 East 23<sup>rd</sup> Street, Block 7604, Lot 66, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 5, 2016, acting on Department of Buildings (“DOB”) Application No. 321232368, reads in pertinent part:

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

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the proposed enlargement of single-family detached residence that does not comply with the zoning requirements for floor area ratio, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on May 2, 2017, after due notice by publication in *The City Record*, with a continued hearings on May 16, 2017, and then to decision on that date; and

WHEREAS, 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 located on the western side of East 23<sup>rd</sup> Street, between Avenue J and Avenue K, in an R2 zoning district, in Brooklyn; and

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

WHEREAS, the site is occupied by a two-story plus attic single-family detached dwelling with 3,243 square feet of floor area, a floor area ratio (“FAR”) of 0.81, an open space ratio of 80 percent, side yards measuring 4 feet and 10’-2” and a rear yard measuring 26’-9”;

WHEREAS, the applicant asserts that the existing rear yard is a legal non-compliance and, in support of that contention, submitted a 1950 Sanborn map of the site and surrounding area showing a rear yard condition at the subject site substantially similar to the existing rear yard conditions, specifically the existing rear yard extension; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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:

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- (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 2X, 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 23-631, 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; and

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 detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing dwelling to 3,769 square feet of floor area, an FAR of 0.94, an open space ratio of 59 percent, side yards measuring 4 feet and 9 feet and a rear yard of 20 feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 and a minimum open space ratio of 150.0 are permitted pursuant to ZR § 23-141; two side yards at least 5 feet wide each and a total combined width of at least 13 feet are required pursuant to ZR § 23-461; and a rear yard of at least 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant proposes extensions on the first floor at the rear, in the southern side yard and in the front yard and an extension in a corner of the second floor in the rear yard, which, in sum, the Board finds to be very modest; and

WHEREAS, the applicant provided the Board with a

streetscape montage demonstrating that the subject block contains a variety of building typologies and that the subject proposal will fit within this existing eclectic character; and

WHEREAS, the applicant also provided the board with open space and FAR studies of residences within 400 feet of subject site showing that all but one of the single- or two-family dwellings within the study area have open space ratios of less than 150.0 and from which the Board observed that there were several buildings within the study area of 1.0 FAR or greater; and

WHEREAS, the applicant additionally provided the Board with a study of the rear yard depths of other single- and two-family dwellings on the same social block as the subject premises demonstrating, that of the 33 residences in the study area, all 33 (100 percent) have rear yards with depths of less than 30 feet and 18 (55 percent) have rear yards with depth of 20 feet or less; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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, in an R2 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area ratio, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received February 14, 2017"- Twelve (12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,769 square feet (0.94 FAR), an open space ratio of at least 59 percent, side yards with widths of at least 4 feet and 9 feet and a rear yard of at least 20 feet, as illustrated on the BSA-approved plans; and

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

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 special 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 the plan(s)/configuration(s) not related to the relief granted.

# MINUTES

Adopted by the Board of Standards and Appeals,  
May 16, 2017.

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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 May June 6, 2017, at 10 A.M., for continued hearing.

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**302-14-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Stanfordville, LLC, owner.

SUBJECT – Application November 10, 2014 – Special Permit (§73-125) to allow proposed ambulatory diagnostic or treatment health care facility in excess of 1500 sq. ft. in a two-story mixed use building. R3X zoning district.

PREMISES AFFECTED – 45-05 Francis Lewis Boulevard, southeast corner of intersection of Francis Lewis Boulevard and 45<sup>th</sup> Avenue. Block 5538, Lot 30. Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for adjourned hearing.

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**25-15-BZ**

APPLICANT – Slater & Beckerman, P.C., for The Roman Catholic Church of St. John the Baptist, owner; 71-85 Lewis Avenue LLC, lessee.

SUBJECT – Application February 17, 2015 – Special Permit (73-46) to allow a waiver of all required accessory off-street parking spaces required for dwelling units created by a conversion a five-story community facility, located within an R6B zoning district.

PREMISES AFFECTED – 71 Lewis Avenue, Block 1592, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for adjourned hearing.

**172-15-BZ**

APPLICANT – Eric Palatnik, P.C., for 146-45 22<sup>nd</sup> Avenue LLC, owner.

SUBJECT – Application July 31, 2015 – Variance (§72-21) to permit the development of a 1,796 square foot two-story with cellar two (2) family dwelling contrary to underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 146-45 22<sup>nd</sup> Avenue, Block 4637, Lot 47, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for continued hearing.

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**234-15-BZ**

APPLICANT – Sarah Tadros Awad, for Nawal Tosson, owner.

SUBJECT – Application October 7, 2015 – Special Permit (§73-622) to permit the legalization of an enlargement and the conversion to a two family home of an existing single-family, semi-detached residential building contrary to floor area ZR 23-141 and perimeter wall height 23-631(b). R4-1 zoning district.

PREMISES AFFECTED – 1223 67<sup>th</sup> Street, Block 5760, Lot 70, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for continued hearing.

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**273-15-BZ**

APPLICANT – Michio Sanga, for Seucharran Sewdat, owner.

SUBJECT – Application December 15, 2015 – Variance (§72-21) to permit the construction of a 2-story two-family residence contrary to ZR §23-461c (open area between buildings containing residences). R3A zoning district.

PREMISES AFFECTED – 110-43 160<sup>th</sup> Street, Block 12164, Lot 4, Borough of Queens.

**COMMUNITY BOARD #12Q**

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to June 6, 2017, at 10 A.M., for decision, hearing closed.

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**2016-4147-BZ**

APPLICANT – Sheldon Lobel, P.C., for Pietro Alesci, owner.

SUBJECT – Application March 17, 2016 – Variance (§72-21) to permit the development of a three-story, three-family residential building (UG 2) contrary to ZR §42-10. M1-1D zoning district.

PREMISES AFFECTED – 57-12 58<sup>th</sup> Place, Block 2672, Lot 96, Borough of Queens.

**COMMUNITY BOARD #5Q**

# MINUTES

## THE VOTE TO CLOSE HEARING –

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

Negative: . . . . .0

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for decision, hearing closed.

## REGULAR MEETING

**TUESDAY AFTERNOON, MAY 16, 2017**

**1:00 P.M.**

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

## ZONING CALENDAR

### 2016-4184-BZ

#### CEQR #16-BSA-118M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for MB-REEC Houston Property Owner LLC, owner; Equinox 196 Orchard Street, Inc., lessee.

SUBJECT – Application May 11, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Equinox*) within a new mixed-use building, C6-2A/C4-4A zoning district.

PREMISES AFFECTED – 194 Orchard Street, Block 412, Lot 12, Borough of Manhattan.

#### COMMUNITY BOARD #3M

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

## THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner

Montanez. . . . .4

Negative: . . . . .0

## THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 15, 2016, acting on New Building Application No. 121473208, reads in pertinent part:

“Proposed physical culture establishment, in a C6-2A and C4-4A zoning districts is contrary to Section ZR 32-10 . . . .”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site partially within a C6-2A zoning district and partially within a C4-4A zoning district, a physical culture establishment (“PCE”), contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 16, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the site

and surrounding neighborhood; and

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application; and

WHEREAS, the subject site is located on the southeast corner of Orchard Street and East Houston Street, partially within a C6-2A zoning district and partially within a C4-4A zoning district, in Manhattan; and

WHEREAS, the site has approximately 120 feet of frontage along Orchard Street, 140 feet of frontage along East Houston Street, 30,000 square feet of lot area and is currently under development, in part, with a 12-story, with cellar and sub-cellar, mixed-use commercial and residential building; and

WHEREAS, a portion of the site is subject to an environmental designation (E-126) and under the jurisdiction of the New York City Office of Environmental Remediation; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

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- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 proposed PCE will occupy a total of 25,538 square feet of floor area as follows: 1,188 square feet on the first floor consisting of a lobby, reception area, lounge and juice bar, 11,520 square feet of floor area on the second floor with strength-training areas, cardiovascular space, stretching areas, changing areas, a lounge and shop, locker rooms, a spa lounge and treatment area, and 12,830 square feet on the third floor, which will include spaces for strength training, stretching, cardiovascular enhancement, group fitness, cycling and yoga; and

WHEREAS, the PCE will be operated as Equinox Fitness with proposed hours of operation of Monday through Friday, 5:30 a.m. to 11:30 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the surrounding commercial area, that the majority of members will be residents of the neighborhood and employees of nearby commercial establishments and, therefore, walk to the site or arrive by public transportation; and

WHEREAS, in addition, the applicant submits that sound attenuation measures will be provided within the space so as to not disturb other tenants in the building by ensuring that the sound levels in adjacent building areas do not exceed 45 dBA, including batt insulation and jack slab flooring; and

WHEREAS, accordingly the Board finds that the PCE

is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics—including group fitness, yoga and stretching; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE will be fully sprinklered and that an approved interior fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—will be installed in the entire PCE space; and

WHEREAS, by letter dated May 9, 2017, the Fire Department states that it has no objection to this application; and

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

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

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16-BSA-118M, dated May 11, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, by letter dated June 3, 2015, OER issued a Notice to Proceed stating that the applicant's noise remedial action plan, including window and wall attenuations of 31 dBA for all facades, 31 dBA in residential spaces and 26 dBA in the commercial space, and the applicant's air quality remedial action plan, proposing to use natural gas for the hot water heaters and electricity for HVAC and other remaining systems, are both acceptable;

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and

WHEREAS, in addition, OER states that a Notice of Satisfaction from OER is required prior to the issuance of any final or temporary Certificate of Occupancy for the subject building, a condition that has been incorporated herein; and

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

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

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion to grant.

*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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, on a site partially in a C6-2A and a C4-4A zoning district, a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 17, 2017”- Eighteen (18) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring May 16, 2027;

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

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the BSA-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the BSA-approved plans;

THAT a Notice of Satisfaction from the New York City Office of Environmental Remediation, signifying that all remedial action requirements established for this project have been satisfied, be issued prior to the issuance of a final or temporary Certificate of Occupancy;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings;

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

THAT a Certificate of Occupancy shall be obtained

within four (4) years, by May 16, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, May 16, 2017.

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## 2016-4185-BZ

### CEQR #16-BSA-119Q

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 108-18 LLC, owner; Blink 108-14 Roosevelt, Inc., lessee. SUBJECT – Application May 11, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Blink*) within a new commercial building. C2-4/R6B zoning district.

PREMISES AFFECTED – 108-18 Roosevelt Avenue, Block 1996, Lot 11, Borough of Queens.

### COMMUNITY BOARD #4Q

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 27, 2016, acting on New Building Application No. 421077667, reads in pertinent part:

“Proposed physical culture establishment is not permitted as of right in a C2-4(R6B) zoning district per ZR32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an R6B (C2-4) zoning district, a physical culture establishment (“PCE”), contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 16, 2017, after due notice by publication in *The City Record*, and then to decision on the same day; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Roosevelt Avenue, between 108th Street and 111th Street, in an R6B (C2-4) zoning district, in Queens; and

WHEREAS, the site has approximately 100 feet of

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frontage along Roosevelt Avenue, 100 feet of depth, 10,000 square feet of lot area and is proposed to be developed with a new three-story plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the

foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 proposed PCE will occupy a total of 14,450 square feet of floor area as follows: 450 square feet on the first floor consisting of a lobby; 7,000 square feet of floor area on the second floor, which includes areas for cardiovascular fitness, strength training, offices, storage, lockers and retail; and 7,000 of square feet of floor area on the third floor with dumbbell areas, strength-training machines, cardiovascular-fitness equipment, a stretching area, a locker room and storage; and

WHEREAS, the PCE will be operated as Blink Fitness with proposed hours of operation of Monday to Saturday, 5:30 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the commercial character of the surrounding area; that Roosevelt Avenue is characterized by similar commercial and mixed-use developments with ground-floor commercial use akin to the subject site and proposed PCE; and that the majority of the PCE's members will be residents of the neighborhood and employees of nearby commercial uses; and

WHEREAS, the applicant submits that sound attenuation measures—including rubber flooring in activity areas and demising walls with batt installation—will be installed within the space to ensure that sound levels in other portions of the building will not exceed a maximum level of 45 dBA; and

WHEREAS, as discussed at hearing, the applicant further represents that no parking is required pursuant to ZR §§ 36-21 and 36-23, which waive the parking requirement of 20 spaces commanded by commercial use of the entire building; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to use of the premises, the applicant represents that the PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2),

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for the issuance of the special permit; 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 applicant represents that the PCE will be fully sprinklered and that an approved interior fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—will be installed in the entire PCE space; and

WHEREAS, by letter dated May 9, 2017, the Fire Department states that, based on its review of the drawings and supporting documentation for the proposed PCE, it has no objection to this application; and

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

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

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 16-BSA-119Q, dated May 11, 2016; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 *permit*, on a site located within an R6B (C2-4) zoning district, a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 16, 2017”-Five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring May 16, 2027;

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

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each

required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the BSA-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the BSA-approved plans;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings;

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

THAT a Certificate of Occupancy shall be obtained within four (4) years, by May 16, 2021;

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

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

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

Adopted by the Board of Standards and Appeals, May 16, 2017.

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## 2016-4231-BZ

### CEQR #17-BSA-006M

APPLICANT – Jay Goldstein, Esq., for JSM Associates LLC, owner; Flywheel Sports Inc., lessee.

SUBJECT – Application August 3, 2016 – Special Permit (§73-36) to permit the legalization of the operation of a physical culture establishment (*Flywheel*) located within a portion of the cellar of an existing building. C6-3 zoning district.

PREMISES AFFECTED – 51 Astor Place, Block 554, Lot 35, Borough of Manhattan.

### COMMUNITY BOARD #3M

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 4, 2017, acting on New Building Application No. 120746826, reads in pertinent part:

“ZR 32-10; ZR 73-36: The proposed physical culture establishment is not permitted as of right in a C6-3 district as per ZR 32-10. BSA special permit per ZR 73-36 is required”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, in a C6-3 zoning district, a physical culture establishment (“PCE”) in portions of the cellar and



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first floor of an existing mixed-use commercial and community facility building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 16, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, the subject site consists of a block bound by Astor Place to the south, Fourth Avenue to the west, East 9th Street to the north and Third Avenue to the east, in a C6-3 zoning district, in Manhattan; and

WHEREAS, the site has approximately 171 feet of frontage along Astor Place, 198 feet of frontage along Fourth Avenue, 231 feet of frontage along East 9th Street, 166 feet of frontage along Third Avenue, 36,117 square feet of lot area and is occupied by a 14-story, plus cellar and sub-cellar, mixed-use commercial and community facility building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the

commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies a total of 458 square feet of floor area (5,075 square feet of floor space) in the existing building as follows: 4,617 square feet of floor space in the cellar, which includes a spinning studio, locker areas with showers and restrooms, an office, reception area, retail space, storage and an IT room, and 458 square feet of floor area on the first floor with a lobby, dedicated staircase to the cellar and access to elevators shared with adjacent commercial tenants; and

WHEREAS, the PCE has been in operation as Flywheel since March 2016; and

WHEREAS, the facility operates Monday through Friday, 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, 8:00 a.m. to 5:30 p.m.; and

WHEREAS, the applicant represents that the PCE use is contained within the cellar of the existing building and, accordingly, has limited visibility from the street; that the surrounding area contains a variety of uses, ranging from office buildings and community facilities to restaurants and residential uses; and that the PCE does not attract significant additional traffic to the area; and

WHEREAS, with regards to sound attenuation, the

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applicant represents that sound attenuation measures—including sheetrock, batt insulation, foam isolators, isolated mat subfloor with neoprene isolators, fiberglass batting, perimeter isolation boards and sealed penetrations at the studio ceiling and partitions—have been installed such that partitions have an STC rating of 60 and all flooring has an STC rating of 64; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to use of the premises, the applicant represents that the PCE contains a group-fitness room that is used for spinning classes; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—and approved sprinkler system have been installed in the entire PCE space; that all sprinkler work was signed-off and a letter of completion was issued by DOB; and that the Fire Department performed an initial inspection of the fire alarm system, requested minor corrections, and a follow-up inspection will be performed; and

WHEREAS, by letter dated October 20, 2016, the Fire Department confirms that an approved interior fire alarm system has been legally filed and installed and that a final on-site inspection is pending; that the building is fully protected with a legally installed, inspected and approved sprinkler system; and, further, states that it has no objection to this application provided that the applicant provide additional information about egress; and

WHEREAS, in response to this request, the applicant revised the drawings to detail the path and terminus of egress from the locker room, a response that, at hearing, the Fire Department indicated was satisfactory; and

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

WHEREAS, the Board also finds that proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist

No. 17-BSA-006M, dated August 3, 2016; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion to grant; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, in a C6-3 zoning district, a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 23, 2017”- Four (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring March 1, 2026;

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

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—and sprinkler system shall be maintained in the entire PCE space;

THAT sound attenuation shall be maintained in the PCE as indicated on the BSA-approved plans;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings;

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

THAT a Certificate of Occupancy shall be obtained within one (1) year, by May 16, 2018;

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

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

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

Adopted by the Board of Standards and Appeals, May 16, 2017.

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**2016-4250-BZ**

**CEQR #17-BSA-017M**

APPLICANT – Transform Fitness Inc., for 133 E. 58<sup>th</sup> Street, LLC, owner.

SUBJECT – Application September 9, 2016 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Transform Fitness*) an existing building. C5-2) zoning district.

PREMISES AFFECTED – 133 East 58<sup>th</sup> Street, Block 1313, Lot 14, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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

**THE VOTE TO GRANT** –

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

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 11, 2016, acting on Alteration Application No. 122827389, reads in pertinent part:

“Proposed Physical Culture Establishment in C5-2 zoning district is not permitted pursuant to ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, in a C5-2 zoning district, a physical culture establishment (“PCE”) located on a portion of the ninth floor of an existing 14-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 16, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, Community Board 5, Manhattan, waives its recommendation for this application; and

WHEREAS, the subject site is located on the northwest corner of East 58th Street and Lexington Avenue, in a C5-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 107 feet of frontage along East 58th Street, 80 feet of frontage along Lexington Avenue, 9,345 square feet of lot area and is occupied by a 14-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:

- (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
- (ii) a swimming pool of a minimum 1,500 square feet; or
- (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

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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 PCE occupies 1,173 square feet of floor area on the ninth floor, consisting of an area with fitness equipment, a yoga therapy room, changing rooms and an office; and

WHEREAS, the PCE has been in operation as Transform Fitness, Inc., with hours of operation of Monday through Sunday, 5:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the mixed residential and commercial uses and character of the surrounding area, that the PCE is located on the ninth floor of a commercial building; that the surrounding area, Midtown Manhattan, is one of the nation's largest centers for commerce, entertainment and media; that the facility plays soft music and that the clients work with personal trainers on a one-on-one basis; and

WHEREAS, the applicant further represents that the PCE is fully contained in an existing structure, generates very little noise and would not be a nuisance to other tenants in the subject building; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to the use of the premises, the applicant states that the PCE will be used as a one-on-one personal training establishment with medical-grade fitness equipment, personal trainers and daily fitness and health training instruction, services and sessions; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the building has an interior fire alarm and that regular fire drills are performed in the building, but that there is no fire alarm within the PCE space; and

WHEREAS, at hearing, the Fire Department confirmed that there is a functional fire alarm system in the subject building and recommended that smoke detectors, connected to the existing fire alarm, be installed within the PCE space; and

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

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

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II

action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 17-BSA-017M, dated September 9, 2016; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, in a C5-2 zoning district, a physical culture establishment ("PCE"), contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 1, 2017"-Four (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring May 16, 2027;

THAT smoke detectors shall be installed in the PCE space and connected to the existing building-wide fire alarm system; and

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

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings;

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

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

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

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

Adopted by the Board of Standards and Appeals, May 16, 2017.

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## **2016-4254-BZ CEQR #17-BSA-020M**

APPLICANT – Mango & Lacoviello, LLP, for Central Harlem Plaza Commercial Unit, LLC, owner; Infiteme LLC, lessee.

SUBJECT – Application September 15, 2016 – Special Permit (§73-36) to permit the legalization of a physical

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culture establishment (*I Love Kickboxing*) on a portion of the first floor of an existing building. C4-5X zoning district. PREMISES AFFECTED – 120 Lenox Avenue a/k/a 47 West 116<sup>th</sup> Street, Block 1600, Lot 7501, Borough of Manhattan.

## COMMUNITY BOARD #10M

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

### THE VOTE TO GRANT –

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

Negative: .....0

### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 30, 2016, acting on Alteration Application No. 122704733, reads in pertinent part:

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

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, in a C4-5X zoning district, a physical culture establishment (“PCE”) located on a portion of the first floor of an 11-story mixed-use commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 16, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, Community Board 10, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Lenox Avenue, between West 117th Street and West 116th Street, in a C4-5X zoning district, in Manhattan; and

WHEREAS, the site has approximately 202 feet of frontage along Lenox Avenue, 450 feet of frontage along West 117th Street, 350 feet of frontage along West 116th Street, 80,731 square feet of lot area and is occupied by an 11-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts,

paddleball courts, racketball [*sic*] courts, tennis courts; or

- (ii) a swimming pool of a minimum 1,500 square feet; or
- (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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

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WHEREAS, the subject PCE occupies 3,002 square feet of floor area on the first floor, consisting of a lobby with reception desk, training floor with floor-mounted boxing bags, locker rooms, toilets, a break room and storage space; and

WHEREAS, the PCE has been in operation as I Love Kickboxing since March 15, 2016; and

WHEREAS, the facility operates Monday through Friday, 6:00 a.m. to 10:00 p.m., and Saturday and Sunday, 9:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant represents that the PCE is entirely contained within the existing building in an area characterized by a mix of commercial and residential uses and that the PCE has not attracted significant additional traffic to the surrounding area; and

WHEREAS, in addition, the applicant submits that sound attenuation measures—including acoustic ceiling panels, soundproofing drywall, floor mats and full insulation—have been installed within the space so as to not disturb other tenants in the building; and

WHEREAS, at hearing, in response to the Board's questions with respect to potential noise created by the floor-mounted boxing bags, the applicant explained that the boxing bags sit on a water-filled base, which in turn sits upon thick, padded floor mats and that the subject space is located above a parking garage; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant represents that the PCE operates class-based fitness instruction with a strong emphasis on boxing and kick-boxing training using boxing bags; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that an approved fire alarm—including area smoke detectors, manual pull stations at each required exist, local audible and visual alarms and connection to an FDNY-approved central station—and sprinkler system have been installed in the entire PCE space; and

WHEREAS, at hearing, the Fire Department confirmed that the sprinklers have been installed and an inspection has been scheduled, that an inspection has also been inspected for the fire alarm system, and stated that it has no objections to this application; and

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

WHEREAS, the proposed project will not interfere

with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 17BSA020M, dated September 15, 2016; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion to grant; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, in a C4-5X zoning district, a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 1, 2016"-Two (2) and "Received on December 19, 2016"- One (1) sheet for a total of Three (3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring March 15, 2026;

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

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—and sprinklers shall be maintained throughout the entire PCE space;

THAT sound attenuation shall be installed in the PCE as indicated on the BSA-approved plans; specifically, the boxing bags shall be stationary, placed on water-filled bases and sit on padded floor mats;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings;

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

THAT a Certificate of Occupancy shall be obtained within one (1) year, by May 16, 2018;

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

THAT the approved plans shall be considered

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approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, May 16, 2017.

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## 2017-146-BZ

### CEQR #BSA-120-K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation (HRO)

SUBJECT – Application May 11, 2017 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for properties registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 3722 Neptune Avenue, Block 7003, Lot 25, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, on a site within an R3-1 zoning district, the redevelopment and enlargement of a two-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side yards, pursuant to ZR § 23-461; and

WHEREAS, a public hearing was held on this application on May 16, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuild homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-05.3 (Filing Period), (3) 2 RCNY § 1-05.4 (Application Referral), (4) 2 RCNY § 1-05.6 (Hearing Notice), (5) 2 RCNY § 1-05.7 (List of Affected Property Owners), (6) 2 RCNY § 1-09.4 (Owner’s Authorization), and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject

application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of Neptune Avenue, between Seagate Avenue and West 37th Street, in an R3-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 30 feet of frontage along Neptune Avenue, 100 feet of depth, 3,000 square feet of lot area and is occupied by a two-story two-family detached home; and

WHEREAS, the applicant seeks a special permit, pursuant to ZR § 64-92, to allow the enlargement of the existing brick framed two-family detached home, which has non-compliant side yards, to allow for the abandonment of the lowest existing level, located partially below grade, and rebuild eligible square footage atop the existing structure to elevate of levels of the residence above the base flood elevation (“BFE”); and

WHEREAS, the existing residence provides side yards measuring 2.6 feet and 4.9 feet; and

WHEREAS, at the subject site, two side yards of at least 5 feet each and measuring at least 13 feet total are required, pursuant to ZR § 23-461; and

WHEREAS, the enlarged building will maintain the existing side yards, increasing the building’s degree of non-compliance at the new second story, hence the applicant seeks the subject relief; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the

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# MINUTES

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future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant states that the existing brick framing of the residence makes elevation of the existing building financially infeasible and the resulting need to, instead, abandon the lowest level and reconstruct atop the existing structure creates practical difficulties in complying with flood-resistant construction standards without the modification of the side yard requirements and that a waiver of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the neighborhood is characterized by single- and two-family detached and semi-detached dwellings; that the design of the residence is consistent with the existing aesthetic of the neighborhood; that the building includes numerous mitigating design features, such as green plantings and improved stairway flow; and that the proposed flood resistant construction would serve as a model for future development in the area; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. BSA-120-K, dated May 11, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R3-1 zoning district, the enlargement of an existing detached two-story two-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side

yards, pursuant to ZR § 23-461; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 11, 2017"- Six (6) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: side yards measuring at least 2.6 feet and 4.9 feet, as illustrated on the BSA-approved plans;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 16, 2021;

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

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

Adopted by the Board of Standards and Appeals, May 16, 2017.

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## **2016-4131-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ateret Torah Center, owner.

SUBJECT – Application March 7, 2016 – Special Permit (§73-19) to permit the construction of a school (UG 3) (Yeshiva Ateret Torah) contrary to use regulation on a portion of the lot and a Variance (§72-21) to permit waivers for height and setback, front yard, street wall height, ridge line and absence of off-street loading facilities. C8-2 and R5 (OP) zoning district.

PREMISES AFFECTED – 901 Quentin Road, Block 6641, Block 38, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for continued hearing.

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*Ryan Singer, Executive Director*



# MINUTES

## \*CORRECTION

**This resolution adopted on March 21, 2017, under Calendar No. 252-12-BZ and printed in Volume 102, Bulletin Nos. 12-13, is hereby corrected to read as follows:**

### 252-12-BZ

#### CEQR #13-BSA-019Q

APPLICANT – Richard Bowers of Akerman Senterfitt, LLP, for Mia & 223<sup>rd</sup> Street Management Corp., owner.

SUBJECT – Application August 15, 2012 – Variance (§72-21) to legalize four single family homes which do not comply with the rear yard requirements, ZR §23-47. R1-2 zoning district.

PREMISES AFFECTED – 39-39 223<sup>rd</sup> Street & 223-01/15/19 Mia Drive, Block 36343, Lot(s) 154-157, Borough of Queens.

#### COMMUNITY BOARD #11Q

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

#### THE VOTE TO GRANT –

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

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated August 10, 2012, acting on Department of Buildings (“DOB”) Application No. 491762035 reads in pertinent part:

ZR 23-47, ZR 12-10: Rear yard provided is contrary to ZR 23-47. The eastern portion of the lot abuts the parkland adjoining to Cross Island Parkway; therefore this property cannot be considered a through lot. Provide 30-ft rear yard; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R1-2 zoning district, to legalize four single-family dwellings that do not comply with the rear yard requirement, contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on February 14, 2017, after due notice by publication in *The City Record*, with a continued hearing on March 21, 2017, and then to decision on the same date; and

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

WHEREAS, Community Board 11, Queens, originally recommended disapproval, but, upon learning that adjacent neighbors retracted their opposition after making the determination that the homes on the site, which have been vacant and subject to vandalism, would contribute more positively to the community if occupied, now has no objection to the subject application; and

WHEREAS, the subject site is located at the northwestern corner of the intersection of 223<sup>rd</sup> Street and Mia Drive, in an R1-2 zoning district, in Queens; and

WHEREAS, the site is a single zoning lot comprised of four tax lots having approximately 100 feet of frontage along 223<sup>rd</sup> Street, 230 feet of frontage along Mia Drive, and 22,859 square feet of lot area; and

WHEREAS, the zoning lot is developed with four two-story single family homes and provides a 15 foot rear yard along the eastern lot line; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 13, 2010, when, under BSA Cal. Nos. 23-10-A thru 26-10-A, the Board recognized that the owner had acquired a common law vested right to continue the development of the single-family dwellings after the subject site was rezoned from an R2 zoning district to an R1-2 zoning district and the development no longer complied with applicable minimum front yard regulations; and

WHEREAS, such determination relied, in part, on the Board’s finding that the construction was conducted pursuant to valid permits, a finding that was based on letters issued from DOB, dated March 18, 2010, and June 7, 2010, stating that the applicable permits were lawfully issued prior to the date of the rezoning; and

WHEREAS, the applicant now seeks a variance of the rear yard requirements to legalize the four single-family dwellings based on practical difficulties and unnecessary hardship resulting from the applicant’s reliance, in good faith, on validly issued DOB permits and DOB determinations that the subject site was a through lot and no rear yards were required; and

WHEREAS, the applicant sets forth the following timeline for the existing dwellings’ approval process: in February and March 2004, the applicant obtained New Building Permits from DOB for the construction of four single-family detached homes at the subject premises; in a letter to the then-Queens Borough Commissioner dated October 6, 2004, a nearby property owner (the “Opposition”) challenged the issuance of the permits alleging that, because the property directly east of the eastern lot line of the subject property was a public park, the subject site was an interior lot, not a through lot, and a 30 foot rear yard was, therefore, required; on October 20, 2004, the then-Queens Borough Commissioner issued a Stop Work Order and Intent to Revoke Approvals and Permits to the site unless and until the applicant verified that the subject lot constituted a “through lot” as defined in ZR § 12-10; on October 28, 2004, in response to a letter from the applicant’s architect requesting confirmation that the site is a through lot with no rear yard requirement because it fronts on the mapped Cross Island Parkway, the Queens Borough President’s Consulting Engineer issued a letter confirming that the Topographical Bureau of the then-Queens Borough President’s Office had determined that the east lot line of Lot 154 coincides with the west mapped street line of the Cross Island Parkway; upon receipt of the Topographical Bureau’s determination, DOB vacated the Stop Work Order; and in a letter dated May 20, 2005, the then-Queens Borough Commissioner responded to the Opposition sharing her conclusion that the subject site was a through lot; and

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WHEREAS, on April 12, 2005, (the “Effective Date”), the rezoning of the site from an R2 zoning district to an R1-2 zoning district became effective and two of the subjects dwellings—39-39 223rd Street and 223-19 Mia Drive—were rendered non-compliant with regards to front yards, but the applicant avers that construction was entitled to continue, pursuant to ZR § 11-331(b), because the foundation of at least one of the four dwelling had been completed prior to the Effective Date; and

WHEREAS, the applicant submits that final construction, electrical and plumbing signoffs were obtained for the dwelling located at 39-39 223rd Street on August 22, 2005, February 13, 2006, and May 8, 2006, respectively; that final electrical signoff was obtained for the remaining three dwellings on October 24, 2005, and that final construction signoff was obtained for a second dwelling at 223-09 Mia Drive on November 29, 2005; and

WHEREAS, nevertheless, the applicant states that, though construction at the site was substantially completed by April 12, 2007, they were unable to obtain certificates of occupancy for the dwellings within two years after the Effective Date, pursuant to ZR § 11-332(a); and

WHEREAS, accordingly, the applicant filed the aforementioned vested rights applications at the Board on February 23, 2010; by letter dated March 18, 2010, DOB Counsel issued a letter stating that the permits for the subject buildings were lawfully issued, a conclusion that was subsequently re-confirmed by additional letters dated May 13, 2010, and June 7, 2010; the Board granted the vested rights applications on July 13, 2010, and the time for the applicant to complete construction and obtain Certificates of Occupancy for the dwellings on the site was extended until July 13, 2012; and

WHEREAS, although the applicant continued to work with DOB, since the Board’s 2012 grant of an extension of time, to resolve issues preventing the issuance of Certificates of Occupancy for the four subject dwellings, on January 10, 2012, DOB issued an Intent to Revoke permits as well as zoning objections for the failure to provide a 30 foot rear yard; DOB also subsequently denied the applicant’s request for reconsideration of those zoning objections on February 6, 2012, citing another DOB final determination—dated October 12, 2010, and affirmed by the Board in a decision dated March 8, 2011, for BSA Cal. No. 215-10-A (29-01 216th Street, Queens)—that a similarly situated lot was an interior lot, not a through lot; and

WHEREAS, the applicant represents that in order to provide the rear yards, approximately 15 feet of the total 27 foot width of the existing dwelling at 223-19 Mia Drive would have to be demolished and that such action is cost prohibitive and would result in a substandard, unmarketable dwelling approximately 12 feet wide; and

WHEREAS, accordingly, the applicant has filed for the subject relief; and

WHEREAS, the Board notes that New York State courts have recognized that property owners may invoke the principle of good faith reliance in the context of a variance application when they have made expenditures towards construction performed pursuant to a building permit that is later revoked

due to a non-compliance that existed at the time the permit was issued and such reliance resulted in a unique hardship, thereby serving as a substitute for the customary uniqueness finding set forth in ZR § 72-21(a);

WHEREAS, in *Jayne Estates, Inc. v. Raynor*, 22 N.Y.2d 417 (1968), the Court of Appeals determined that the expenditures made by a property owner in reliance on permits deemed to be invalid were suitably considered in an application for a variance, particularly with regards to the (a) finding, in which an applicant must allege “unnecessary hardship,” because (1) the property owner acted in good faith and (2) there was no reasonable basis upon which the property owner could have been charged with constructive notice of the permit’s invalidity; and

WHEREAS, in *Pantelidis v. Board of Standards and Appeals*, 10 N.Y.3d 846 (2008), the Court of Appeals, in a limited opinion, held that it was appropriate for the New York State Supreme Court to have conducted a good faith reliance hearing, rather than remand the case to the Board, to determine whether the property owner could claim reliance in the context of an Article 78 proceeding to overturn the Board’s denial of a variance application; the Court established that the Board should conduct such a hearing and that good faith reliance is relevant to the variance analysis; and

WHEREAS, most recently, in *Woods v. Srinivasan*, 108 A.D.3d 412 (1st Dep’t 2013) *lv to appeal denied*, 22 N.Y.3d 859 (2014), the Appellate Division found that, where the issue was whether construction documents and plans complied with the applicable side lot line requirements, DOB, rather than the property owner, was in the best position to avoid the erroneous issuance of the permit; accordingly, the Appellate Division found that the owner had relied in good faith on DOB’s permit issuance and remanded the matter to the Board to consider whether petitioner satisfied the remaining elements required for a variance; and

WHEREAS, the Board notes that the body of case law that addresses good faith reliance and a property owner’s ability to establish detrimental reliance that can be introduced in a variance application is limited to those instances where there is a unique history of approvals from high-level municipal officials—the Village Board of Trustees in *Jayne Estates* and a DOB Borough Commissioner in *Pantelidis*—on the precise matter at issue; and

WHEREAS, accordingly, the Board identifies the findings for good faith reliance under the common law as: (1) that a permit was issued and later revoked based on a permit defect that existed when the permit was first issued; (2) that the permit approval process included an inquiry into the issue that would subsequently be the basis for the revocation of such permit; (3) that the owner could not have known that the permit was defective despite municipal assurances to the contrary; and (4) that construction was performed and expenditures were made subsequent to the issuance of the permit; and

WHEREAS, with respect to the first and second elements of good faith reliance, the applicant asserts that DOB issued the permits in February and March 2004 and issued an Intent to Revoke the permits on January 10, 2012, based on the purported non-compliance of the development with ZR § 23-

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47, a defect that existed in 2004 and was the precise subject of inquiry by the Queens Borough Commissioner, who, after issuing an Intent to Revoke and Stop Work Order for the site on October 20, 2004, unless and until it was verified that the site constituted a “through lot” as defined in ZR § 12-10, in a 2005 letter concluded that the subject site was, indeed, a through-lot and had the Stop Work Order vacated; and

WHEREAS, with regard to the third element, the applicant submits that it could not have known that the permits were defective despite multiple municipal assurances to the contrary because DOB’s denial of a request for reconsideration for the rear yard zoning objections relied, in part, on a DOB final determination, dated October 12, 2010, that post-dated both the 2004 issuance of permits for the subject site and the substantial completion of construction at the site in 2007; and

WHEREAS, finally, in satisfaction of the fourth element, the applicant represents that construction on the four residences was completed subsequent to the 2004 issuance of the permits at a cost of approximately \$1 million as of 2010, when the applicant applied to the Board to recognize a common law vested right to continue the development of the site; and

WHEREAS, while the Board acknowledges that government agencies, such as DOB, maintain the ability to correct mistakes and that DOB may not be estopped from correcting the erroneous approval of a building permit or issuance of a Certificate of Occupancy, the Board finds the retroactive application of DOB’s corrected interpretation as to whether properties similar to the subject site are “interior lots” rather than “through lots” to have, in this case, resulted in a unique hardship; and

WHEREAS, accordingly, the Board finds that the applicant has made all of the findings required to establish their good faith reliance on the issuance of the 2004 permits in satisfaction of ZR § 72-21(a); and

WHEREAS, the applicant states that, in accordance with ZR § 72-21(b), there is no reasonable possibility that modifications to the site required for compliance with the Zoning Resolution, specifically, the demolition of approximately 15 feet from the existing 27-foot wide single-family residence located at 223-19 Mia Drive, will bring a reasonable return and, in support of this contention, provided cost estimates for the demolition and reconstruction of a revised as-of-right 12-foot wide residence at this location (approximately \$538,000), the costs associated with the construction of the existing residence (assumed to be one-quarter of the total construction costs, approximately \$274,000), and the loss in sales value of a 12-foot wide residence as compared to a 27-foot wide residence; and

WHEREAS, as evidence of the significant loss in sale value, stated to be approximately \$1 million, the applicant provided letters from two real estate brokers with experience selling property in the area surrounding the subject site who both concluded that a 12-foot wide home would be substandard, have an inefficient and unattractive layout and, therefore, be unmarketable, regardless of its location in an

up-scale neighborhood, and that the cost to convert it from its existing conditions would be greater than its market value; and

WHEREAS, in sum, demolition and reconstruction of the existing residence at 223-19 Mia Drive required for compliance with ZR § 23-47 and the provision of a 30-foot rear yard at the site would constitute a loss of more than \$1.8 million; and

WHEREAS, upon review of these submissions, the Board has determined that because of the applicant’s good faith reliance on early DOB approvals, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the surrounding area is predominated by residential uses, primarily one- and two-family residences, and, thus, the subject proposal 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 prepared a study of the area surrounding the subject site—including sites on the same Tax Block, located to the west of the Cross Island Parkway and north of the Long Island Railroad tracks, and sites on neighboring Tax Blocks 6197, 6344 and 6340 (the “Study Area”)—and, of the 83 total sites in the Study Area, 81 (98 percent) of the lots are improved with single-family homes, 22 of these have floor area ratios (“FARs”) equal to or greater than the FAR of the subject site (0.49 FAR) and an additional 35 (a total of 70 percent) have FARs equal to or greater than 0.40; and

WHEREAS, the applicant concedes that a majority of the lots on the same Tax Block as the subject site provide larger open areas between their eastern building walls and rear lot lines, but the applicant submits that, because the rear yard in question abuts an area currently mapped as park land adjoining the Cross Island Parkway, the granting of the subject variance, and the maintenance of the existing 15 foot rear yard in lieu of an enlargement to 30 feet, will have no impact on the light, air or open space enjoyed by the neighboring homes, nor will it decrease the distance between the subject dwellings and their neighbors; and

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

WHEREAS, the applicant states that, per ZR § 72-21(d), the hardship was not self-created, but was, instead, the result of reliance on multiple assurances from municipal officials that the subject site was a “through lot” for which rear yards were not required; and

WHEREAS, the applicant additionally cites the New York Supreme Court’s decision in *Pantelidis*, 10 Misc.3d 1077(A), 9 (N.Y. Cnty. 2005), for the proposition that the presence of good faith precludes a finding of self-created

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hardship; and

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

WHEREAS, supported by their study of the surrounding area and submission that the existing dwellings are comparable in bulk to their neighbors, the applicant represents that the subject proposal is the minimum needed to provide relief; and

WHEREAS, the Board agrees, in accordance with ZR § 72-21(e), that the subject proposal is the minimum necessary to afford the owner relief; 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 a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 13-BSA-019Q, dated August 15, 2013; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to permit, in an R1-2 zoning district, the legalization of four sing-family dwellings that do not comply with rear yard requirements, contrary to ZR § 23-47; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received July 1, 2017—twelve (12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the site: minimum rear yard depth of 15’-0”, as reflected on the BSA-approved plans;

THAT Certificates of Occupancy shall be obtained within one (1) year of the date of filing of this resolution, by May 5, 2018;

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

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

Adopted by the Board of Standards and Appeals, March 21, 2017.

**\*The resolution has been amended.**

**Corrected in Bulletin Nos 20-21, Vol. 102, dated June 1, 2017.**

# 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.

Volume 102, No. 22

June 10, 2017

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# DOCKETS

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## 2017-151-BZ

161 Bowery, located on Bowery between Delancy and Broome Streets, Block 00424, Lot(s) 6, Borough of **Manhattan, Community Board: 3**. Special Permit (§73-36) to permit the legalization of physical culture establishment (Grand Unicorn Experiment) on the cellar and first floors of an existing commercial building contrary to ZR §32-10. C6-1G zoning district. C6-1G district.

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## 2017-152-BZ

104 East 10th Street, located on the south side of East 10th Street between 2nd and 3rd Avenues, Block 00465, Lot(s) 109, Borough of **Manhattan, Community Board: 3**. Variance (§72-21) to permit the addition of a two story vertical enlargement of an existing building contrary ZR §23-52(B) (required rear yard). C6-2A/R8B C6-2A/R8B district.

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## 2017-153-BZ

14A Mesereau Court, located on Mesereau Court between Shore Parkway and Dunne Place, Block 08797, Lot(s) 47, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-154-BZ

7A Lake Avenue, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08796, Lot(s) 139, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-155-BZ

26 Lincoln Terrace, located on Lincoln Terrace between Nostrand and Emmons Avenue, Block 08796, Lot(s) 154, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-156-BZ

31 Lincoln Terrace, located on Lincoln Terrace between Nostrand and Emmons Avenue, Block 08796, Lot(s) 149, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-157-BZ

16 Stanton Road, located on Stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 88, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-158-BZ

20 Stanton Road, located on Stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 96, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-159-BZ

35 Gunnison Court, located on Gunnison Court between Brown Street and Stanton Road, Block 08800, Lot(s) 82, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-160-BZ

36 Gunnison Court, located on Gunnison Court between Brown Street and Stanton Road, Block 80800, Lot(s) 83, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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# DOCKETS

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## 2017-161-BZ

37 Gunnison Court, located on Gunnison Court between Brown Street and Stanton Road, Block 08800, Lot(s) 188, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-162-BZ

38 Gunnison Court, located on Gunnison Court between Brown Street and Stanton Road, Block 08800, Lot(s) 189, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-163-BZ

27 Lincoln Terrace, located on Lincoln Terrace between Nostrand and Emmons Avenue, Block 08796, Lot(s) 153, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-164-BZ

32 Lincoln Terrace, located on Lincoln Terrace between Nostrand and Emmons Avenue, Block 08796, Lot(s) 148, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-165-BZ

3 Lake Avenue, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08796, Lot(s) 179, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-166-BZ

26 Stanton Road, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08800, Lot(s) 185, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-167-BZ

13C Lake Avenue, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08796, Lot(s) 54, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-168-BZ

10A Lake Avenue, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08796, Lot(s) 57, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-169-BZ

15 Lake Avenue, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08796, Lot(s) 131, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-170-BZ

14 Lake Avenue, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08796, Lot(s) 132, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-171-BZ

12A Lake Avenue, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08796, Lot(s) 134, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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# DOCKETS

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## 2017-172-BZ

11 Lake Avenue, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08796, Lot(s) 135, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-173-BZ

10 Lake Avenue, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08796, Lot(s) 136, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-174-BZ

9A Lake Avenue, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08796, Lot(s) 137, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-175-BZ

1 Lake Avenue, located on Lake Avenue between Nostrand and Emmons Avenue, Block 08796, Lot(s) 177, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-176-BZ

32 Stanton Road, located on Stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 52, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-177-BZ

22 Stanton Road, located on Stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 100, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-178-BZ

21 Stanton Road, located on Stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 98, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-179-BZ

33 Stanton Road, located on Stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 50, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-180-BZ

17A Mesereau Court, located on Mesereau Court off of Dunne Place, Block 08797, Lot(s) 52, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-181-BZ

30 Stanton Road, located on Stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 55, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-182-BZ

29 Stanton Road, located on Stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 59, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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# DOCKETS

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## 2017-183-BZ

28 Stanton Road, located on stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 181, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-184-BZ

27 Stanton Road, located on stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 183, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-185-BZ

34 Stanton Road, located on stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 46, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-186-BZ

17 Stanton Road, located on stanton Road between Losee Terrace and Gunnison Court, Block 08800, Lot(s) 90, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R4-1 district.

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## 2017-187-BZ

3660 East Tremont Avenue, located at the intersection fromed by East Tremont and Philip Avenues., Block 05543, Lot(s) 83, Borough of **Bronx, Community Board: 10**. Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (McDonald's) with an accessory drive-through facility contrary to ZR §32-15 . C1-2/R5D zoning district. C1-2/R4-1 district.

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## 2017-188-BZ

1727 Ocean Parway, located on the east side of Ocean Parkway between Quentin Road and Kings Highway, Block 06663, Lot(s) 82 & 83, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area (§23-142); side yard requirements (§§23-461) and less than the required rear yard (§23-47). R5 (Special Ocean Parkway) zoning district. R5 (Special Ocean Parkway) 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 JUNE 27, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, June 27, 2017, 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

#### 70-97-BZ

APPLICANT – Law Office of Fredrick A. Becker for 575 Lex Property Owner LLC, owner; TSI East 51<sup>st</sup> Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 10, 2016 – Extension of Term of a Special Permit (§73-36) to permitting the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on November 1, 2016. C6-6 and C6-4.5 (MID) zoning district.

PREMISES AFFECTED – 575 Lexington Avenue, Block 1306, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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#### 98-97-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 278 Eighth Associates LLC, owner; TSI West 23<sup>rd</sup> Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 30, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture Establishment (*New York Sports Club*) which expired on November 1, 2016. C2-7A zoning district.

PREMISES AFFECTED – 270 Eighth Avenue, Block 773, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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#### 302-01-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Creston Avenue Realty LLC, owner.

SUBJECT – Application April 19, 2017 – Amendment of a pre-1961 variance which permitted an open parking lot accessory to a commercial building. The Amendment seeks to develop an as-of-right building on the site retaining the accessory parking. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, Block 3175, Lot 26, Borough of Bronx.

**COMMUNITY BOARD # 7BX**

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#### 336-05-BZ

APPLICANT – Klein Slowik PLLC, for WB Realty Partners LLC, owner; CPM Enterprises LLC, lessee.

SUBJECT – Application October 12, 2016 – Extension of Term of a previously approved Special permit (§73-36) permitting the operation of a Physical Culture Establishment (drive 495) in the subject building, occupying the third and a portion of the second floor which expired on September 12, 2016. M1-5B (SoHo-Cast Iron Historic District).

PREMISES AFFECTED – 495 Broadway aka 66-68 Mercer Street, Block 484, Lot 24, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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## REGULAR MEETING JUNE 27, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, June 27, 2017, 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

#### 2016-4299-BZ

APPLICANT – Jesse Masyr, Esq., Fox Rothschild LLP, for Thor 280 Richards Street, LLC, owner.

SUBJECT – Application November 4, 2016 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1). M3-1 zoning district.

PREMISES AFFECTED – 280 Richards Street, Block 612, Lot 150, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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#### 2016-4354-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 5111 4<sup>th</sup> Avenue Equity Realty Holdings, LLC, owner; Blink Sunset Park, Inc., lessee.

SUBJECT – Application December 6, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Blink*) within an existing building. C2-4/R7A zoning district.

PREMISES AFFECTED – 5109 4<sup>th</sup> Avenue, Block 799, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

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# CALENDAR

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**2017-210-BZ**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application June 13, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 131 Bedford Avenue, Block 16350, Lot 400, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**2017-211-BZ**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application June 14, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 38 Brighton 4<sup>th</sup> Court, Block 8664, Lot 446, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

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**2017-212-BZ**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application June 14, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 25 Brighton 7<sup>th</sup> Court, Block 8667, Lot 762, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

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*Ryan Singer, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, MAY 23, 2017 10:00 A.M.

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

### SPECIAL ORDER CALENDAR

#### 1289-80-BZ

APPLICANT – Troutman Sanders LLP, for Evelyn L. Wells, as surviving Trustee and Steven R. Straus, owner; Bally Total Fitness, lessee.

SUBJECT – Application July 15, 2016 – Extension of Term of a variance allowing the operation of a Physical Culture Establishment (*24 Hour Fitness*) which expired on July 21, 2016. C1-3/R6 zoning district.

PREMISES AFFECTED – 298 West 231<sup>st</sup> Street, Block 5711, Lot 29, Borough of Bronx.

#### COMMUNITY BOARD #8BX

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a previously granted variance for a physical culture establishment (“PCE”), which expired on July 21, 2016, and an amendment to reflect a change in the PCE operator and remove a previously imposed condition; and

WHEREAS, a public hearing was held on this application on March 21, 2017, after due notice by publication in *The City Record*, with a continued hearing on May 23, 2017, and then to decision on that date; and

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

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

WHEREAS, the subject site is located on the southwest corner of the intersection of West 231<sup>st</sup> Street and Tibbett Avenue, within an R6 (C1-3) zoning district, in the Bronx; and

WHEREAS, the site has approximately 135 feet of frontage along West 231<sup>st</sup> Street, 422 feet of frontage along Tibbett Avenue, 75 feet of frontage along Corlear Avenue, 52,900 square feet of lot area and is occupied by a one-story plus cellar commercial building of which the subject PCE is the sole occupant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 21, 1981, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the change in use of the existing building from a supermarket to a physical culture establishment for a term of five (5) years, expiring July 21,

1986, on condition that its hours of operation be restricted to 10:00 a.m. to 10:00 p.m. daily; that lighting be provided for the parking area and directed away from the adjoining plots; that the retaining wall and fence indicated on the approved plans be repaired and properly maintained; and that the gates to the parking facility be locked after business hours; and

WHEREAS, on June 10, 1986, under the subject calendar number, the Board granted an extension of the term of the variance for ten (10) years, expiring July 21, 1996; and

WHEREAS, on June 23, 1998, under the subject calendar number, the Board amended the resolution to extend the term for ten (10) years, expiring July 21, 2006, and permit a change in the hours of operation to 6:00 a.m. to 11:00 p.m. Monday through Thursday, 6:00 a.m. to 10:00 p.m. on Friday, 9:00 a.m. to 6:00 p.m. on Saturday and 9:00 a.m. to 5:00 p.m. on Sunday, on condition that a continuous video monitoring systems at the entrance, security mirrors, wallet size security lock boxes and coin-operated security lockers be installed and maintained; that the security guard in the parking lot be maintained; that fencing, screening and gates surrounding the premises be adequately maintained; and that the premises be maintained graffiti free; and

WHEREAS, on October 24, 2006, under the subject calendar number, the Board again amended the variance to extend the term another ten (10) years, expiring July 21, 2016, on condition that there be no change in ownership or operating control of the PCE without prior approval from the Board; and

WHEREAS, the previous term of the variance having expired, the applicant seeks an extension of term for an additional ten (10) years in addition to an amendment to permit and reflect a change in the ownership and operating control of the PCE; and

WHEREAS, the PCE was previously under operation by Bally Total Fitness of Greater New York and is currently operated by 24 Hour Fitness, Inc. from 6:00 a.m. to 11:00 p.m. Monday to Thursday, 6:00 a.m. to 10:00 p.m. on Friday, 9:00 a.m. to 6:00 p.m. on Saturday and 9:00 a.m. to 5:00 p.m. on Sunday in compliance with the 1998 variance amendment; and

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

WHEREAS, the applicant represents that no changes are sought to the area of the building occupied by the subject PCE, but notes that the plans submitted with this application include minor alterations, including reverse door swings, the removal and reconfiguration of partitions and the relocation of storage areas; and

WHEREAS, at hearing, the Fire Department represented that the existing fire alarm and sprinklers at the site are functioning and that it has no objection to the subject application; and

WHEREAS, the applicant additionally submits that, in compliance with the 1998 variance amendment, video

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# MINUTES

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monitoring is maintained in the facility, including at the front entrance, as are security mirrors and coin-operated security lockers and that the operator has implemented an active graffiti-removal program to clear the façade, as required, but requests that the Board remove the condition that a security guard be maintained in the parking lot; and

WHEREAS, the applicant represents that the parking lot at the premises is completely fenced in, well-lit and sees significant pedestrian activity daily, obviating the need for a security guard; and

WHEREAS, the Board waives the prior condition that a security guard be maintained in the parking lot, approved the change in operator and finds that a ten (10) year extension are appropriate, with the conditions set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 21, 1981, as amended through October 24, 2006, 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, expiring July 21, 2026, *on condition* that the site shall substantially conform to drawings as filed with this application, marked ‘Received May 15, 2017’-Four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring July 21, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 6:00 a.m. to 11:00 p.m. Monday through Thursday, 6:00 a.m. to 10:00 p.m. on Friday, 9:00 a.m. to 6:00 p.m. on Saturday and 9:00 a.m. to 5:00 p.m. on Sunday;

THAT a continuous video monitoring system at the entrance of the facility, security mirrors, wallet-size security lock boxes and coin-operated security lockers shall be maintained;

THAT the fencing, screening and gates surrounding the premises shall be adequately maintained;

THAT the premises shall be maintained graffiti free;

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

THAT a revised Certificate of Occupancy shall be obtained within one (1) year, by May 23, 2018;

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;

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

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

Adopted by the Board of Standards and Appeals, May 23, 2017.

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**117-07-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Rosebud Owner LLC, owner; Crunch LLC, lessee.

SUBJECT – Application December 9, 2016 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Crunch*) in an existing 21-story mixed-use building which expires on July 24, 2017. C1-9A (TA) zoning district.

PREMISES AFFECTED – 222 East 34<sup>th</sup> Street, Block 914, Lot 36, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which will expire on July 24, 2017, and an amendment reflected a change in hours of operation; and

WHEREAS, a public hearing was held on this application on May 23, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is located on the south side of East 34th Street, between Second Avenue and Third Avenue, in a C1-9A zoning district and partially within the Special Transit Land Use District, in Manhattan; and

WHEREAS, the site has approximately 360 feet of frontage along East 34th Street, 35,396 square feet of lot area and is occupied by a 21-story mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 24, 2007, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to allow the establishment of a physical culture establishment on the first and second floors of the subject building for a term of ten (10) years, expiring July 24, 2017, on condition that the hours of operation be limited to Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday 5:00 a.m. to 9:00 p.m., Saturday and Sunday, 7:00 a.m. to 7:00 p.m.; that all massages only be performed by New York State licensed massage therapists; that measures be implemented to ensure there is no noise impact from the use in residential units in the building; and that fire safety measures be installed and maintained as shown on the approved plans; and

WHEREAS, by letter dated January 14, 2013, the Board

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# MINUTES

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approved a change in ownership and operating control of the PCE from Club H Fitness to Crunch Fitness and modifications to the interior layout as in substantially compliance with the previously approved plans; and

WHEREAS, the applicant presently seeks an extension of the term of the special permit without any further proposed changes to the operator and an amendment to the permitted hours of operation and previously approved plans to reflect a slight reduction in floor area on the first floor; and

WHEREAS, the applicant proposes to change the operating hours in order to be consistent with Crunch's other facilities; specifically, the applicant requests that the hours be changed to Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday 5:00 a.m. to 10:00 p.m., Saturday 7:00 a.m. to 9:00 p.m. and Sunday 8:00 a.m. to 9:00 p.m.; and

WHEREAS, in addition, the applicant represents that the PCE currently occupies 3,855 square feet of floor area on the first floor and 21,749 square feet of floor area on the second floor, a reduction of 589 square feet of floor area on the first floor and resulting in the PCE occupying a total of 25,604 square feet of floor area in the subject building; and

WHEREAS, finally, the applicant clarifies that no massages are offered at the facility and no such services are herein proposed; and

WHEREAS, at hearing, the Fire Department confirmed that an interior fire alarms and sprinkler have been installed in the space and that it has no objection to the subject application; and

WHEREAS, the Board finds that a ten (10) 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 July 24, 2007, 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, expiring July 24, 2027, *on condition* that the site shall substantially conform to drawings as filed with this application, marked 'Received December 9, 2016' - Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring July 24, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday 5:00 a.m. to 10:00 p.m., Saturday 7:00 a.m. to 9:00 p.m. and Sunday 8:00 a.m. to 9:00 p.m.;

THAT all signage shall comply with regulations applicable in the underlying zoning district and shall not exceed 150 square feet;

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

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT measure are implemented to ensure there is no noise impact from the PCE in residential units in the building;

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

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 revised Certificate of Occupancy shall be obtained within one (1) year;

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

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

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

Adopted by the Board of Standards and Appeals, May 23, 2017.

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## **581-56-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Salamander Realty Corp., owner.

SUBJECT – Application May 16, 2016 – Amendment (§11-413) of a previously approved variance which permitted the operation of a Storage Warehouse (UG 16). The amendment seeks to change the use to a trade school, meeting hall and offices (Use Groups 6 & 9). R5 zoning district.

PREMISES AFFECTED – 24-01 to 24-11 36<sup>th</sup> Avenue aka 35-45 to 35-57 24<sup>th</sup> Street, Block 338, Lot 1, Borough of Queens.

## **COMMUNITY BOARD #1Q**

THE VOTE TO CLOSE HEARING –

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

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for decision, hearing closed.

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## **65-94-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for KGH Realty Corp., owner.

SUBJECT – Application March 7, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted an enlargement contrary to side yard regulations and community facility (UG 4) on the ground and cellar floors and commercial offices (UG 6) in the garage which expired on March 5, 2016. R4B zoning district.

PREMISES AFFECTED – 144-02 Jewel Avenue, Block 6642, Lot 2, Borough of Queens.

## **COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for adjourned hearing.

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## 58-96-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 277 Park Avenue, LLC., owner; Manhattan Athletic Club LLC, lessee.

SUBJECT – Application November 28, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (*Manhattan Athletic Club*) which expires on December 10, 2016. C5-2A (DB) zoning district. C5-3 & C6-6 (Special Midtown District) zoning district.

PREMISES AFFECTED – 277 Park Avenue, Block 1302, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.

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## 201-97-BZ

APPLICANT – Eric Palatnik, P.C., for Monroe Queens-Rockaway, LLC, owner.

SUBJECT – Application August 6, 2015 – Amendment of a previously approved Variance (§72-21) which permitted the erection and use of a one-story building as a non-conforming Use Group 6 drug store with accessory parking. The Amendment seeks to eliminate the term of the variance since the use is now permitted in the district. C2-3/R3-2 zoning district.

PREMISES AFFECTED – 119-02 Rockaway Boulevard, corner of Rockaway Boulevard and Lefferts Boulevard, Block 11712, Lot 28, Borough of Queens.

### COMMUNITY BOARD #10Q

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for continued hearing.

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## 30-00-BZ

APPLICANT – Fried, Frank, Harris Shriver & Jacobson LLP, for The Trustees of Columbia University in the City of New York, lessee.

SUBJECT – Application February 17, 2016 – Extension of term of a previously granted variance granted pursuant to §72-21 of the zoning resolution which permitted an open parking lot (Use Group 8) which expired on February 6, 2016. R7-2 zoning district.

PREMISES AFFECTED – 465-469 West 165<sup>th</sup> Street and 458-464 West 166<sup>th</sup> Street, Block 2111, Lot(s) 53, 54, 55, 57, 71, 72, 73, Borough of Manhattan.

### COMMUNITY BOARD #12M

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for continued hearing.

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## 7-04-BZ

APPLICANT – Eric Palatnik, P.C., for Co-Op City BC, owner.

SUBJECT – Application November 7, 2016 – Extension of Time to Complete Construction of a UG4 Church/Community Outreach Center (*Co-Op City Baptist*

*Church*) which expired August 19, 2011; Waiver of the Rules. R3A zoning district

PREMISES AFFECTED – 2208 Boller Avenue, Block 5135, Lot 1, Borough of the Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to February 6, 2018, at 10 AM for special hearing.

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## APPEALS CALENDAR

### 2016-4332-A

APPLICANT – Eric Palatnik, P.C., for Dov Finman, owner. SUBJECT – Application November 11, 2016 – To permit the proposed development of a one family home, contrary to Article 3 Section 36 of the General City Law. R4-1 zoning district.

PREMISES AFFECTED – 4 Williams Court, Block 15622, Lot 181, Borough of Queens.

### COMMUNITY BOARD #14Q

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”), dated October 17, 2016, acting on Application No. 420658176 reads in pertinent part:

The proposed new building fronts on an unmapped street. General City Law Sec. 36 (2) requires that a street giving access to a structure has been duly placed on the official map or plan; number 4 Williams Court fronts on an unmapped street; and

WHEREAS, this is an application to permit the construction of a single-family, two-story dwelling that does not front on a mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on March 28, 2017, after due notice by publication in *The City Record*, with a continued hearing on May 23, 2017, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject lot is located on the west side of Williams Court, approximately 149 feet from the intersection of New Haven Avenue and Williams Court, in an R4-1 zoning district, in Queens; and

WHEREAS, the site has approximately 56 feet of frontage along Williams Court, 2,610 square feet of lot area and is currently vacant; and

WHEREAS, the applicant proposes to develop the site with a single-family two-story dwelling compliant with all zoning requirements applicable in the zoning district and seeks the subject relief because the proposed dwelling will fronts on two streets identified as Williams Court, neither of which are



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duly placed on the official map of the City of New York; and

WHEREAS, the City does not have title to the street, but there are Corporation Counsel Opinions of Dedication, dated August 20, 1991, recognizing both the Williams Court located to the northeast of the subject site that runs approximately 280 feet east of Caffrey Avenue and the Williams Court located to the southwest of the site running to New Haven Avenue as dedicated to public use as a public streets for widths of 20 feet and 30 feet, respectively; and

WHEREAS, Caffrey Avenue and New Haven Avenue are both paved legally mapped streets; and

WHEREAS, the Williams Court located to the southwest of the site allows parking only its western side, the same side of the street as the subject site, and “No Parking Anytime” signs are located on the opposite side of the street; and

WHEREAS, the applicant submits that a fire hydrant is currently located in front of the proposed residence and that the proposed dwelling will be fully sprinklered; and

WHEREAS, at hearing, the Fire Department stated that it has no objection to the subject application; and

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

*Therefore it is Resolved*, that the decisions of the DOB dated October 17, 2016, acting on DOB Application No. 420658176 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received May 5, 2017”- One (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the dwelling shall be fully sprinklered, as indicated on the BSA-approved plans;

THAT curb and pavement improvements for the site shall be completed in substantial compliance with the Builder’s Pavement Plan;

THAT all curbs, curb cuts, sidewalks, pavement, street lighting and street signage shall be designed and constructed in accordance with the requirements of the New York City Department of Transportation (“DOT”) and be subject to DOT review and approval;

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

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

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

Adopted by the Board of Standards and Appeals, May 23, 2017.

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## 2016-4329-A

APPLICANT – Richard G. Leland, for Baychester Retail III LLC, owner.

SUBJECT – Application November 10, 2016 – Administrative appeal challenging the Department of Buildings' final determination dated October 25, 2016, to permit the installation of 54 individual signs at the subject property. C7 zoning district.

PREMISES AFFECTED – 2001 Bartow Avenue, Block 5141, Lot 101, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 2016-4229-BZ

#### CEQR #17-BSA-004R

APPLICANT – Eric Palatnik, P.C., for Loffcoff Properties LLC, owner.

SUBJECT – Application July 21, 2016 – Variance (§72-21) to permit the construction of a two (2) family detached home contrary to rear yard requirements (ZR §23-47). R3X (SSRD) zoning district.

PREMISES AFFECTED – 1452 Drumgoole Road West, Block 6333, Lot 201, Borough of Staten Island.

### COMMUNITY BOARD #3SI

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated July 18, 2016, acting on Department of Buildings (“DOB”) Application No. 520268282 reads in pertinent part:

23-47 (ZR): Proposed rear yard is contrary to Sec 23-47 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R3X zoning district and the Special South Richmond Development District, the construction of a two-story plus cellar detached two-family dwelling that does not comply with the underlying regulations pertaining to rear yards, as set forth in ZR § 23-47; and

WHEREAS, a public hearing was held on this application on March 21, 2017, after due notice by publication in *The City Record*, with a continued hearing on May 2, 2017, and then to decision on that date; and

WHEREAS, Commissioner Montanez performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application on condition that the garage at the site face Drumgoole Road West and that the

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driveway be located in front of the proposed dwelling instead of to the side; and

WHEREAS, the subject site is located on the north side of Drumgoole Road West, between Nippon Avenue and Huguenot Avenue, in an R3X zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 100 feet of frontage along Drumgoole Road West, 4,905 square feet of lot area and is currently vacant; and

WHEREAS, the applicant proposes to develop the subject site with a two-story plus cellar detached two-family home with 2,102 square feet of floor area, a floor area ratio (“FAR”) of 0.43 and a 13’-2” rear yard; and

WHEREAS, at the subject site, a rear yard of at least 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the shallow depth of the lot, ranging from approximately 44 feet deep at its eastern end to approximately 53 feet deep at its western end, is a unique physical condition that creates a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations; and

WHEREAS, the applicant represents that the subject site—the result of a merger of former lots 201 and 203—is comprised of lots created in or around 1928 with depth varying from approximately 148 feet at the eastern end of former lot 203 to approximately 133 feet at the western end of former lot 201, but the depth of these lots were reduced to their current dimensions in the 1960s when the New York State Department of Transportation (“NYSDOT”) mapped and constructed the Richmond Parkway and the Drumgoole Road West service road; additionally a 30 foot deep slope easement exists across the site and a one-foot wide strip of land currently owned by NYSDOT (Lots 200 and 202) lies between the subject site and Drumgoole Road West; and

WHEREAS, by letter dated February 24, 2016, NYSDOT states that it has no objection to the construction of the proposal within the slope easement and access across Lots 200 and 202 on condition that the site conform to the site plan reviewed by NYSDOT, Job # 1096, dated, 10/20/16, prepared by Joseph M. Morace, AIA, Architect and that any revisions to those plans not reviewed and approved by the State will result in the rescinding of their permission; and

WHEREAS, the applicant submitted a study of all sites within 1,000 feet of the subject site (the “Study Area”) concluding that 83 percent of those lots are developed with single- or two-family dwellings, have an average lot depth of 119 feet and have a median depth of 100 feet; and

WHEREAS, of the 264 lots in the Study Area, 17 sites, including the subject site, have depths of less than 60 feet: five of those sites have a dimension (either frontage/width or depth) measuring less than 10 feet and, thus, undevelopable on their own; four are already developed with dwellings; two are used in common as a parking lot; two others are part of the Staten Island Railway right-of-way; and

WHEREAS, only three sites within the Study Area are vacant—Lots 209, 207 and 205 located immediately east of the subject premises on the subject block—but the applicant

represents that they do not share the same hardship as the subject site because they are owned in common with Lot 109, which has a depth of approximately 140 feet, and aerial photos provided by the applicant show that Lots 109, 209 and 207 are, in fact, surrounded by a single fence and, thus, utilized in common; and

WHEREAS, based on the above, the Board finds that the shallow depth of the subject site is a unique physical condition that creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home, in satisfaction of ZR § 72-21(b); and

WHEREAS, the applicant states that the proposal to develop the subject site with a residential use compliant with FAR, total height, front yard and side yard regulations is consistent with the essential character of the surrounding district and, thus, will not substantially impair the appropriate use or development of adjacent property and not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, in support of this contention, the applicants submitted photographs of single- and two-family dwellings located within close proximity to the subject site with similar massing to the proposed; and

WHEREAS, at hearing, the Board expressed confusion regarding the Community Board’s objection to the orientation of the garage and location of the driveway, noting that other dwellings on the subject block had driveways located to the side, rather than in the front, and that the applicant’s proposed treatment of parking at the subject site is more desirable and safe layout in that it provides sufficient room for a vehicle to make a U-turn; and

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

WHEREAS, in hearing, the Board questioned whether the merger of former lots 201 and 203 to create the subject site resulted in the hardship complained of herein by removing the site(s) from eligibility for an as-of-right reduction, pursuant to ZR § 23-52, of the depth of the required rear yards from 30 feet to 10 feet, and requested proof that viable complying dwellings could not be built on former lots 201 and 203 if they had not been merged; and

WHEREAS, in response to the Board’s request, the applicant submitted as-of-right plans depicting the dwellings that would result from the application of ZR § 23-52 to former lots 201 and 203, to wit, a two-story single-family dwelling with 1,287 square feet of floor area, a 13’-2” rear yard and two parking spaces on former lot 201 and a two-story single-family dwelling with 578 square feet of floor area, a ten foot rear yard and two parking spaces on former lot 203; and

WHEREAS, in addition, the applicant submitted a

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letter from a licensed real estate broker with knowledge of the real estate market on Staten Island opining that, because the subject area consists primarily of dwellings containing between 1,500 and 5,000 square feet of floor area, dwellings containing less than 1,500 square feet of floor area would be unmarketable; and

WHEREAS, accordingly, the applicant submits that the merger of the two lots did not create the hardship and, instead, mitigated it, allowing the applicant to construct one viable two-family residence rather than two non-viable single-family residences; and

WHEREAS, a neighbor testified at hearing in opposition to the application on the basis that the proposed dwelling is only 13 feet from his property line and will reduce both his property value and privacy; and

WHEREAS, in response to this concern, the Board notes that, as demonstrated by the as-of-right plans submitted by the applicant, the an as-of-right development of the subject site would allow a rear yard as shallow as 10 feet and, thus, the grant of the relief sought herein does not cause any additional hardship on neighbors residing at the rear of the subject site than as-of-right development; and

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

WHEREAS, the applicant submits that the subject proposal, which requests only a waiver of the rear yard requirements and is otherwise compliant with zoning regulations, is the minimum relief required in satisfaction of ZR § 72-21(e); and

WHEREAS, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; 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 a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-004R, dated July 21, 2016; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to permit, in an R3X zoning district and the Special South Richmond Development District, development of a two-story plus cellar detached two-family dwelling that does not comply with the underlying regulations pertaining to rear yards, as set forth in ZR § 23-47; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received December 16, 2016- Ten (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the site: minimum rear yard depth of 13’-2”, as reflected on the BSA-approved plans;

THAT any revisions to the site plan reviewed and approved by NYSDOT—Job # 1096, dated 10/20/16,

prepared by Joseph M. Morace, AIA, Architect—must be submitted to NYSDOT for review and approval;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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

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

Adopted by the Board of Standards and Appeals, May 23, 2017.

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## 2016-4266-BZ

### CEQR #17-BSA-026M

APPLICANT – Francis R. Angelino, Esq., for Brause 59 Co., owner; 330 East 59<sup>th</sup> Street Gym, LLC, lessee.

SUBJECT – Application October 6, 2016 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*ICE NYC*) in portions of the ground and cellar of an existing building. C2-5/R8 zoning district.

PREMISES AFFECTED – 330 East 59<sup>th</sup> Street, Block 1351, Lot 36, Borough of Manhattan.

### COMMUNITY BOARD #6M

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Chief Plan Examiner of the Manhattan Borough Office of the Department of Buildings (“DOB”), dated September 26, 2016, acting on DOB Application No. 122889712, reads in pertinent part:

The proposed Physical Culture Establishment in zoning district R8 within a C2-5 overlay is not a permitted use as of right. A Special Permit is required from the Board of Standards and Appeals as per Sections 32-10, 32-31 and 73-36 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within an R8 (C2-5) zoning district, a physical culture establishment (“PCE”) located on the ground floor and cellar of an eight-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 28, 2017, after due notice by publication in *The City Record*, with a continued hearing on May 23, 2017, and then to decision on that date; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

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WHEREAS, Commissioner Montanez performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the south side of East 59th Street, between First Avenue and Second Avenue, in an R8 (C2-5) zoning district, in Manhattan; and

WHEREAS, the site has approximately 42 feet of frontage along East 59th Street, a depth of 100 feet, 4,185 square feet of lot area and is occupied by an eight-story plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be

satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and Certificate of Occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 2,867 square feet of floor area on the first floor and 2,420 square feet of floor space in the cellar of the existing building consisting of locker rooms with showers, office space and fitness classroom space in the cellar with the lobby and spaces for weight training, interval training and yoga classes on the first floor; and

WHEREAS, the PCE has been in operation as ICE NYC since approximately mid-December 2016 with the following hours of operation: Monday through Thursday, 5:30 a.m. to 9:00 p.m., Friday, 5:30 a.m. to 7:00 p.m., Saturday, 9:00 a.m. to 1:00 p.m. and Sunday, 9:00 a.m. to 12:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located within a commercial district in a building without any residential occupancy and has instituted an operational plan to mitigate any nuisance to neighbors; and

WHEREAS, specifically, the applicant engaged an acoustical engineer, which made the following recommendations: installation of an isolated floor system to mitigate the effects of weight drops; infilling of the existing staircase opening in the second floor slab; infill of all penetrations that pass through from the first floor to the second floor with fire-stop and acoustic sealant; the wrapping or lagging of all pipes, conduits and ductwork that passes from the first to second floor; and installation of a digital tamper-resistant limiter in-line with the audio playback system to ensure that music volume does not violate the New York City Noise Code; and

WHEREAS, the applicant represents that these recommendations have been installed in the PCE space and the Board has made the maintenance of these recommendations a condition of this approval; and

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WHEREAS, in addition, the applicant submits that the four column in the first floor training area have been boxed in with wallboard and tiles that are decoupled from and do not touch the columns to prevent noise vibrations from traveling through the building during wall ball exercises; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides facilities for high-intensity interval training, cycling and rowing instruction for physical improvement and weight reduction and no massage services will be offered at the facility; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE has a sprinkler system and is equipped with an interior fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to the building’s interior fire alarm connected to an FDNY-approved central station; and

WHEREAS, at hearing, the Fire Department stated that it has no objections to the application; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

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

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

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

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 17-BSA-026M, dated October 6, 2016; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located in an R8 (C2-5) zoning district, the operation of a physical culture establishment on a portion of the first floor and second floor of an existing two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially

conform to drawings filed with this application marked “Received April 21, 2017” – Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on December 15, 2026;

THAT the following sound attenuation measures shall be maintained in the PCE space: an isolated floor system to mitigate the effects of weight drops; infill of the existing staircase opening in the second floor slab; infill of all penetrations that pass through from the first floor to the second floor with fire-stop and acoustic sealant; the wrapping or lagging of all pipes, conduits and ductwork that passes from the first to second floor; and a digital tamper-resistant limiter in-line with the audio playback system to ensure that music volume does not violate the New York City Noise Code;

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 the existing fire alarm and sprinkler systems shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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

THAT a revised Certificate of Occupancy shall be obtained within one (1) year;

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, May 23, 2017.

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## **226-14-BZ**

APPLICANT – Gerald J. Caliendo, RA, AIA, for Sharey Tefilah, owner.

SUBJECT – Application September 18, 2014 – Variance (§72-21 to permit the proposed three (3) story use group 4 Synagogue, school and Rabbi’s office. R4 zoning district. PREMISES AFFECTED – 147-02 76<sup>th</sup> Road, Block 6686, Lot 1, Borough of Queens.

## **COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for adjourned hearing.

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## 263-14-BZ

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application October 24, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141(b); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 1601 Oriental Boulevard, Block 8757, Lot 23, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for adjourned hearing.

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## 330-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jack Guindi, owner.

SUBJECT – Application December 30, 2014 – Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461); perimeter wall height (ZR 23-263) and less than the required minimum rear yard (ZR23-47); R3-2 zoning district.

PREMISES AFFECTED – 1746 East 21<sup>st</sup> Street, Block 6783, Lot 18, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for continued hearing.

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## 4-15-BZ

APPLICANT – Sheldon Lobel, P.C., for Bais Chaya Esther Inc., owner.

SUBJECT – Application January 9, 2015 – Variance (§72-21) to permit the conversion of the existing building at the premises from residential to community facility use.

PREMISES AFFECTED – 119 Webster Avenue, block 5416, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for adjourned hearing.

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## 258-15-BZ

APPLICANT – Eric Palatnik, P.C., for Elijah Realty LLC, owner.

SUBJECT – Application November 18, 2015 – Special Permit (§73-44) to reduce the number of required accessory off street parking spaces from twenty nine (29) to fourteen (14) at the existing building. C4-2 zoning district.

PREMISES AFFECTED – 2619 East 16<sup>th</sup> Street, Block 7460, Lot 96, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for continued hearing.

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## 2016-4277-BZ

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Consolidated Edison Company of New York, Inc., owner.

SUBJECT – Application March 28, 2017 – Special Permit (§73-16) to permit the addition of a battery storage facility to an existing electric utility substation that was granted pursuant to BSA Calendar Number: 178-63-BZ. R4 zoning district.

PREMISES AFFECTED – 79-04 151<sup>st</sup> Avenue, Block 11426, Lot 2, Borough of Queens.

### COMMUNITY BOARD #10Q

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for adjourned hearing.

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## REGULAR MEETING TUESDAY AFTERNOON, MAY 23, 2017 1:00 P.M.

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

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## ZONING CALENDAR

### 2016-4242-BZ

APPLICANT – Eric Palatnik, P.C., for Robert and Judy Weiss, owners.

SUBJECT – Application August 25, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to open space (ZR §23-142); side yards (ZR 23-461) and less than the required rear yard (ZR §23-47). R-32 zoning district.

PREMISES AFFECTED – 1671 East 29<sup>th</sup> Street, Block 6792, Lot 50, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 28, 2016, acting on Application No. 321365704 reads in pertinent part:

Proposed vertical and horizontal enlargement to an existing single family home in an R3-2 district is non-compliant in regard to:

- 1) Proposed floor area ratio is contrary to ZR 23-142;
  - 2) Proposed lot coverage is contrary to ZR 23-142;
  - 3) Proposed open space is contrary to ZR 23-142;
  - 4) Proposed rear yard is contrary to ZR 23-47;
  - 5) Proposed side yard is contrary to ZR 23-461;
- And must be referred to the Board of Standard and Appeals for a special permit pursuant to ZR 73-622; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-2 zoning district, the proposed enlargement of a single-family detached residence that does not comply with

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the zoning requirements for floor area ratio, lot coverage, open space, rear and side yards contrary to ZR §§ 23-142, 23-47 and 23-461; and

WHEREAS, a public hearing was held on this application on May 23, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Montanez performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 29th Street, between Avenue P and Quentin Road, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 50 feet of frontage along East 29th Street, a depth of 100 feet and 5,000 square feet of lot area; and

WHEREAS, the site is occupied by a two-story single-family detached dwelling with 2,500 square feet of floor area, a floor area ratio ("FAR") of 0.50, 27 percent lot coverage, 73 percent open space, two side yards measuring 8.9 feet and 3.9 feet and a rear yard of 39 feet; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

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 detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing dwelling with a one-story addition at the rear the will result in a dwelling with a total of 3,183 square feet of floor area, 0.64 FAR, 41 percent lot coverage, 59 percent open space, maintain the 8.9 foot wide and 3.9 foot wide side yards and reduce the existing rear yard to 20 feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50, maximum lot coverage of 35 percent and minimum open space of 65 percent are permitted pursuant to ZR § 23-142; a rear yard of at least 30 feet is required pursuant to ZR § 23-47; and two side yards having a minimum width of 5 feet and a minimum total combined width of 13 feet are required pursuant to ZR § 23-461; and

WHEREAS, the applicant submitted an analysis of the floor area ratios of single- and two-family residences within a

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400 foot radius of the subject site (the “Study Area”) concluding that 37 of the 82 dwellings (45 percent) have FARs equal to or greater than 0.64, ranging from 0.64 to 1.50; and

WHEREAS, the applicant additionally provided a lot coverage analysis of the same Study Area concluding that 30 of the 82 dwellings (37 percent) have lot coverage equal to or greater than 41 percent, ranging from 41 percent to 65 percent; and

WHEREAS, finally, the applicant submitted a rear yard study of single- and two-family dwellings on the subject block showing that, while most of the dwellings have rear yards of complying depths, many have one-story garages in these rear yards, indicating that one-story rear yard incursions are typical of the subject block; and

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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, in an R3-2 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area ratio, lot coverage, open space, rear and side yards contrary to ZR §§ 23-142, 23-47 and 23-461; *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 May 23, 2017”- Seventeen (17) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,183 square feet (0.64 FAR), a maximum of 41 percent lot coverage, a minimum of 59 percent open space, side yards of at least 8.9 feet and 3.9 feet and a rear yard of at least 20 feet, as illustrated on the BSA-approved plan; and

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

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 special 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 23, 2017.

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## **20-15-BZ**

APPLICANT – Alexander Levkovich, for Steven Israel, owner; Mishkan Yerushalayim, lessee.

SUBJECT – Application February 5, 2015 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship community facility at the premises contrary to floor area ratio, open space, lot coverage, wall height, front yard, side yards, rear yard, sky exposure plane, and parking regulations. R4 (OP) zoning district.

PREMISES AFFECTED – 461 Avenue X, Block 7180, Lot 75, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for postponed hearing.

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## **2016-4176-BZ**

APPLICANT – Akerman, LLP, for Islamic Center of Jackson Heights, Inc., owner.

SUBJECT – Application April 20, 2017 – Variance (§72-21) to permit the construction of a new three-story house of worship (UG 4A) building contrary to ZR §24-34 (front yard) and ZR §24-35 (side yard) requirements. R4 zoning district.

PREMISES AFFECTED – 78-04 31<sup>st</sup> Avenue, Block 1149, Lot 1, Borough of Queens.

### **COMMUNITY BOARD #3Q**

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for continued hearing.

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## **2016-4251-BZ**

APPLICANT – Jesse Masyr, Esq., Fox Rothschild LLP, for Neptune South Commercial LLC, owner.

SUBJECT – Application September 13, 2016 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for ambulatory diagnostic and treatment health care facility use (UG 4A) and office use (UG 6B). C8-2 (Special Ocean Parkway District) zoning district.

PREMISES AFFECTED – 626 Sheepshead Bay Road, Block 7279, Lot 6, Borough of Brooklyn.

### **COMMUNITY BOARD #13BK**

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for continued hearing.

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## **2016-4262-BZ**

APPLICANT – Pryor Cashman LLP, for ZCAM, LLC, owner; Lyons Den Power Yoga, owner.

SUBJECT – Application October 3, 2016 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Lyons Den Power Yoga*) on the second and third floors of an existing building. C6-2A (Tribeca East Historic District) zoning district.

PREMISES AFFECTED – 279 Church Street, Block 175, Lot 16, Borough of Manhattan.

### **COMMUNITY BOARD #1M**



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**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for continued hearing.  
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*Ryan Singer, Executive Director*

**SPECIAL MEETING**  
**THURSDAY MORNING, MAY 25, 2017**  
**10:00 A.M.**

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

**2017-133-A**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 206 Beach 42<sup>nd</sup> Street, Block 15850, Lot 30, Borough of Queens.

**COMMUNITY BOARD #14Q**

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for waiver of certain of the Board’s Rules of Practice and Procedure and to allow for the elevation or reconstruction of a single-family home on a portion of a 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 May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the owner by the Mayor’s Office of Housing Recovery Operations (“HRO”) and the Build it Back Program, which was created to assist New York City residents affected by Hurricane Sandy; and

WHEREAS, in order to accept the application from HRO on behalf of the owner, and in furtherance of the City’s effort to rebuild homes impacted by Hurricane Sandy expeditiously and efficiently, the Board waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-06.1(b) (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-06.2 (A Form), (3) 2 RCNY § 1-06.3(b) (Filing Period), (4) 2 RCNY § 1-06.4(b) (Application Referral), (5) 2 RCNY § 1-06.5(b) (Hearing Notice), (6) 2 RCNY § 1-09.1 (Application Form), and (7) 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Beach 42<sup>nd</sup> Street, south of Rockaway Beach Boulevard, within an R4 zoning district, in Queens; and

WHEREAS, by letter dated March 29, 2017, the Department of Environmental Protection (“DEP”) states that

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there are no existing or planned DEP Capital Projects associated with the subject site and that DEP has no objections to the proposed application, on condition that (1) no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; (2) if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; (3) if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; and (4) if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; and

WHEREAS, by letter dated April 4, 2017, the Department of Transportation (“DOT”) states that there is no existing or planned DOT Capital Project associated with the subject site and that it has no objection to the proposal on condition that the proposal comply with Department of Buildings’ requirement, including the Builders Pavement Plan; and

WHEREAS, by letter dated April 10, 2017, the Fire Department states that it has no objections to the proposal on the condition that, where the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet; and

WHEREAS, the Fire Department further states that, in circumstances where the construction consists primarily of structural elevation and the Fire Department has determined that the home has been mostly repaired, with the exception of work associated with elevating the home, elevating and moving mechanical, electrical, and plumbing equipment, roof

construction or other minor work associated with elevating the home in compliance with the New York City Building Code Appendix G, the Department of Buildings (“DOB”) may waive the requirement that the building has a sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code upon notice from the Fire Department; and

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

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the above-referenced Rules of Practice and Procedure, and authorizes a waiver of GCL § 35 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 *on condition* that the proposed elevation or reconstruction will comply with all applicable zoning district requirements; and that all other applicable laws, rules and regulations shall be complied with; and *on further condition*:

THAT no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of

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the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT the proposal complies with Department of Buildings' requirement, including the Builders Pavement Plan;

THAT, if the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that the building is exempt; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT this approval is limited to proposals for the elevation or reconstruction of previously existing structures and insofar as the applicant proposes, instead, to repair the building or other structure on the subject lot, this waiver shall be void as unnecessary;

THAT the applicant provide the Board with a full set of approved plans upon DOB's issuance of a Certificate of Occupancy for the subject building or other structure;

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; 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, May 25, 2017.

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## 2017-134-A

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 118 East 7<sup>th</sup> Road, Block 15455, Lot 11, Borough of Queens.

## COMMUNITY BOARD #14Q

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for waiver of certain of the Board's Rules of Practice and Procedure and to allow for the elevation or reconstruction of a single-family home on a portion of a 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 May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the owner by the Mayor's Office of Housing Recovery Operations ("HRO") and the Build it Back Program, which was created to assist New York City residents affected by Hurricane Sandy; and

WHEREAS, in order to accept the application from HRO on behalf of the owner, and in furtherance of the City's effort to rebuild homes impacted by Hurricane Sandy expeditiously and efficiently, the Board waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-06.1(b) (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-06.2 (A Form), (3) 2 RCNY § 1-06.3(b) (Filing Period), (4) 2 RCNY § 1-06.4(b) (Application Referral), (5) 2 RCNY § 1-06.5(b) (Hearing Notice), (6) 2 RCNY § 1-09.1 (Application Form), and (7) 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of East 7 Road, between Church Road and Walton Road, within an R3-2 zoning district, in Queens; and

WHEREAS, by letter dated March 29, 2017, the Department of Environmental Protection ("DEP") states that a contemplated DEP Capital Project, the scope of which is unknown, is associated with the subject site but that DEP has no objections to the proposed application, on condition that (1) no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; (2) if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other

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structure being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; (3) if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; and (4) if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; and

WHEREAS, by letter dated April 4, 2017, the Department of Transportation (“DOT”) states that there is a planned DOT Capital Project, the scope of which is not yet finalized, associated with the subject site, and that it has no objections to the proposed application, on condition that the proposal complies with Department of Buildings’ requirements, including the Builder’s Pavement Plan; and

WHEREAS, accordingly, DOT and DEP further condition the subject application on all buildings and other structures, including exterior stairs, being set back at least 5 feet from the front lot line of the property; and

WHEREAS, by letter dated April 10, 2017, the Fire Department states that it has no objections to the proposal on the condition that, where the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet; and

WHEREAS, the Fire Department further states that, in circumstances where the construction consists primarily of structural elevation and the Fire Department has determined that the home has been mostly repaired, with the exception of work associated with elevating the home, elevating and moving mechanical, electrical, and plumbing equipment, roof construction or other minor work associated with elevating the home in compliance with the New York City Building Code Appendix G, the Department of Buildings (“DOB”) may waive

the requirement that the building has a sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code upon notice from the Fire Department; and

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

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

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

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

*Therefore it is Resolved,* that the Board of Standards and Appeals waives the above-referenced Rules of Practice and Procedure, and authorizes a waiver of GCL § 35 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 *on condition* that the proposed elevation or reconstruction will comply with all applicable zoning district requirements; and that all other applicable laws, rules and regulations shall be complied with; and *on further condition:*

THAT no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other

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structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT all buildings and other structures, including exterior stairs, be set back at least 5 feet from the front lot line of the property;

THAT the proposal complies with Department of Buildings' requirement, including the Builders Pavement Plan;

THAT, if the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that the building is exempt; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT this approval is limited to proposals for the elevation or reconstruction of previously existing structures and insofar as the applicant proposes, instead, to repair the building or other structure on the subject lot, this waiver shall be void as unnecessary;

THAT the applicant provide the Board with a full set of approved plans upon DOB's issuance of a Certificate of Occupancy for the subject building or other structure;

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; 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, May 25, 2017.

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## 2017-135-A

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3X zoning district.

PREMISES AFFECTED – 14-50 Gipson Street, Block 15655, Lot 33, Borough of Queens.

### COMMUNITY BOARD #14Q

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for waiver of certain of the Board's Rules of Practice and Procedure and to allow for the elevation or reconstruction of a single-family home on a portion of a 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 May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the owner by the Mayor's Office of Housing Recovery Operations ("HRO") and the Build it Back Program, which was created to assist New York City residents affected by Hurricane Sandy; and

WHEREAS, in order to accept the application from HRO on behalf of the owner, and in furtherance of the City's effort to rebuild homes impacted by Hurricane Sandy expeditiously and efficiently, the Board waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-06.1(b) (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-06.2 (A Form), (3) 2 RCNY § 1-06.3(b) (Filing Period), (4) 2 RCNY § 1-06.4(b) (Application Referral), (5) 2 RCNY § 1-06.5 (b) (Hearing Notice), (6) 2 RCNY § 1-09.1 (Application Form), and (7) 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Gipson Street, north of Enright Road, within an R3X zoning district, in Queens; and

WHEREAS, by letter dated March 29, 2017, the Department of Environmental Protection ("DEP") states that there are no existing or planned DEP Capital Projects associated with the subject site and that DEP has no objections to the proposed application, on condition that (1) no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; (2) if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure

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being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; (3) if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; and (4) if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; and

WHEREAS, by letter dated April 4, 2017, the Department of Transportation (“DOT”) states that there is no existing or planned DOT Capital Project associated with the subject site and that it has no objection to the proposal on condition that the proposal comply with Department of Buildings’ requirement, including the Builders Pavement Plan; and

WHEREAS, by letter dated April 10, 2017, the Fire Department states that it has no objections to the proposal on the condition that, where the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet; and

WHEREAS, the Fire Department further states that, in circumstances where the construction consists primarily of structural elevation and the Fire Department has determined that the home has been mostly repaired, with the exception of work associated with elevating the home, elevating and moving mechanical, electrical, and plumbing equipment, roof construction or other minor work associated with elevating the home in compliance with the New York City Building Code Appendix G, the Department of Buildings (“DOB”) may waive the requirement that the building has a sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code upon notice from the Fire Department; and

WHEREAS, the Board notes that pursuant to GCL §35, it may authorize construction within the bed of the mapped

street subject to reasonable requirements; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the above-referenced Rules of Practice and Procedure, and authorizes a waiver of GCL § 35 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 *on condition* that the proposed elevation or reconstruction will comply with all applicable zoning district requirements; and that all other applicable laws, rules and regulations shall be complied with; and *on further condition*:

THAT no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as

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confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT the proposal complies with Department of Buildings' requirement, including the Builders Pavement Plan;

THAT, if the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that the building is exempt; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT this approval is limited to proposals for the elevation or reconstruction of previously existing structures and insofar as the applicant proposes, instead, to repair the building or other structure on the subject lot, this waiver shall be void as unnecessary;

THAT the applicant provide the Board with a full set of approved plans upon DOB's issuance of a Certificate of Occupancy for the subject building or other structure;

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; 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, May 25, 2017.

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## 2017-136-A

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-2 zoning district.

PREMISES AFFECTED – 310 East 8 Road, Block 15655, Lot 33, Borough of Queens.

### COMMUNITY BOARD #14Q

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

**THE VOTE TO GRANT** –

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

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for waiver of certain of the Board's Rules of Practice and Procedure and to allow for the elevation or reconstruction of a single-family home on a portion of a 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 May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the owner by the Mayor's Office of Housing Recovery Operations ("HRO") and the Build it Back Program, which was created to assist New York City residents affected by Hurricane Sandy; and

WHEREAS, in order to accept the application from HRO on behalf of the owner, and in furtherance of the City's effort to rebuild homes impacted by Hurricane Sandy expeditiously and efficiently, the Board waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-06.1(b) (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-06.2 (A Form), (3) 2 RCNY § 1-06.3(b) (Filing Period), (4) 2 RCNY § 1-06.4(b) (Application Referral), (5) 2 RCNY § 1-06.5(b) (Hearing Notice), (6) 2 RCNY § 1-09.1 (Application Form), and (7) 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of East 8 Road, between Lanark Road and West Road, within an R3-2 zoning district, in Queens; and

WHEREAS, by letter dated March 29, 2017, the Department of Environmental Protection ("DEP") states that a DEP Capital Project extends into the subject site, but that DEP has no objections to the proposed application, on condition that (1) no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; (2) if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or

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other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; (3) if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; and (4) if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; and

WHEREAS, by letter dated April 4, 2017, the Department of Transportation (“DOT”) states that there is a planned and finalized DOT Capital Project associated with the subject site and that it has no objections to the subject proposal, on condition that the proposal complies with Department of Buildings’ requirements, including the Builders Pavement Plan; and

WHEREAS, accordingly, DOT and DEP further condition the subject application on all buildings or other structures, including exterior stairs, not being constructed within either a planned DEP Capital Project, as indicated on the Department of Design and Construction’s (“DDC”) Damages Map and/or Acquisition plans as of September 15, 2015, or a planned DOT Capital Project, as indicated on DDC’s Right of Way Acquisition Plan as of September 15, 2015, or as indicated in writing by the DDC; and

WHEREAS, by letter dated April 10, 2017, the Fire Department states that it has no objections to the proposal on the condition that where the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet; and

WHEREAS, the Fire Department further stated that, in circumstances where the construction consists primarily of structural elevation and the Fire Department has determined that the home has been mostly repaired, with the exception of work associated with elevating the home, elevating and moving

mechanical, electrical, and plumbing equipment, roof construction or other minor work associated with elevating the home in compliance with the New York City Building Code Appendix G, the Department of Buildings (“DOB”) may waive the requirement that the building has a sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code upon notice from the Fire Department; and

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

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the above-referenced Rules of Practice and Procedure, and authorizes a waiver of GCL § 35 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 *on condition* that the proposed elevation or reconstruction will comply with all applicable zoning district requirements; and that all other applicable laws, rules and regulations shall be complied with; and *on further condition*:

THAT no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building



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or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT all buildings or other structures, including exterior stairs, not be constructed within a planned DEP Capital Project as indicated on the DDC's Damages Map and/or Acquisitions plan as of September 15, 2015;

THAT all buildings or other structures, including exterior stairs, not be constructed within a planned DOT Capital Project as indicated on the DDC's Right of Way Acquisition Plan as of September 15, 2015, or as indicated in writing by the DDC;

THAT the proposal complies with Department of Buildings' requirement, including the Builders Pavement Plan;

THAT, if the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that the building is exempt; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT this approval is limited to proposals for the elevation or reconstruction of previously existing structures and insofar as the applicant proposes, instead, to repair the building or other structure on the subject lot, this waiver shall be void as unnecessary;

THAT the applicant provide the Board with a full set of approved plans upon DOB's issuance of a Certificate of Occupancy for the subject building or other structure;

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; 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, May 25, 2017.

## 2017-137-A

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 580 Lincoln Avenue, Block 3884, Lot 28, Borough of Staten Island.

### COMMUNITY BOARD #2SI

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

**THE VOTE TO GRANT** –

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

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for waiver of certain of the Board's Rules of Practice and Procedure and to allow for the elevation or reconstruction of a single-family home on a portion of a 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 May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the owner by the Mayor's Office of Housing Recovery Operations ("HRO") and the Build it Back Program, which was created to assist New York City residents affected by Hurricane Sandy; and

WHEREAS, in order to accept the application from HRO on behalf of the owner, and in furtherance of the City's effort to rebuild homes impacted by Hurricane Sandy expeditiously and efficiently, the Board waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-06.1(b) (Objection Issued by the Department of Buildings), (2) 2 RCNY § 1-06.2 (A Form), (3) 2 RCNY § 1-06.3(b) (Filing Period), (4) 2 RCNY § 1-06.4(b) (Application Referral), (5) 2 RCNY § 1-06.5(b) (Hearing Notice), (6) 2 RCNY § 1-09.1 (Application Form), and (7) 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of Lincoln Avenue, between Olympia Boulevard and Colony Avenue, within an R3-1 zoning district, on Staten Island; and

WHEREAS, by letter dated March 29, 2017, the Department of Environmental Protection ("DEP") states that there are no existing or planned DEP Capital Projects associated with the subject site and that DEP has no objections to the proposed application, on condition that (1) no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; (2) if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure

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being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; (3) if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; and (4) if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; and

WHEREAS, by letter dated April 4, 2017, the Department of Transportation (“DOT”) states that there is no existing or planned DOT Capital Project associated with the subject site and that it has no objection to the proposal on condition that the proposal comply with Department of Buildings’ requirement, including the Builders Pavement Plan; and

WHEREAS, by letter dated April 10, 2017, the Fire Department states that it has no objections to the proposal on the condition that, where the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet; and

WHEREAS, the Fire Department further states that, in circumstances where the construction consists primarily of structural elevation and the Fire Department has determined that the home has been mostly repaired, with the exception of work associated with elevating the home, elevating and moving mechanical, electrical, and plumbing equipment, roof construction or other minor work associated with elevating the home in compliance with the New York City Building Code Appendix G, the Department of Buildings (“DOB”) may waive the requirement that the building has a sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code upon notice from the Fire Department; and

WHEREAS, the Board notes that pursuant to GCL §35, it may authorize construction within the bed of the mapped

street subject to reasonable requirements; and

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

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

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

*Therefore it is Resolved*, that the Board of Standards and Appeals waives the above-referenced Rules of Practice and Procedure, and authorizes a waiver of GCL § 35 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 *on condition* that the proposed elevation or reconstruction will comply with all applicable zoning district requirements; and that all other applicable laws, rules and regulations shall be complied with; and *on further condition*:

THAT no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor;

THAT if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as

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confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply;

THAT the proposal complies with Department of Buildings' requirement, including the Builders Pavement Plan;

THAT, if the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that the building is exempt; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT this approval is limited to proposals for the elevation or reconstruction of previously existing structures and insofar as the applicant proposes, instead, to repair the building or other structure on the subject lot, this waiver shall be void as unnecessary;

THAT the applicant provide the Board with a full set of approved plans upon DOB's issuance of a Certificate of Occupancy for the subject building or other structure;

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; 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, May 25, 2017.

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## 2017-138-A

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 3089 Alan Place, Block 5529, Lot 446, Borough of Bronx.

## COMMUNITY BOARD #10BX

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application to allow for the elevation or reconstruction of a single family home that does not front on a mapped street, contrary to General City Law § 36 ("GCL § 36"), as well as a waiver of certain of the Board's Rules of Practice and Procedure; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on that same date; and

WHEREAS, this application is brought on behalf of the owner by the Mayor's Office of Housing Recovery Operations ("HRO") and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HRO on behalf of the owner, and in furtherance of the City's effort to rebuild homes impacted by Superstorm Sandy expeditiously and efficiently, the Board waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-06.1(a) (Appeal of Agency Final Determination), (2) 2 RCNY § 1-06.2 (A Form), (3) 2 RCNY § 1-06.3(b) (Filing Period), (4) 2 RCNY § 1-06.4(b) (Application Referral), (5) 2 RCNY § 1-06.5 (Hearing Notice), (6) 2 RCNY § 1-09.1 (Application Form), and (7) 2 RCNY § 1-09.4 (Owner's Authorization); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the north side of Alan Place, west of Pennyfield Avenue, within an R3-1 zoning district, in the Bronx; and

WHEREAS, the site has approximately 50 feet of frontage along Alan Place, a depth of 450 feet and 22,524 square feet of lot area; and

WHEREAS, it has been determined by HRO that the subject site is occupied by a building or other structure or was occupied by a building or other structure on October 28, 2012, which must be reconstructed or elevated and which does not front on a mapped street; and

WHEREAS, in support of this application, HRO has submitted the following documents to the Board: (1) a BSA application form; (2) a statement of facts which includes reference to HRO's identification of the site as not fronting on a mapped street; and (3) maps of the subject property; and

WHEREAS, by letter dated April 10, 2017, the Fire Department stated that it had no objections to the proposal provided that: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the exterior of the building where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plan to the highest window-sill leading to a habitable space may not

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exceed 32 feet; and

WHEREAS, the Fire Department further stated, that in circumstances where the construction consists primarily of structural elevation and FDNY has determined that the home has been mostly repaired, Department of Buildings (“DOB”) may waive the requirement that the building has a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code upon notice from FDNY; 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 of Standards and Appeals waives the above-referenced Rules of Practice and Procedure, and authorizes a waiver of GCL § 36, *on condition* that the proposed elevation or reconstruction will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that it is exempt;

THAT the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the building where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plan to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT this approval is limited to proposals for elevation or reconstruction of previously existing structures; insofar as the applicant proposes, instead, to repair the building or other structure on subject lot, this waiver will be void as unnecessary;

THAT the applicant provide the Board with a full set of approved plans upon DOB’s issuance of a Certificate of Occupancy for the subject building or structure; 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, May 25, 2017.

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## 2017-139-A

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application April 27, 2017 – General City Law 35 Waiver for the reconstruction of properties located within the bed of a mapped street, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R3A zoning district.

PREMISES AFFECTED – 197 Beach 25 Street, Block 15817, Lot 59, Borough of Queens.

### COMMUNITY BOARD # 14Q

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application to allow for the elevation or reconstruction of a single family home that does not front on a mapped street, contrary to General City Law § 36 (“GCL § 36”), as well as a waiver of certain of the Board’s Rules of Practice and Procedure; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on that same date; and

WHEREAS, this application is brought on behalf of the owner by the Mayor’s Office of Housing Recovery Operations (“HRO”) and the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in order to accept the application from HRO on behalf of the owner, and in furtherance of the City’s effort to rebuild homes impacted by Superstorm Sandy expeditiously and efficiently, the Board waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-06.1(a) (Appeal of Agency Final Determination); (2) 2 RCNY § 1-06.2 (A Form); (3) 2 RCNY § 1-06.3(b) (Filing Period); (4) 2 RCNY § 1-06.4(b) (Application Referral); (5) 2 RCNY § 1-06.5 (Hearing Notice); (6) 2 RCNY § 1-09.1 (Application Form); and (7) 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the southwest corner of Beach 25 Street and Seagirt Avenue, within an R3A (C1-3) zoning district, in Queens; and

WHEREAS, the site has approximately 36 feet of frontage along Beach 25 Street, a depth of 46 feet and 1,629 square feet of lot area; and

WHEREAS, it has been determined by HRO that the subject site is occupied by a building or other structure or was occupied by a building or other structure on October 28, 2012, which must be reconstructed or elevated and which does not front on a mapped street; and

WHEREAS, in support of this application, HRO has submitted the following documents to the Board: (1) a

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BSA application form; (2) a statement of facts which includes reference to HRO's identification of the site as not fronting on a mapped street; and (3) maps of the subject property; and

WHEREAS, by letter dated April 10, 2017, the Fire Department stated that it had no objections to the proposal provided that: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the exterior of the building where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plan to the highest window-sill leading to a habitable space may not exceed 32 feet; and

WHEREAS, the Fire Department further stated, that in circumstances where the construction consists primarily of structural elevation and FDNY has determined that the home has been mostly repaired, Department of Buildings ("DOB") may waive the requirement that the building has a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code upon notice from FDNY; 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 of Standards and Appeals waives the above-referenced Rules of Practice and Procedure, and authorizes a waiver of GCL § 36, *on condition* that the proposed elevation or reconstruction will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition:*

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that it is exempt;

THAT the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the building where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plan to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT this approval is limited to proposals for elevation or reconstruction of previously existing structures; insofar as the applicant proposes, instead, to repair the building or other structure on subject lot, this waiver will be void as unnecessary;

THAT the applicant provide the Board with a full set of

approved plans upon DOB's issuance of a Certificate of Occupancy for the subject building or structure; 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, May 25, 2017.

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## 2017-153-BZ

### CEQR #17-BSA-126K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 14A Mesereau Court, Block 8797, Lot 47. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards, rear yards, lot coverage and open space, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

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WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Mesereau Court, north of Dunne Place, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 22 feet of frontage along Mesereau Court, 55 feet of depth, 1,210 square feet of lot area and is occupied by a one-story single-family detached home, which is setback 13.4 feet from the western lot line, 1.7 feet from the northern lot line, encroaches on its eastern and southern lot lines and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-385-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction of a single-family detached home on a concrete foundation setback 10 feet from the western lot line, 5.6 feet from the northern lot line, 3 feet from the southern lot line and 10 feet from the eastern lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets;

and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to redevelop the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this

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case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA126K, dated May 18, 2017; and

*Therefore, it is Resolved,* that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of an existing detached one-story single-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards, rear yards lot coverage and open space, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 18, 2017"- Five (5) sheets; and *on further condition:*

THAT the bulk parameters of the building shall be as follows: setback at least 10 feet from the western lot line, setback at least 5.6 feet from the northern lot line, setback at least 3 feet from the southern lot line and setback at least 10 feet from the eastern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32

feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

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

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

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-154-BZ

### CEQR #17-BSA-126K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 7A Lake Avenue, Block 8796, Lot 139. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards and rear yards, contrary to ZR §§ 23-45, 23-461(a), 23-47, 64-A351, 64-A352 and 64-A353; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure:

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(1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Lake Avenue, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lake Avenue, 66 feet of depth, 1,544 square feet of lot area and is occupied by a one-story single-family detached home, which is setback 0.8 feet from the northern property line, 10.74 feet from the eastern property line, 2.4 feet from the southern property line, 0.48 feet from the western property line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-449-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the one-story single-family detached home, resulting in a two-story home setback 0.8 feet from the northern lot line, 2.4 feet from the southern lot line, 1.83 feet from the western lot line and 11.17 feet from the eastern lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR

§ 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant



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construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA126K, dated May 18, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of an existing detached one-story single-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards and rear yards, contrary to ZR §§ 23-45, 23-461(a), 23-47, 64-A351, 64-A352 and 64-A353; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 18, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 0.8 feet from the northern lot line, setback at least 2.4 feet from the southern lot line, setback at least 1.83 feet from the western lot line and setback at least 11.17 feet from the eastern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling

where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

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

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

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## **2017-155-BZ CEQR #17-BSA-127K**

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 26 Lincoln Terrace, Block 8796, Lot 154. Brooklyn of Brooklyn.

### **COMMUNITY BOARD # 15BK**

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by

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Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Lincoln Terrace, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lincoln Terrace, 1,520 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 1.6 feet and 2.3 feet from the northern lot line, between 2.1 feet and 2.7 feet from the eastern lot line, between 1.3 feet and 2 feet from the southern lot line, between 15.2 feet and 22.5 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-460-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction of the one-story single-family detached home, resulting in a residence setback 3.5 feet from the northern lot line, 3.5 feet from the southern lot line, 16 feet from the western lot line and 17 feet from the eastern lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard

requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions

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and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA127K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of an existing detached one-story single-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Four (4) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 3.5 feet from the northern lot line, setback at least 3.5 feet from the southern lot line, setback at least 16 feet from the western lot line and setback at least 17

feet from the eastern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

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

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

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-156-BZ

### CEQR #17-BSA-127K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 31 Lincoln Terrace, Block 8796, Lot 149. Brooklyn of Brooklyn.

### COMMUNITY BOARD # 15BK

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Otley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning

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requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Lincoln Terrace, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lincoln Terrace, 1,466 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 1.3 feet and 1.9 feet from the northern lot line, between 1.3 feet and 9.4 feet from the eastern lot line, between 1.8 feet and 2.3 feet from the southern lot line, between 16 feet and 23.4 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-455-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction of the one-story single-family detached home, resulting in a

residence setback 3.5 feet from the northern lot line, 15 feet from the eastern lot line, 3.5 feet from the southern lot line and 16 feet from the western lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted

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- height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA127K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of an existing detached one-story single-family dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front

yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Four (4) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 3.5 feet from the northern lot line, setback at least 15 feet from the eastern lot line, setback at least 3.5 feet from the southern lot line and setback at least 16 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

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

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

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-157-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 16 Stanton Road, Block 8800, Lot 88. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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

THE VOTE TO GRANT –

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

## THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family semi-detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuild homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 23 feet of frontage along Stanton Road, 1,256 square feet of lot area and is occupied by a one-story single-family semi-detached home, which is setback 0.3 feet from the northern lot line, 14.1 feet from the eastern lot line, 0 feet from the southern lot line, 0 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-412-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the

exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 3.75 feet from the northern lot line, 13 feet from the eastern lot line, 3.75 feet from the southern lot line and 10 feet from the western lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction*

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*standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;

- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and

issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 3.75 feet from the northern lot line, setback at least 13 feet from the eastern lot line, setback at least 3.75 feet from the southern lot line and setback at least 10 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

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

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

Adopted by the Board of Standards and Appeals, May 25, 2017.

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# MINUTES

**2017-158-BZ**

**CEQR #17-BSA-128K**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 20 Stanton Road, Block 8800, Lot 96, Borough of Brooklyn.

**COMMUNITY BOARD # 15BK**

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

**THE VOTE TO GRANT** –

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

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Stanton Road, 1,320 square feet of lot area and is occupied by a one-story single-family detached home, which is setback 1.9 feet from the northern lot line, 14.6 feet from the eastern lot line, 1.5 feet from the southern lot line,

6.1 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-421-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 4 feet from the northern lot line, 13 feet from the eastern lot line, 4 feet from the southern lot line and 10 feet from the western lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and



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*enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject

site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 4 feet from the northern lot line, setback at least 13 feet from the eastern lot line, setback at least 4 feet from the southern lot line and setback at least 10 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

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

THAT DOB must ensure compliance with all other

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

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-159-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 35 Gunnison Court, Block 8800, Lot 82, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family semi-detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of Gunnison Court, between Brown Street and Stanton Road, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 27 feet of frontage along Gunnison Court, 1,677 square feet of lot area and is occupied by a one-story single-family semi-detached home, which is setback 14.2 feet from the northern lot line, 0 feet from the eastern lot line, 2.3 feet from the southern lot line, 6 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-407-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 14.33 feet from the northern lot line, 4.5 feet from the eastern lot line, 16.5 feet from the southern lot line and 6.25 feet from the western lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard”

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and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character

of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 14.33 feet from the northern lot line, setback at least 4.5 feet from the eastern lot line, setback at least 16.5 feet from the southern lot line and setback at least 6.25 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

# MINUTES

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

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

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

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-160-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 36 Gunnison Court, Block 8800, Lot 83. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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

**THE VOTE TO GRANT** –

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

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family semi-detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuild homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2

RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of Gunnison Court, between Brown Street and Stanton Road, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 23 feet of frontage along Gunnison Court, 1,453 square feet of lot area and is occupied by a one-story single-family semi-detached home, which is setback 14.2 feet from the northern lot line, 3.2 feet from the eastern lot line, 6.7 feet from the southern lot line, 0 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-409-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 14.33 feet from the northern lot line, 3.625 feet from the eastern lot line, 10.6 feet from the southern lot line and 3.625 feet from the western lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR

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§ 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-

resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 14.33 feet from the northern lot line, setback at least 3.625 feet from the eastern lot line, setback at least 10.6 feet from the southern lot line and setback at least 3.625 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

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THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

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

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

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-161-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 37 Gunnison Court. Block 8800, Lot 188. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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

THE VOTE TO GRANT –

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

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family semi-detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was

created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of Gunnison Court, between Stanton Road and Batchelder Street, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Gunnison Court, 2,042 square feet of lot area and is occupied by a one-story single-family semi-detached home, which is setback 14.6 feet from the northern lot line, 0 feet from the eastern lot line, 21 feet from the southern lot line, 4.3 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-474-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 14.33 feet from the northern lot line, 4.375 feet from the eastern lot line, 30.1 feet from the southern lot line and 4.375 feet from the western lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard

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requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions

and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 14.33 feet from the northern lot line, setback at least 4.375 feet from the eastern lot line, setback at least 30.1 feet from the southern lot line and

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setback at least 4.375 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

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

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

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-162-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 38 Gunnison Court. Block 8800, Lot 189. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family semi-detached home in compliance with flood-resistant construction standards that does not comply with the zoning

requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of Gunnison Court, between Stanton Road and Batchelder Street, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Gunnison Court, 2,077 square feet of lot area and is occupied by a one-story single-family semi-detached home, which is setback 14.2 feet from the northern lot line, 4.8 feet from the eastern lot line, 11.8 feet from the southern lot line, 0 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-475-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 14.33 feet from the northern lot line, 4.63 feet from the eastern lot line,



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33.083 feet from the southern lot line and 4.63 feet from the western lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant*

- (c) *construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to

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ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 14.33 feet from the northern lot line, setback at least 4.63 feet from the eastern lot line, setback at least 33.083 feet from the southern lot line and setback at least 4.63 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

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

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

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-163-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 27 Lincoln Terrace. Block 8800, Lot 153. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,

Commissioner Ottley-Brown, Commissioner Montanez.....4  
Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Lincoln Terrace, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lincoln Terrace, 1,785 square feet of lot area and is occupied by a one-story single-family home, which is setback 2.2 feet from the northern lot line, 1.5 feet from the southern lot line, 16 feet from the western lot line, encroaches over the eastern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-459-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire

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resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 3.75 feet from the northern lot line, 17 feet from the eastern lot line, 3.75 feet from the southern lot line and 16 feet from the western lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

(a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum

necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;

- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of

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Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 3.75 feet from the northern lot line, setback at least 17 feet from the eastern lot line, setback at least 3.75 feet from the southern lot line and setback at least 16 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

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

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

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-164-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 32 Lincoln Terrace. Block 8796, Lot 148. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

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

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Lincoln Terrace, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lincoln Terrace, 1,455 square feet of lot area and is occupied by a one-story single-family home, which is setback 1 foot from the northern lot line, 1.2 feet from the eastern lot line, 2.1 feet from the southern lot line, 15.9 feet from the western lot line and is non-compliant with the

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applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-454-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 3.75 feet from the northern lot line, 15.5 feet from the eastern lot line, 3.75 feet from the southern lot line and 16 feet from the western lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant*

*construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a

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significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals waives its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 3.75 feet from the northern lot line, setback at least 15.5 feet from the eastern lot line, setback at least 3.75 feet from the southern lot line and setback at least 16 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

## 2017-165-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 3 Lake Avenue. Block 8796, Lot 179. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4  
Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Lake Avenue, north of Emmons Avenue, in an R4-1

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zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lake Avenue, 1,094 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 2.8 and 3.6 feet from the northern lot line, 1.8 feet from the eastern lot line, between 0.3 and 0.7 feet from the southern lot line, 0.4 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-479-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a one-story one-family detached residence in the same foot print as the existing residence and maintaining the same open areas between the residence and the lot lines; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards,

along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character

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of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a one-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 2.8 feet from the northern lot line, setback at least 1.8 feet from the eastern lot line, setback at least 0.3 feet from the southern lot line and setback at least 0.4 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-166-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 26 Stanton Road. Block 8800, Lot 185. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family semi-detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2



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RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 23 feet of frontage along Stanton Road, 1,256 square feet of lot area and is occupied by a one-story single-family semi-detached home, which is setback 2.5 feet from the northern lot line, 0 feet from the southern lot line, 14.5 feet from the western lot line, encroaches over the eastern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-471-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 10 feet from the eastern lot line, 3.75 feet from the northern lot line, 13 feet from the western lot line and 3.75 feet from the southern lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR

§ 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-

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resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 10 feet from the eastern lot line, setback at least 3.75 feet from the northern lot line, setback at least 13 feet from the western lot line and setback at least 3.75 feet from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-167-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 13C Lake Avenue. Block 8796, Lot 54. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by

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Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Lincoln Terrace, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lincoln Terrace, 1,455 square feet of lot area and is occupied by a one-story single-family home, which is setback 1 foot from the northern lot line, 1.2 feet from the eastern lot line, 2.1 feet from the southern lot line, 15.9 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-454-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 3.75 feet from the northern lot line, 15.5 feet from the eastern lot line, 3.75 feet from the southern lot line and 16 feet from the western lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and

64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

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WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 3.75 feet from the northern lot line, setback at least 15.5 feet from the eastern lot line, setback at least 3.75 feet from the southern lot line and setback at least 16 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## **2017-168-BZ**

### **CEQR #17-BSA-128K**

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 10A Lake Avenue. Block 8796, Lot 57. Borough of Brooklyn.

### **COMMUNITY BOARD # 15BK**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a),

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23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Lake Avenue, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lake Avenue, 1,092 square feet of lot area and is occupied by a one-story single-family detached home, which is setback 3.5 feet from the northern lot line, 0.3 feet from the eastern lot line, 0.1 feet from the southern lot line, 0.1 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-398-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375

square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the

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future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on*

*further condition:*

THAT the bulk parameters of the building shall be as follows: setback at least 3.5 feet from the northern lot line, setback at least 0.3 feet from the eastern lot line, setback at least 0.1 feet from the southern lot line and setback at least 0.1 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-169-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 15 Lake Avenue. Block 8796, Lot 131. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4  
Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the

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Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Lake Avenue, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lake Avenue, 1,533 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 1.57 and 2.15 feet from the northern lot line, 16.42 feet from the eastern lot line, between 1.75 and 2.18 feet from the southern lot line, 2.79 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-440-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not

exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;

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- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a

single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 1.57 feet from the northern lot line, setback at least 16.42 feet from the eastern lot line, setback at least 1.75 feet from the southern lot line and setback at least 2.79 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-170-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 14 Lake Avenue. Block 8796, Lot 132. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK



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**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Lake Avenue, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lake Avenue, 1,522 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 1.58 and 2.17 feet from the northern lot line, between 17.8 and 25 feet from the eastern lot line, between 1.95 and 2.27 feet from the southern lot line, 0.21 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-391-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New

York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations,

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provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No.

17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 1.58 feet from the northern lot line, setback at least 17.8 from the eastern lot line, setback at least 1.95 feet from the southern lot line and setback at least 0.21 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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**2017-171-BZ**

**CEQR #17-BSA-128K**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 12A Lake Avenue. Block 8796, Lot 134. Borough of Brooklyn.

**COMMUNITY BOARD # 15BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Lake Avenue, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lake Avenue, 1,615 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 1.4 and 1.7 feet from the northern lot line, 15.6 feet from the eastern lot line, between 1.8 and

2.1 feet from the southern lot line, 0.6 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-442-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and

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*enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject

site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 1.4 feet from the northern lot line, setback at least 15.6 feet from the eastern lot line, setback at least 1.8 feet from the southern lot line and setback at least 0.6 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other

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applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-172-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 11 Lake Avenue. Block 8796, Lot 135. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Lake Avenue, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lake Avenue, 1,615 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 1.4 and 1.7 feet from the northern lot line, 15.6 feet from the eastern lot line, between 1.8 and 2.1 feet from the southern lot line, 0.6 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-442-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard”

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and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character

of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 1.4 feet from the northern lot line, setback at least 15.6 feet from the eastern lot line, setback at least 1.8 feet from the southern lot line and setback at least 0.6 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

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THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-173-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 10 Lake Avenue. Block 8796, Lot 135. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuild homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2

RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Lake Avenue, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lake Avenue, 1,486 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 1.3 and 1.6 feet from the northern lot line, 15.6 feet from the eastern lot line, 1.8 feet from the southern lot line, 2.4 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-444-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

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WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 1.3 feet from the northern lot line, setback at least 15.6 feet from the eastern lot line, setback at least 1.8 feet from the southern lot line and setback at least 2.4 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling



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where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-174-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 9A Lake Avenue. Block 8796, Lot 137. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by

Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Lake Avenue, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lake Avenue, 1,466 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 1.5 and 1.8 feet from the northern lot line, 12.1 feet from the eastern lot line, between 1.5 and 1.8 feet from the southern lot line, 0.3 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-445-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and

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64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 1.5 feet from the northern lot line, setback at least 12.1 feet from the eastern lot line, setback at least 1.5 feet from the southern lot line and setback at least 0.3 feet from the western lot line, as illustrated on the BSA-approved plans;

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THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-175-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 1 Lake Avenue. Block 8796, Lot 177. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4  
Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a),

23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Lake Avenue, north of Emmons Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Lake Avenue, 1,095 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 3 and 3.6 feet from the northern lot line, 1.6 feet from the eastern lot line, between 0.2 and 0.4 feet from the southern lot line, 0.1 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-463-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area

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required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in

which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and

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marked "Received May 19, 2017"- Five (5) sheets; and *on further condition:*

THAT the bulk parameters of the building shall be as follows: setback at least 3 feet from the northern lot line, setback at least 1.6 feet from the eastern lot line, setback at least 0.2 feet from the southern lot line and setback at least 0.1 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-176-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 32 Stanton Road. Block 8800, Lot 52. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Stanton Road, 1,375 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 0.8 and 1.4 feet from the northern lot line, 14.1 feet from the eastern lot line, between 3.2 and 3.7 feet from the southern lot line, 0.2 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-454-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the

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highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

(a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant*

*construction standards*;

- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on

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a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 0.8 feet from the northern lot line, setback at least 14.1 feet from the eastern lot line, setback at least 3.2 feet from the southern lot line and setback at least 0.2 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

## 2017-177-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 9A Lake Avenue. Block 8796, Lot 137. Borough of Brooklyn.

## COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Stanton Road, 1,375 square feet of lot area and is occupied by a one-story single-family detached home, which encroaches its western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-426-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms,

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designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence approximately 3.5 feet to the east of the existing footprint so that the entirety of the dwelling is located within the subject lot, resulting in a two-story single-family detached dwelling setback 10.8 feet from the eastern lot line, 1.6 feet from the southern lot line, 2.5 feet from the western lot line and 2.9 feet from the northern lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning

Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the



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proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 10.8 feet from the eastern lot line, 1.6 feet from the southern lot line, 2.5 feet from the western lot line and 2.9 feet from the northern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-178-BZ

### CEQR #17-BSA-129

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 21 Stanton Road. Block 8800, Lot 98. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Stanton Road, 1,320 square feet of lot area and is occupied by a one-story single-family detached home, which is 1.7 feet from the northern lot line, 0.2 feet from the western lot line, 15’-3” from the eastern lot line, 1.7 feet

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from the southern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-423-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 10 feet from the western lot line, 13 feet from the eastern lot line, 3’-10” from the northern lot line and 3’-10” from the southern lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and

*enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject

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site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 10 feet from the western lot line, setback at least 13 feet from the eastern lot line, setback at least 3’-10” from the northern lot line and setback at least 3’-10” from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other

applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-179-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 33 Stanton Road. Block 8800, Lot 50. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side

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of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 23 feet of frontage along Stanton Road, 1,265 square feet of lot area and is occupied by a one-story single-family semi-detached home, which is 0 feet from the northern lot line, 13 feet from the western lot line, 0 feet from the eastern lot line, 2'-5" from the southern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-387-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 13 feet from the western lot line, 10 feet from the eastern lot line, 3'-8" from the northern lot line and 3'-8" from the southern lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards,

along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area

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in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Six (6) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 13 feet from the western lot line, setback at least 10 feet from the eastern lot line, setback at least 3'-8" from the northern lot line and setback at least 3'-8" from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be

signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-180-BZ

### CEQR #17-BSA-129K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 17A Mesereau Court. Block 8797, Lot 52. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of

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Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Mesereau Court, south of Dunne Place, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 36 feet of frontage along Mesereau Court, 1,528 square feet of lot area and is occupied by a one-story single-family detached home, which is 2.8 feet from the northern lot line, 5.8 feet from the western lot line, 4'-3" from the eastern lot line, 3.4 feet from the southern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-389-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 10 feet from the western lot line, 10 feet from the eastern lot line, 4 feet from the northern lot line and 4 feet from the southern lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street,"

as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds

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that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved,* that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition:*

THAT the bulk parameters of the building shall be as follows: setback at least 10 feet from the western lot line, setback at least 10 feet from the eastern lot line, setback at least 4 feet from the northern lot line and setback at least 4 feet from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor

assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-181-BZ

### CEQR #17-BSA-129K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 30 Stanton Road. Block 8800, Lot 56. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

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WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Stanton Road, 1,320 square feet of lot area and is occupied by a one-story single-family detached home, which is 1 foot from the northern lot line, 13'-8" feet from the western lot line, 6 feet from the eastern lot line, 2'-7" from the southern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-397-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements

for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is



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non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Six (6) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 1 foot from the northern lot line, setback at least 13'-8" feet from the western lot line, setback at least 6 feet from the eastern lot line and setback at least 2'-7" from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New

York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-182-BZ

### CEQR #17-BSA-129K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 29 Stanton Road. Block 8800, Lot 59. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

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WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Stanton Road, 1,320 square feet of lot area and is occupied by a one-story single-family detached home, which is 1'-3" from the northern lot line, 13'-5" from the western lot line, 0'-7" from the eastern lot line, 2'-1" from the southern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-402-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's

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potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as

follows: setback at least 1'-3" from the northern lot line, setback at least 13'-5" from the western lot line, setback at least 0'-7" from the eastern lot line and setback at least 2'-1" from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-183-BZ

### CEQR #17-BSA-128K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 28 Stanton Road. Block 8800, Lot 181. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4  
Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an

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R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Stanton Road, 1,320 square feet of lot area and is occupied by a one-story single-family detached home, which is 2'-7" from the northern lot line, 13'-11" from the western lot line, 7 feet from the eastern lot line, 1 foot from the southern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-467-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the

existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted

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- height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear

yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Six (6) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 2'-7" from the northern lot line, setback at least 13'-11" from the western lot line, setback at least 7 feet from the eastern lot line and setback at least 1 foot from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-184-BZ

### CEQR #17-BSA-129K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations ("HRO")

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 27 Stanton Road. Block 8800, Lot 183. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

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Affirmative: Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown, Commissioner Montanez.....4  
Negative: .....0

## THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuild homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Stanton Road, 1,375 square feet of lot area and is occupied by a one-story single-family detached home, which is 2’-8” from the northern lot line, 13’-8” from the western lot line, 1’-1” from the eastern lot line, 7 feet from the southern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-469-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the

exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and

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that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;

- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5

and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 2'-8" from the northern lot line, setback at least 13'-8" from the western lot line, setback at least 1'-1" from the eastern lot line and setback at least 7 feet from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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**2017-185-BZ**

**CEQR #17-BSA-129K**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 34 Stanton Road, Block 8800, Lot 46. Borough of Brooklyn.

**COMMUNITY BOARD # 15BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the southeast corner of Stanton Road and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 35 feet of frontage along Stanton Road, 55 feet of frontage along Losee Terrace, 1,925 square feet of lot area and is occupied by a one-story single-family semi-detached home, which is 14’-4” from the northern lot line, 13’-6” from the western lot line, 0 feet from the eastern lot line, 0 feet from the southern

lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-384-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 13’-8” from the northern lot line, 13 feet from the western lot line, 10 feet from the eastern lot line and 4’-8” from the southern lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and



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*enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject

site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Six (6) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 13'-8" from the northern lot line, setback at least 13 feet from the western lot line, setback at least 10 feet from the eastern lot line and setback at least 4'-8" from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other

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applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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## 2017-186-BZ

### CEQR #17-BSA-129K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 17 Stanton Road. Block 8800, Lot 90. Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the reconstruction of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Stanton Road, 1,375 square feet of lot area and is occupied by a one-story single-family semi-detached home, which is 1.8 feet from the northern lot line, 0.7 feet from the western lot line, 13.7 feet from the eastern lot line, 2.5 feet from the southern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-414-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the construction of a three-story one-family detached residence setback 4’-4.5” from the northern lot line, 10 feet from the western lot line, 13’-6” from the eastern lot line and 4’-4.5” from the southern lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard”

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# MINUTES

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and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character

of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the construction of a three-story single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Seven (7) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 4’-4.5” from the northern lot line, setback at least 10 feet from the western lot line, setback at least 13’-6” from the eastern lot line and setback at least 4’-4.5” from the southern lot line as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

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# MINUTES

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THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

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*Ryan Singer, Executive Director*

# 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.

Volume 102, Nos. 23-24

June 22, 2017

### DIRECTORY

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413-50-BZ	691 East 149 <sup>th</sup> Street, Bronx
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2017-35-BZ	580 Columbus Avenue, Manhattan

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**2017-189-A**

222 Dongan Hills Avenue, located on the south side of Dongan Hills Avenue, 201.04 ft. west of the intersection with Hylan Boulevard, Block 03549, Lot(s) 16, Borough of **Staten Island, Community Board: 2**. Proposed three-story, two-family dwelling located within the bed of a mapped street contrary to Article III, Section 35 of the General City Law. R3X zoning district. R3X district.  
-----

**2017-190-BZ**

23-11 31st Road, located on the south west corner of 23rd Street and 31st Road, Block 00569, Lot(s) 17, Borough of **Queens, Community Board: 1**. Variance (§72-21) to permit the development of a 7-story building containing 92 affordable independent residences for seniors and a ground floor senior center contrary to ZR §§23-155 & 24-11 (maximum permitted FAR); ZR §24-33 (permitted obstruction in the required rear yards) and ZR §23-622 (maximum height and setbacks). R6B zoning district. R6B district.  
-----

**2017-191-BZ**

47 Greene Street, located on Greene Street between Grand and Broome Streets, Block 00475, Lot(s) 50, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit the legalization of retail (Use Group 6) on the cellar and ground floors of an existing building contrary to ZR §42-14(D)(2)(b). M1-5B (SoHo Cast Iron Historic District) M1-5B district.  
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**2017-192-BZ**

5402-5414 Fort Hamilton Parkway, located on the southwest corner of Fort Hamilton Parkway and 54th Street, Block 05673, Lot(s) 42 & 50, Borough of **Brooklyn, Community Board: 12**. Special Permit (§73-44) to allow the reduction of required parking for ambulatory diagnostic or treatment facility (Use Group 4) (Parking Category PRC B1). C1-3/R6 zoning district. C1-3/R6 district.  
-----

**2017-193-A**

9 Tupelo Court, located on a private road off of Richmond Road, Block 02260, Lot(s) 4, Borough of **Staten Island, Community Board: 2**. Proposed construction of a commercial building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R1-2 zoning district R1-2 district.  
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**2017-194-A**

10 Tupelo Court, located on a private road off of Richmond Road, Block 02260, Lot(s) 10, Borough of **Staten Island, Community Board: 2**. Proposed construction of a commercial building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R1-2 zoning district R1-2 district.  
-----

**2017-195-A**

11 Tupelo Court, located on a private road off of Richmond Road, Block 02260, Lot(s) 60, Borough of **Staten Island, Community Board: 2**. Proposed construction of a commercial building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R1-2 zoning district R1-2 district.  
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**2017-196-A**

12 Tupelo Court, located on a private road off of Richmond Road, Block 02260, Lot(s) 62, Borough of **Staten Island, Community Board: 2**. Proposed construction of a commercial building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R1-2 zoning district R1-2 district.  
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**2017-197-A**

14 Tupelo Court, located on a private road off of Richmond Road, Block 02260, Lot(s) 64, Borough of **Staten Island, Community Board: 2**. Proposed construction of a commercial building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R1-2 zoning district R1-2 district.  
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**2017-199-A**

17 Tupelo Court, located on a private road off of Richmond Road, Block 02260, Lot(s) 68, Borough of **Staten Island, Community Board: 2**. Proposed construction of a commercial building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R1-2 zoning district R1-2 district.  
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**2017-198-A**

15 Tupelo Court, located on a private road off of Richmond Road, Block 02260, Lot(s) 66, Borough of **Staten Island, Community Board: 2**. Proposed construction of a commercial building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R1-2 zoning district R1-2 district.  
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# DOCKETS

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## **2017-200-BZ**

133-04 39th Avenue, located on the south east corner of 39th Avenue and College Point Boulevard, Block 04973, Lot(s) 6, Borough of **Queens, Community Board: 7.** Variance (§72-21) to permit the development of a seven-story commercial and community facility building contrary to ZR §36-21 (required accessory parking spaces) and ZR §36-681 (less than the required loading berth height. C4-2 zoning district. C4-2 district.

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## **2017-201-BZ**

323 Elmwood Avenue, located on Elmwood Avenue between Ocea Parkway and East 3rd Street., Block 06503, Lot(s) 103, Borough of **Brooklyn, Community Board: 12.** Variance (§72-21) to permit the construction of a four-story plus cellar use group 3 dormitory to be used in conjunction with an existing three-story, cellar, sub-cellar and roof top play area school building (Cheder), which was the subject of a previously approved BSA variance (BSA Calendar Number: 54-06-BZ) which is contrary to ZR §113-51 (floor area ratio), ZR §§113-55 and 23-631 (height; sky exposure plane and setback ratio), ZR §113-544 (rear yard setback) and ZR §23-631 (minimum distance between legally required windows and lot lines). R3-1 zoning district (Special Ocean Parkway District) and (Special Purpose Sub district (SOPD). R3-1 district.

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## **2017-202-A**

43 Cunard Avenue, located on Cunard Avenue, 266' off of Wandel Avenue, Block 00623, Lot(s) 252, Borough of **Staten Island, Community Board: 1.** Proposed construction of a two-family residential building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3S (SHPD) zoning district R3S (SHPD) 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  
JULY 11, 2017, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 11, 2017, 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**

**163-04-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee. SUBJECT – Application July 11, 2017 – Reopen. Extension of time to obtain a certificate of occupancy for a previously granted physical culture establishment (Crunch Fitness) which expired on October 29, 2014; Waiver of the Rules. C2-4/R7A zoning district. PREMISES AFFECTED – 671/99 Fulton Street, Block 2096, Lot(s) 66, 69, Borough of Brooklyn. **COMMUNITY BOARD #2BK**

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**REGULAR MEETING  
JULY 11, 2017, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 11, 2017, 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**

**2017-29-BZ**

APPLICANT – Goldman Harris LLC, for Brooklyn Flatbush Avenue, LLC, owner. SUBJECT – Application January 27, 2017 – Special Permit (§73-44) for the reduction in parking from 144 to 72 spaces to facilitate a Use Group 10 furniture store (*Raymour & Flanigan*) in parking category PRC B1. C8-1 zoning district. PREMISES AFFECTED – 2570 Flatbush Avenue, Block 8590, Lot 31, Borough of Brooklyn. **COMMUNITY BOARD #18BK**

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**2017-57-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Mary McDowell Friends School, owner. SUBJECT – Application March 2, 2017– Variance (§72-21) to permit the enlargement of an existing School (Mary McDowell Friends School) UG 3 contrary to ZR §24-11 (floor area increased the degree of non-compliance and lot coverage); ZR §23-33 (opposed 2 story addition in the rear yard is not a permitted obstruction); ZR § 23-662a (maximum base height of the street wall exceeds the maximum permitted); and ZR §23-662c (Proposed enlargement does not comply with the initial setback distance. R6A and R6B zoning districts. PREMISES AFFECTED – 18-20 Bergen Street, Block 384, Lot(s) 15, 16, 172, Borough of Brooklyn. **COMMUNITY BOARD #2BK**

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*Ryan Singer, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 6, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**377-88-BZ**

APPLICANT – NYC Board of Standards and Appeals.  
SUBJECT – Application – Compliance Hearing of a previously approved Variance (§72-21) which permitted the legalization of a one (1) story enlargement to a one (1) story blacksmith and welding shop (UG 16) which increased the degree on non-conformance contrary to ZR §52-22 in a then R4 zoning district. C2-4/R6A zoning district.

PREMISES AFFECTED – 145-64 Liberty Avenue, southwest corner of Liverpool Street. Block 10049, Lot 11. Borough of Queens.

**COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Application withdrawn from the compliance calendar.

**THE VOTE TO WITHDRAW** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4  
Negative: .....0

**THE RESOLUTION** –

WHEREAS, the subject premises is subject to a variance, granted pursuant to ZR § 72-21 on March 20, 1990, under the subject calendar number; and

WHEREAS, the variance permitted, in what was then an R4 zoning district, the legalization of a one (1) story enlargement to a one (1) story blacksmith and welding shop (Used Group 16) on condition, *inter alia*, that there be no open storage of material at the site and that the open area fronting on Liberty Avenue be used for accessory parking only; and

WHEREAS, on January 3, 2017, the Department of Buildings (“DOB”) issued a Notice of Violation and Hearing (Violation No. 35222344P) stating that the front yard was being utilized for storage of steel and materials, contrary to the variance grant, and that a worker was also observed cutting steel tubing on the sidewalk along Liverpool Street; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez subsequently conducted site visits to the premises; and

WHEREAS, on March 21, 2017, the Board moved to hold a compliance hearing; and

WHEREAS, a public hearing was held on this application on April 25, 2017, after due notice by publication in *The City Record*, with a continued hearing on June 6, 2017, and then to decision on the same date; and

WHEREAS, notice of the hearing was provided to the subject site’s owner of record and, in advance of the first hearing, the owner’s representative submitted photos of the

site taken in April 2017 showing the front yard of the premises empty and the sidewalks clear; and

WHEREAS, Commissioners stated at hearing that, during visits to the site, they observed work taking place in the front yard and adjoining sidewalks as well as materials stored outside the building, though the fencing appeared to be in good condition and graffiti-free; and

WHEREAS, as a result, the Board requested that the owner install signs on the interior of the premises indicating that no work is to be done or materials stored outside; and

WHEREAS, the owner’s representative submitted photographs of the requested signage inside the building as well as a sign outside the premises stating that parking and work activity are prohibited on the sidewalks; and

WHEREAS, in response to inquiries as to the operations of the business at the site, the owner’s representative stated that some customers perform minor cutting in the parking lot in order to fit items into their vehicles, but that the posted signs will serve as notice to customers that such use of the parking lot and sidewalks are prohibited; and

*Therefore it is Resolved*, that the Board of Standards and Appeals finds that the applicant has submitted adequate documentation demonstrating substantial compliance with the Board’s prior grant and that the application to rescind the variance is withdrawn from the Compliance Calendar; *on condition*:

THAT signage prohibiting work in open areas and on the sidewalk shall remain visible at the site;

THAT there be no open storage of material;

THAT the open area fronting on Liberty Avenue be used for accessory parking only;

THAT landscaping and fences be provided in accordance with the drawings and be adequately maintained at all times and replaced when necessary;

THAT the side walls abutting residential properties and the front wall on Liverpool Street have a stucco finish;

THAT the hours of operation be limited to 7:00 a.m. to 6:00 p.m. Monday through Saturday;

THAT the premises be kept clean and free of graffiti at all times;

THAT there be no parking on the sidewalk or in such a manner as to obstruct pedestrian and vehicular traffic;

THAT an employee be posted on site to ensure that traffic entering and exiting the premises not interfere with the safety of the children going to and from school;

THAT the above conditions appear on the certificate of occupancy; and

THAT all conditions from prior resolutions 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, June 6, 2017.

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## 120-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Harry McNulty, owner.

SUBJECT – Application March 14, 2016 – Extension of Term (§11-411) of a previously approved variance which permitted an Automotive Repair Facility (UG 16B) with the sale of used automobiles which expired on May 10, 2014; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 222-19 Linden Boulevard, Block 11323, Lot 1, Borough of Queens.

### COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and an extension of the term of a variance, previously granted by the Board, which expired on May 10, 2014; and

WHEREAS, a public hearing was held on this application on October 18, 2016, after due notice by publication in *The City Record*, with continued hearings on January 10, 2017 and March 7, 2017, and then to decision on June 6, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez and former Vice-Chair Hinkson performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 13, Queens, recommends approval on condition that fencing and landscaping be provided on the premises to screen the use and that the owner not rent the parking spaces at the site to trucks for overnight parking or for cars not in the process of being repaired; and

WHEREAS, the subject site is located on the northwest corner of Linden Boulevard and 223rd Street, in an R3-2 (C1-3) zoning district, in Queens; and

WHEREAS, the site has approximately 100 feet of frontage along Linden Boulevard, 97 feet of frontage along 223rd Street, 9,700 square feet of lot area and is occupied by a one-story gasoline service station with accessory uses (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 24, 1956, when, under BSA Cal. No. 749-53-BZ, the Board granted a variance to permit the occupation of the subject site as a gasoline service station with accessory uses for a term of fifteen (15) years, expiring July 24, 1971, on various conditions; and

WHEREAS, on November 27, 1956, under BSA Cal. No. 749-53-BZ, the Board amended the variance to add a condition that there be a masonry wall not less than 2 feet in height with a steel picket fence above to a total height of not less than 5 feet 6 inches along the street line of 223rd Street; and

WHEREAS, on January 11, 1972, under BSA Cal. No.

749-53-BZ, the Board waived its Rules of Practice and Procedure and extended the term of the variance for an additional ten (10) years, expiring July 24, 1981; and

WHEREAS, on January 18, 1983, under BSA Cal. No. 749-53-BZ, the Board waived its Rules of Practice and Procedure, extended the term of the variance for an additional ten (10) years, expiring July 24, 1991 and amended the variance to permit an existing 3 foot high brick wall on 223rd Street to remain at the site in lieu of the 2 foot high brick wall with 3'-6" high steel picket fence above to a total height of 5'-6" as originally approved and to omit all the plantings as originally approved, on additional condition that graffiti be removed from the brick walls on the north and east lot lines; that the rolled-down shutters and the façade of the building shall be painted and that this station shall be operated at all times in such a fashion so as to minimize traffic congestion; and

WHEREAS, on May 10, 1994, under the subject calendar number, the Board permitted the reestablishment, pursuant to ZR § 11-411, of the gasoline service station, which remained continuously in operation subsequent to the expiration of the previously approved variance on July 24, 1991, for a term of ten (10) years, expiring May 10, 2004, on condition that the fencing be maintained in accordance with BSA approved plans; that all site lighting be directed downward and away from adjacent residences; that no signs be placed on the sidewalks; that all signs comply with C-1 district regulations; that no automobile repair work be conducted in the open portion of the lot and automobile repair work be limited to the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday and the hours of 8:00 a.m. to 1:00 p.m. on Saturday; and that the premises be kept clean and free of debris and graffiti; and

WHEREAS, on August 17, 2004, under the subject calendar number, the Board extended the term of the variance for an additional ten (10) years, expiring May 10, 2014, and amended the variance to permit the elimination of gasoline sales and the creation of a parking area for nine cars to be utilized for used car sales and cars awaiting entry into the service bay garage, on condition that the premises be maintained free of debris and graffiti; that any graffiti located on the premises be removed within 48 hours; that there be no welding, body or fender work done on the premises; that all signage conform to underlying district requirements; that landscaping be provided and maintained in accordance with BSA approved plans; and that a certificate of occupancy be obtained within one year; and

WHEREAS, the previous term of the variance having expired, the applicant seeks a further extension of the term for an additional ten (10) years; and

WHEREAS, the applicant also requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-7.03(b)(2) to permit the filing of this application less than two years after the expiration of the term; and

WHEREAS, the applicant represents that the use has been continuous since the expiration of the term and that substantial prejudice would result without the requested

# MINUTES

waiver; and

WHEREAS, in response to the concerns raised by Community Board 13, the applicant added “No Overnight Parking” signs to the site, striped the parking lot, added a chain to enclose the parking area, revised an agreement with a towing company to enforce the ban on overnight parking at the subject site, installed landscaping, removed a recreational vehicle from the site and repaired fencing; and

WHEREAS, the Board finds that a ten (10) year extension of the term of the variance is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated May 10, 1994, as amended through August 17, 2004, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years from the expiration of the last grant to expire on May 10, 2024; *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received May 19, 2017-Three (3) sheets; and *on further condition*:

THAT signs stating that no overnight parking is permitted at the site and violators will be towed shall be posted at all times;

THAT an agreement with a towing company to enforce the ban on overnight parking shall remain in effect for the duration of the term;

THAT no rental of parking spaces at the site shall be permitted;

THAT no parking of trailers or recreational vehicles shall be permitted on the site;

THAT asphalt and striping of the parking spaces shall be maintained and repaired as necessary;

THAT fencing, perimeter walls and building walls, as illustrated on the BSA-approved plans, shall be maintained in good condition, free of graffiti and repainted regularly;

THAT landscaping shall be maintained, as illustrated on the BSA-approved plans, and replaced as necessary so as to provide a dense buffer between the subject site and its surrounding neighbors;

THAT all site lighting shall be directed downward and away from adjacent residences;

THAT no signs shall be placed on the sidewalks;

THAT all signs shall comply with the C-1 district regulations;

THAT there shall be no automobile repair work conducted in the open portion of the lot and automobile repair work shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday and the hours of 8:00 a.m. to 1:00 p.m. on Saturday;

THAT the premises shall be kept clean and free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT there shall be no welding, body or fender work done on the premises;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions and all conditions from prior resolutions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one year from the date of this grant;

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 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, June 6, 2017.

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## 139-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 54<sup>th</sup> Street, LLC, owner.

SUBJECT – Application October 11, 2016 – Extension of Term for a Special Permit (§73-36) to allow the operation of a Physical Cultural Establishment (Equinox) which expired on October 8, 2016. C1-9 (TA) zoning district.

PREMISES AFFECTED – 250 East 54<sup>th</sup> Street, Block 1327, Lot 7502, Borough of Manhattan.

## COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on October 8, 2016, and an amendment to reflect a change in hours of operation; and

WHEREAS, a public hearing was held on this application on June 6, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Montanez performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, recommends approval on condition that the term be extended for five (5) years in order to allow review and recommendations based on any changes in condition that may occur; and

WHEREAS, the subject site is located on the southwest corner of East 54<sup>th</sup> Street and Second Avenue, in a C1-9 zoning district and the Special Transit Land Use District, in Manhattan; and

WHEREAS, the site has approximately 100 feet of frontage along East 54<sup>th</sup> Street, 100 feet of frontage along Second Avenue, 10,042 square feet of lot area and is occupied by a forty-story mixed-use commercial and residential building; and

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WHEREAS, the Board has exercised jurisdiction over the subject site since October 8, 1996, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit a proposed physical culture establishment on a portion of the sub-cellar, cellar and first floor of an existing building for a term of ten (10) years, expiring October 8, 2006, on condition that there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; that hours of operation be limited to Monday through Friday 6:00 a.m. to 11:00 p.m. and Saturday and Sunday 8:00 a.m. to 6:00 p.m.; and that noise levels generated by the physical culture establishment comply with the New York City Noise Control Code to minimize any potential impacts on the residents in the building; and

WHEREAS, on March 30, 1999, under the subject calendar number, the Board amended the special permit to permit a change in the layout of the physical culture establishment, an increase in the floor area of the establishment and a change in the operators, on further condition that the premises be kept clean of debris and graffiti and that all signs be maintained in accordance with BSA Approved plans; and

WHEREAS, by letter dated April 14, 2006, the Board approved modifications to the plans, including the proposed conversion of the sub-cellar swimming pool into additional exercise studio space, as substantially in compliance with the previously approved plans; and

WHEREAS, on December 12, 2006, under the subject calendar number, the Board amended the special permit to grant an extension of the term for an additional ten (10) years, expiring October 8, 2016; and

WHEREAS, the most recent term having expired, the applicant presently seeks an extension of the term of the special permit and an amendment to the permitted hours of operation; and

WHEREAS, the applicant proposes to change the operating hours to Monday through Thursday 5:30 a.m. to 11:00 p.m., Friday 5:30 a.m. to 9:00 p.m. and Saturday and Sunday 8:00 a.m. to 9:00 p.m.; and

WHEREAS, by letter dated May 31, 2017, the Fire Department states that the premises was last inspected for compliance with the New York Fire Code and Department of Buildings Place of Assembly regulations on February 1, 2017, the Fire Department inspection account was approved and, thus, the Fire Department has no objection to the subject application; and

WHEREAS, noting that there have been no issued raised regarding the operation of the PCE at the premises, the Board finds that a ten (10) year extension and change in operating hours, as requested, are appropriate, with the conditions set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 8, 1996, as amended through December 12, 2006, 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, expiring October 8, 2026, *on condition* that the site shall substantially conform to drawings as filed with this application,

marked 'Received October 11, 2016 – Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring October 8, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Thursday 5:30 a.m. to 11:00 p.m., Friday 5:30 a.m. to 9:00 p.m. and Saturday and Sunday 8:00 a.m. to 9:00 p.m.;

THAT the noise levels generated by the physical culture establishment shall comply with the New York City Noise Control Code to minimize any potential impacts on the residents in the building;

THAT the premise shall be kept clean of debris and graffiti;

THAT all signs shall be maintained in accordance with the BSA-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by the Department of Buildings;

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 this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, June 6, 2017.

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## 413-50-BZ

APPLICANT – Eric Palatnik, P.C., for Sandra Yetman, owner; BP Products North America Inc., lessee.

SUBJECT – Application October 8, 2015 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expires on November 18, 2015. C2-4/R7-1 zoning district.

PREMISES AFFECTED – 691 East 149<sup>th</sup> Street, Block 2623, Lot 140, Borough of Bronx.

## COMMUNITY BOARD #1BX

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for adjourned hearing.

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## 704-59-BZ

APPLICANT – Carl A. Sulfaro, Esq., for The Rand Properties Group, LLC, owner; Danes Parking Corp., lessee. SUBJECT – Application May 9, 2016 – Extension of Term (§11-411) of a previously approved variance which permitted a parking lot (UG 8) which expired on June 3, 2010; Waiver of the Rules. R8 zoning district.

PREMISES AFFECTED – 53 East 177<sup>th</sup> Street (fka 53-57 East 177<sup>th</sup> Street), Block 2828, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #5BX

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for adjourned hearing.

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## 174-94-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for David Rosero, owner.

SUBJECT – Application May 30, 2014 – Extension of the term of the variance, permitting an automotive sales establishment, which expired on May 6, 2012; Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 99-07 Roosevelt Avenue, Block 1765, Lot 44, Borough of Queens.

### COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for continued hearing.

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## 187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation & Yeshiva Maschzikei Hadas, owner.

SUBJECT – Application April 22, 2016 – Amendment to a variance (§72-21) to allow a five-story school (*Congregation & Yeshiva Maschzikei Hadas*). The application seeks to increase the zoning lot contrary to the previous Board approval. M1-2/R6B zoning district.

PREMISES AFFECTED – 1247 38<sup>th</sup> Street, Block 5295, Lot(s) 52 & 109, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for continued hearing.

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## 46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application November 5, 2015 – Extension of Time to Complete Construction of an offsite parking lot to accommodate the required parking, which expires, November 15, 2015, located within an C4-2 zoning district. PREMISES AFFECTED – 1401 Sheepshead Bay Road, intersection of Sheepshead Bay Road and Avenue Z. Block 7459, Lot 1. Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for postponed hearing.

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## 228-13-BZ

APPLICANT – Pryor Cashman LLP, for 45 West 67<sup>th</sup> Street Development Company, owner; Crossfit, NYC lessee.

SUBJECT – Application June 20, 2016 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (Cross Fit) located in the cellar level of an existing 31-story building which expired on May 20, 2016. C4-7 (SLS) zoning district.

PREMISES AFFECTED – 157 Columbus Avenue, Block 1120, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #7M

**ACTION OF THE BOARD** – Laid over to July 11, 2017, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 2016-4170-A

APPLICANT – Juan D. Reyes of Seyfarth Shaw, for Cast Iron Corp., owner.

SUBJECT – Application April 15, 2017 – Appeal to challenge the NYC Department of Buildings Permit Number 121236983-01-AL. C6-1 zoning district.

PREMISES AFFECTED – 809-811 Broadway, Block 563, Lot 35, Borough of Manhattan

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4  
Negative: .....0

Adopted by the Board of Standards and Appeals, June 6, 2017.

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### 232-15-A

APPLICANT – Sheldon Lobel, P.C., for Thor 840 West End Avenue LLC, owner.

SUBJECT – Application October 1, 2015 – Proposed vertical enlargement of an existing six story building to allow for a new penthouse floor and roof above the sixth floor which requires a waiver of the Multiple Dwelling Law and Building Code. R8 zoning district.

PREMISES AFFECTED – 840 West End Avenue aka 259 West 101 Street, Block 1873, Lot 01, Borough of Manhattan.

### COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez.....4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for decision, hearing closed.

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## 2016-4263-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for R.A. Properties, LLC, owner.

SUBJECT – Application October 3, 2016 – Proposed development of a two-story building with warehouse use on the first floor (UG 16B) and office use on the second floor (UG 6) not fronting on a mapped street contrary to General City Law 36. M3-1(SRD)

PREMISES AFFECTED – 235 Industrial Loop, Block 7206, Lot 314, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 168-15-BZ

#### CEQR #16-BSA-008K

APPLICANT – Sheldon Lobel, P.C., for Bushwack 7 LLC, owner.

SUBJECT – Application July 28, 2015 – Variance (§72-21) to permit the development of a four-story commercial building contrary to height, setback and parking requirements. M1-1 zoning district.

PREMISES AFFECTED – 58 Grattan Street, Block 3008, Lot 15, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), acting on Application No. 321131743, reads in pertinent part:

“Refer to Board of Standards and Appeals for a variance of bulk regulations as follows:

1. Proposed floor area ratio (FAR) exceed[s] the maximum permitted pursuant to ZR 43-12;
2. Proposed front wall height exceeds the maximum permitted pursuant to ZR 43-43;
3. No initial setback provided, contrary to ZR 43-43;
4. Required parking is not provided contrary to ZR 44-21”; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located within an M1-1 zoning district, the development of a four-story plus cellar commercial building at the premises that does not comply with the underlying regulations pertaining to floor area ratio, front wall height, setback and parking, contrary to ZR §§ 43-12, 43-43 and 44-21; and

WHEREAS, a public hearing was held on this

application on September 20, 2016, after due notice by publication in *The City Record*, with continued hearings on February 13, 2017, and April 4, 2017 and then to decision on June 6, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez and former Vice-Chair Hinkson performed inspections of the site and surrounding area; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of the application and states in its recommendation that the advantage of the commercial spaces provided by the proposal outweighs the lack of additional parking spaces because; and

WHEREAS, the subject site is located on the south side of Grattan Street, between Knickerbocker Avenue and Morgan Avenue, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Grattan Street, 100 feet of depth, 2,500 square feet of lot area and is currently vacant; and

WHEREAS, the subject site is not held in common ownership with any adjacent lots and the applicant suggests that the site has been vacant since at 1991, when a full demolition permit was issued for the site; and

WHEREAS, the subject application proposes to develop the site with a four-story plus cellar commercial building having 7,975 square feet of floor area, a floor area ratio (“FAR”) of 3.19, a front wall height of 44’-4”, no front setback at a height of 30 feet and no off-street parking spaces; and

WHEREAS, the applicant proposes to occupy the buildings with retail uses in the cellar and on the first floor and offices uses in the remainder of the building to be marketed to creative businesses; and

WHEREAS, at the subject site, a maximum FAR of 1.00 (2,500 square feet of floor area) is permitted pursuant to ZR § 43-12; a maximum front wall height of 30 feet and an initial 20 foot setback are required pursuant to ZR § 43-43; and 32 off street parking spaces are required pursuant to ZR § 44-21; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the narrow width of the lot, which results in inefficiently small floor plates, and history of development of the site create practical difficulties and unnecessary hardship in developing the subject site in conformance with the zoning regulations applicable in the underlying district; and

WHEREAS, the applicant provided the Board with a study of lots located within 400 feet of the premises and within an M1-1 zoning district (the “Study Area”) concluding that while 50 (71 percent) of the 70 total lots in the Study Area have widths of 25 feet or less, 25 of these lots (50 percent, or 36 percent of all lots in the Study Area) are not held in common ownership with one or more adjacent lots and only two of these lots (8 percent, or 3 percent of all lots in the Study Area) are currently vacant or utilized as a parking lot; in addition, only four of all lots in the Study area (6 percent) have widths of 25 feet or less, are

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not held in common ownership with an adjacent lot and developed with a conforming use; and

WHEREAS, the applicant submits that the narrow width of the site reduces its marketability for a conforming manufacturing or industrial use, as evidenced by the limited number of similarly sized, vacant and singularly owned lots in the Study Area developed with conforming uses; and

WHEREAS, based on the foregoing, the Board finds that the aforementioned unique physical conditions create unnecessary hardship and practical difficulties in developing the site in conformance with applicable zoning regulations; and

WHEREAS, with regards to ZR § 72-21(b), the applicant submits that there is no reasonable possibility that a conforming development at the subject site will bring a reasonable return and, in support of that assertion, submitted a financial analysis of (1) an as-of-right one-story plus cellar building with industrial and retail uses (the "AOR Industrial Scenario"); (2) an as-of-right one-story plus cellar building for co-working and shared office use (the "AOR Office Scenario") and (3) the subject proposal, demonstrating that only the subject proposal would provide a reasonable return; and

WHEREAS, to wit, the financial analysis concludes that the AOR Industrial Scenario would generate a project loss of approximately \$185,000; the AOR Office Scenario would generate a project loss of approximately \$405,000; and the subject proposal would yield a return of approximately \$45,000; and

WHEREAS, upon review of the applicant's submissions, the Board finds that, due to the site's unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposal 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) because the use conforms with those permitted in the underlying district, is consistent with the surrounding area, which is characterized by a mix of manufacturing, commercial and residential uses, the tenants of the proposed building will create jobs and contribute to the local economy and the development of the site will fill a long-standing vacancy in the street wall;

WHEREAS, with respect to the proposed bulk, the applicant provided a study showing that the proposal is consistent with the existing character of the neighborhood, which includes a variety of building types; specifically, the height of the proposal, at 44'-4", is slightly taller than the parapet height of the building located immediately to the west and its FAR is consistent with a variety of building on the block, which have FARs ranging from 2.68 to 3.55; and

WHEREAS, the Board notes that while the floor area ask is large in comparison to the floor area permitted as-of-right in the zoning district, the proposed building provides the most efficient interior layouts for the proposed

occupancy with minimal redundancies in circulation space, the proposed building height was reduced in the course of hearing from 53'-8" to 44'-4" by reducing the floor-to-floor heights; in addition, the Board notes that allowing commercial use in a manufacturing district, where possible, is desirable and to be encouraged as good public policy; and

WHEREAS, with regards to traffic, the applicant submits that, based on their experiences in commercial development in the subject neighborhood, tenants of the building will be local and access the site by foot, bicycle or public transportation rather than private motor vehicle and, therefore, not adversely affect traffic and/or parking conditions in the neighborhood; and

WHEREAS, to support this contention, the applicant conducted an informal travel survey of employees at 20 businesses located near the subject site concluding that the majority arrive to work in the surrounding area by public transportation (43 out of 55 respondents, or 78 percent) or bike (4 out of 55 respondents, or 7 percent); and

WHEREAS, in addition, the applicant provided a parking study, showing that the proposal will generate a parking demand of nine spaces during peak periods identified as weekdays from 10 a.m. to 12 p.m., and a parking survey of on-street parking available within a ¼-mile radius of the site, showing that approximately 100 on-street spaces are available within this radius during an active weekday hour and, conservatively discounting all streets within this radius but south of Flushing Avenue with street-cleaning rules in effect during various weekdays, an estimated 46 on-street parking spaces are available; and

WHEREAS, the Board notes that although the parking study submitted in connection with this application shows a demand for nine spaces, the on-street parking study demonstrates that a significant number of spaces in excess of the nine demanded are available at peak times, therefore the Board is comfortable with the proposal providing no parking on-site; and

WHEREAS, accordingly, the Board finds that the requested relief will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship claimed as grounds for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant represents that the subject proposal is the minimum variance necessary to afford relief because it is the only scenario of the three analyzed that provides a return and will enable the applicant to develop the underutilized site with conforming commercial uses; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the



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Environmental Assessment Statement Short Form CEQR No. 16-BSA-008K, dated June 28, 2016; and

WHEREAS, the EAS documents that the project as proposed would not have significant impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, the New York City Landmarks Preservation (“LPC”) reviewed the subject proposal and concluded that the subject site is of no architectural or archaeological significance; and

WHEREAS, by letter dated July 20, 2016, the New York Department of Environmental Protection (“DEP”) states that they reviewed the June 2016 Environmental Assessment Statement, May 2013 Phase I Environmental Site Assessment Report (the “Phase I”), the May 2016 limited Phase II Environmental Site Investigation (the “Phase II”), the 2016 Remedial Action Plan (“RAP”) and the May 2016 Construction Health and Safety Plan (“CHASP”) for the subject proposal; notes that the Phase II was conducted without DEP approval; recommends that, upon completion of the clean fill (for landscaped areas, if proposed) investigation activities, the applicant submit a detailed clean soil report—including, at a minimum, an executive summary, narrative of the field activities, laboratory data and comparison of soil analytical results—to DEP for review and approval prior to importation and placement on-site; and states that it finds the June 2016 RAP and May 2016 CHASP acceptable as long as the recommended clean soil report is submitted to DEP and that, upon the completion of the project, a Professional Engineer certified Remedial Closure Report, indicating that all remedial requirements have been properly implemented, be submitted to DEP for review and approval; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration 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 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located within an M1-1 zoning district, the development of a four-story plus cellar commercial building at the premises that does not comply with the underlying regulations pertaining to floor area ratio, front wall height, setback and parking, contrary to ZR §§ 43-12, 43-43 and 44-21, *on condition* that all work will

substantially conform to drawings filed with this application marked “Received May 9, 2017”—Eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 3.19 (7,975 square feet of floor area), a maximum front wall height of 44’-4”, no initial set back and no off-street parking spaces, as reflected on the BSA-approved plans;

THAT upon the completion of the project, a Professional Engineer certified Remedial Closure Report, indicating that all remedial requirements as set forth in the June 2016 Remedial Action Plan and the May 2016 Construction Health and Safety Plan have been properly implemented, be submitted to DEP for review and approval; and

THAT such Remedial Closure Report shall be submitted and approved prior to the issuance of a Certificate of Occupancy;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a Certificate of Occupancy shall be obtained within four (4) years;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 6, 2017.

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## **2016-4336-BZ**

### **CEQR #17-BSA-044X**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 645 East Tremont LLC, owner; Blink East Tremont Avenue, Inc., lessee.

SUBJECT – Application November 21, 2016 – Special Permit (73-36) to allow the operation of a physical culture establishment (*Blink*) at the subject premises. C4-5X zoning district.

PREMISES AFFECTED – 643 East Tremont Avenue, Block 3079, Lot 2, Borough of the Bronx.

### **COMMUNITY BOARD #6BX**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated October 26, 2016, acting on

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Department of Buildings (“DOB”) Application No. 220549459, reads in pertinent part:

“Proposed Physical Culture Establishment in C4-5X Zoning district is contrary to section 32-10 ZR and requires a special permit from BSA (73-36)”;  
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within a C4-5X zoning district, a physical culture establishment (“PCE”) on a portion of the first floor and the entire second and third floors of a proposed three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 2, 2017, after due notice by publication in *The City Record*, with a continued hearing on June 6, 2017, and then to decision on that date; and

WHEREAS, Community Board 6, Bronx, made no recommendation as to the disposition of this application; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the northeast corner of East Tremont Avenue and Hughes Avenue, in a C4-5X zoning district, in the Bronx; and

WHEREAS, the site has approximately 71 feet of frontage along East Tremont Avenue, 91 feet of frontage along Hughes Avenue, 3,238 square feet of lot area and is occupied by a one-story and mezzanine commercial building; and

WHEREAS, the applicant represents that an application has been filed with DOB to vertically enlarge the existing building with two additional stories; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i)

through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and Certificate of Occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 PCE is proposed to occupy a total of 14,142 square feet of floor area: 1,250 square feet of floor area on the first floor, containing an entrance lobby, stair and a dedicated elevator to the PCE space on the upper levels; 6,446 square feet of floor area on the second floor, containing the front desk, cardiovascular and weight training equipment, office space and the women’s locker room; and 6,446 square feet of floor area on the third floor, containing additional exercise equipment, a dumbbell area and the men’s locker rooms; and

WHEREAS, the PCE is proposed to be operated as a Blink Fitness with the following hours of operation: Monday through Saturday, 5:30 a.m. to 11:00 p.m. and Sunday, 7:00 a.m. to 9:00 p.m.; and

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# MINUTES

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WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located in a commercial building within a busy commercial district and will feature sound attenuation measures, including rubber flooring in activity areas and demising walls with batt insulation, to ensure that the sound level experienced in other portions of the building will not exceed 45 dBA; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE will provide facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that an approved fire alarm system—including area smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—and full sprinklering will be provided in the PCE space; and

WHEREAS, by letter dated December 29, 2016, the Fire Department states that the proposed conditions satisfy all necessary Fire Department requirements for this type of occupancy and that it has no objection to the approval of this application; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 17-BSA-044X, dated November 21, 2016; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review 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 C4-5X zoning district, the operation of a physical culture establishment on a portion of the first floor and the entire second and third floors of a proposed three-story commercial building, contrary to ZR § 32-10; *on condition* that all work

shall substantially conform to drawings filed with this application marked “Received June 9, 2017” – Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on June 6, 2027;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT an approved fire alarm system—including area smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—shall be installed in the entire PCE space;

THAT the PCE shall be fully sprinklered;

THAT accessibility compliance under Local Law 58/87 shall be as reviewed and approved by DOB;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a revised Certificate of Occupancy shall be obtained within four (4) years;

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, June 6, 2017.

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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 August 8, 2017, at 10 A.M., for continued hearing.

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# MINUTES

## 128-15-BZ thru 130-15-BZ

APPLICANT – Law Office of Steven Simicich, for John Massamillo, owner.

SUBJECT – Application May 29, 2015 – Variance (§72-21) to allow for the construction on a three family attached residential building (Use Group 2). R2/SHPD zoning district.

PREMISES AFFECTED – 680, 682 and 684 Van Duzer Street, Block 613, Lot(s) 95, 96 and 97, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for adjourned hearing.

## 200-15-BZ

APPLICANT – Dennis D. Dell’Angelo, for Baruch M. Wieder, owner.

SUBJECT – Application August 27, 2015 – Special Permit (§ZR 73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1364 East 23<sup>rd</sup> Street, Block 7568 Lot 76, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda. ....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 27, 2017, at 10 A.M., for decision, hearing closed.

## 273-15-BZ

APPLICANT – Michio Sanga, for Seucharran Sewdat, owner.

SUBJECT – Application December 15, 2015 – Variance (§72-21) to permit the construction of a 2-story two-family residence contrary to ZR §23-461c (open area between buildings containing residences). R3A zoning district.

PREMISES AFFECTED – 110-43 160<sup>th</sup> Street, Block 12164, Lot 4, Borough of Queens.

### COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for continued hearing.

## 2016-3-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seneca Clove Corp., owner.

SUBJECT – Application January 4, 2016 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store (UG 16B). C2-1/R2 zoning district.

PREMISES AFFECTED – 1212 Victory Boulevard, Block 651, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for continued hearing.

## 2016-4136-BZ & 2016-4137-BZ

APPLICANT – Sheldon Lobel, P.C., for Astoria Warehouse Enterprises, Inc., owner.

SUBJECT – Application March 15, 2016 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. M1-1 zoning district.

PREMISES AFFECTED – 19-59 & 19-61 49<sup>th</sup> Street, Block 755, Lot(s) 5 and 6; 19-55 & 19-57 49<sup>th</sup> Street, Block 755, Lot(s) 7 & 8, Borough of Queens.

### COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda. ....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for decision, hearing closed.

## 2016-4208-BZ

APPLICANT – Sheldon Lobel, P.C., for USD 142 W 19 LLC, owner.

SUBJECT – Application May 13, 2016 – Variance (§72-21) to permit the development of a 10-story residential building contrary to ZR §23-692. C6-3A zoning district.

PREMISES AFFECTED – 142 West 19<sup>th</sup> Street, Block 794, Lot 63, Borough of Manhattan.

### COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for continued hearing.

## 2016-4249-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP for Margaret Lee, Youngwoo & Associates LLC, owner.

SUBJECT – Application September 8, 2016 – Variance (§72-21) to allow the development of a commercial building contrary to ZR §22-10 (to allow commercial use (UG 5 & 6) within a R7-2 zoning district, ZR §33-122 (exceed the maximum permitted commercial floor area within a C8-3 zoning district, ZR §§33-432 & 33-442 (C8-3 sky exposure plane regulations) and ZR §36-683 (Location of the entry/exit of an accessory loading berth with a C8-3 zoning district). C8-3 & R7-2 zoning district.

PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot(s) 77 & 83, Borough of Manhattan.

### COMMUNITY BOARD #12M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda. ....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to June 20, 2017, at 10 A.M., for decision, hearing closed.

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, JUNE 6, 2017  
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez.

## ZONING CALENDAR

### 2016-4243-BZ

#### CEQR #17-BSA-014X

APPLICANT – Sheldon Lobel, P.C., for Silver Capital, LLC, owner.

SUBJECT – Application August 25, 2016– Variance (§72-21) to permit a supermarket (UG 6A) on the ground floor and office use (UG 6B) on the second floor of an existing building contrary to ZR §22-10. R8 zoning district.

PREMISES AFFECTED – 151 East Tremont Avenue, Block 2808, Lot 4, Borough of Bronx.

#### COMMUNITY BOARD #5BX

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, acting on DOB Application No. 220533901, reads in pertinent part:

“ZR 22-10: Zoning use group 6 is not permitted as-of-right in an R8 district . . . .”; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located within an R8 zoning district, a Use Group 6A supermarket and Use Group 6B offices in an existing two-story building, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on June 6, 2017, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Community Board 5, Bronx, recommends approval of this application on the following conditions: that there be no “Loading Zone” or reduction in parking in front of the supermarket proposed for the first floor of the existing building; there be no unloading of delivery trucks during peak hours; that all deliveries be unloaded during the evening and early morning hours; and that the proposed supermarket be handicap and senior citizen friendly; and

WHEREAS, the subject site is bound by East Tremont Avenue to the south, Creston Avenue to the west and East 178th Street to the north, in an R8 zoning district, in the Bronx; and

WHEREAS, the site has approximately 82 feet of frontage along East Tremont Avenue, 126 feet of frontage along Creston Avenue, 22 feet of frontage along East 178th Street, 6,764 square feet of lot area and is occupied by a vacant two-story building containing 13,430 square feet of floor area; and

WHEREAS, the site was previously owned by the City of New York; by decision dated December 16, 2009, the City Planning Commissioner designated the subject site as an Urban Development Action Area and the Council of the City of New York approved this decision by its Resolution No. 22, dated February 3, 2010; and

WHEREAS, the site was sold by deed, entered into with the Department of Housing Preservation and Development (“HPD”) on June 19, 2014, subject to the restriction that the purchaser, the applicant, “conserve the existing Improvements on the [site] for a period of not less than twenty (20) years” and devote the property to “commercial use consisting of 13,500 square feet to be used as commercial space or for other uses as permitted by zoning”; and

WHEREAS, the subject application is for commercial use of the existing building, specifically a Use Group 6A supermarket, having 6,710 square feet of floor area on the first floor of the building, accessible by an entrance located on the corner of East Tremont Avenue and Creston Avenue; and Use Group 6B commercial offices having a total of 6,720 square feet of floor area on the second floor of the building, accessible by stairs and elevator through an entrance fronting East Tremont Avenue; and

WHEREAS, commercial use is not permitted in an R8 zoning district, the applicant seeks the subject relief; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the history of development of the site with commercial uses and the irregular floorplates of the existing building create practical difficulties and unnecessary hardship in developing the subject site in conformance with the zoning regulations applicable in the underlying district; and

WHEREAS, the site is an irregularly shaped triangular lot ranging in width from 21’-8” at the northern edge of the lot to a width of 76’-4” at the southern edge of the lot, and the full lot coverage building occupying the site has similarly irregular floorplates; and

WHEREAS, the applicant provided the Board with a study of lots located within 800 feet of the subject site (the “Study Area”) concluding that, of the 215 total lots within the Study Area, 8 other lots (or 3.7 percent) are triangularly shaped; and

WHEREAS, the subject building was designed for commercial use and has been so utilized since at least 1967, as evidenced by a Temporary Certificate of Occupancy, dated February 28, 1967, indicating Use Group 6 stores and offices as the permissible occupancy; and

WHEREAS, the applicant additionally represents that HPD occupied the building as the Bronx Field Office for approximately 30 years; and

WHEREAS, based on the foregoing, the Board finds that the aforementioned unique physical conditions create unnecessary hardship and practical difficulties in developing the site in conformance with applicable zoning regulations; and

WHEREAS, with regards to ZR § 72-21(b), the applicant submits that there is no reasonable possibility that

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# MINUTES

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a conforming development at the subject site while utilizing the existing building as required under the terms of the deed will bring a reasonable return and, in support of that assertion, submitted a financial analysis of (1) an as-of-right residential use providing 12 units; (2) an as-of-right residential use providing seven duplex units; (3) an as-of-right community facility use and (4) the subject proposal, demonstrating that only the subject proposal would provide a reasonable return; and

WHEREAS, to wit, the financial analysis concludes that the as-of-right residential use with 12 units would generate a project loss of \$4,319,427; the as-of-right residential use with seven duplex units would generate a project loss of \$4,287,437; the as-of-right community facility use would generate a project loss of \$1,716,323; and the subject proposal would yield a return of approximately \$19,458; and

WHEREAS, the applicant represents that the irregular floorplates of the existing building and lack of windows along the eastern lot line, the longest side of the lot, result in oddly shaped and inefficiently laid out dwelling units in the as-of-right residential use proposals and a high proportion of required access, egress and circulation space to rentable space in the community facility proposal, which renders all of the alternative scenarios infeasible; and

WHEREAS, the proposal for residential use with duplex units was proposed to demonstrate that the reduction in the area dedicated to circulation and access on the second floor, specifically the removal of the corridor and an elevator, would not produce a feasible as-of-right scenario; and

WHEREAS, the applicant also submits that the location of the site at East Tremont Avenue, a wide four-lane highly traveled street, and the low profile of the existing building would necessitate the installation of sound attenuation measures for a complying residential use in order to counter the noise and vibrations associated with nearby vehicular traffic and, along with the residential rents available in the local market, negatively affects the profitability of the residential units; and

WHEREAS, upon review of the applicant's submissions, the Board finds that, due to the site's unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposal 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) because the proposal is consistent with the historical commercial use of the property and the immediate area, particularly East Tremont Area, which is characterized by a mix of commercial, community facility and residential uses; and

WHEREAS, the applicant further submits that the proposal for a supermarket on the ground floor of the existing building will, in particular, provide a necessary

service in the neighborhood, which is currently underserved by neighborhood grocery stores and, further, that the applicant intends to offer senior citizen discounts, donate food to community food drives and organizations and offer a delivery service to patrons living within walking distance; and

WHEREAS, with regards to the proposed office uses on the second floor, the applicant submits that this use is a continuation of the most recent use of the building as an office location for HPD; and

WHEREAS, the Board finds that the proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship claimed as a ground for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant represents that the subject proposal is the minimum variance necessary to afford relief because it is the only scenario of the four analyzed that provides a return and it continues the historic use of the subject site; 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 Board notes that it considered other Use Group 6 uses on the first floor in the course of its review of this application, particularly in the evaluation of the financials, which utilized comparables other than food markets, and that future requests for a change in the use of the first floor from a Use Group 6A supermarket, as permitted herein, to another use within Use Group 6 could be facilitated by letter, rather than an amendment, because the Board finds that such change would not implicate any of the findings for a variance and, thus, be in substantial compliance with this Resolution; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Statement Short Form CEQR No. 17-BSA-014X, dated March 23, 2017; and

WHEREAS, the EAS documents that the project as proposed would not have significant impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; 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

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# MINUTES

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on the environment; and

*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 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site within an R8 zoning district, a Use Group 6A supermarket on the first floor and Use Group 6B offices on the second floor of an existing two-story building, contrary to ZR § 22-10, *on condition* that all work will substantially conform to drawings filed with this application marked “Received March 23, 2017”- Seven (7) sheets; and *on further condition*:

THAT the hours of operation of the supermarket shall not exceed 5:00 a.m. to midnight, seven days a week;

THAT no delivery shall be permitted during peak traffic hours and in no event between 7:00 a.m. and 9:00 a.m. and 5:00 p.m. and 7:00 p.m.;

THAT trash shall remain on the interior of the building until immediately before pickup;

THAT no dumpsters shall be maintained on the sidewalks;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a Certificate of Occupancy shall be obtained within four (4) years;

THAT the above conditions shall appear on the Certificate of Occupancy;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 6, 2017.

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## 2016-4167-BZ

APPLICANT – Eric Palatnik, P.C., for Ocean Services, Inc., owner.

SUBJECT – Application April 6, 2016 – Special Permit (§73-622) for the enlargement of an existing two story single family home contrary to floor area, lot coverage and open space (ZR 23-141(b)); and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 4180 Ocean Avenue, Block 8737, Lot 92, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to July 11, 2017, at 10 A.M., for continued hearing.

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## 2016-4464-BZ

APPLICANT – Law Office of Jay Goldstein, for Noah S. Smith, owner.

SUBJECT – Application December 8, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space ratio (ZR 23-141); side yard (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1350 East 28<sup>th</sup> Street, Block 7663, Lot 60, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for continued hearing.

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## 2017-35-BZ

APPLICANT – Law Office of Jay Goldstein, for Geloda Briarwood Corp., owner; Fhitting Room, lessee.

SUBJECT – Application February 6, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*The Fhitting Room*) on the first floor of an existing building. C1-9 and R7-2 zoning district.

PREMISES AFFECTED – 580 Columbus Avenue, Block 1219, Lot 7501, Borough of Manhattan.

## COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda. ....4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 11, 2017, at 10 A.M., for decision, hearing closed.

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*Ryan Singer, Executive Director*

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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 102, Nos. 25-26

June 29, 2017

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

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*Commissioners*

Ryan Singer, *Executive Director*

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2016-4301-BZ	136 Oxford Street, Brooklyn

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# DOCKETS

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New Case Filed Up to June 20, 2017  
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## 2017-203-BZ

295 Madison Avenue, located on the southeast corner of Madison Avenue and East 41st Street, Block 01275, Lot(s) 50, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture establishment (Every Body Fights) in a portion of the cellar of an existing commercial building contrary to ZR §32-10. C5-3 (MID) zoning district. C5-3 (MID) district.  
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## 2017-204-BZ

124-14 20th Avenue, located on the southwest corner of the intersection formed by 20th Avenue and 125th Street, Block 04169, Lot(s) 21, Borough of **Queens, Community Board: 7**. Variance (§72-21) to permit the enlargement of a non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §52-22. R4A zoning district. R4A district.  
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## 2017-205-BZ

555 Nereid Avenue, located at the northeast corner of Nereid Avenue and Bullard Avenue, Block 05065, Lot(s) 1, Borough of **Bronx, Community Board: 12**. Variance (§72-21) to permit the conversion of the former Sgt. Joseph E. Muller U.S. Army Reserve Center into a 90-bed Use Group 3A non-profit institution with sleeping accommodations contrary to ZR §42-10. M1-1 zoning district. M1-1 district.  
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## 2017-206-BZ

4449 Bronx Boulevard, located on an interior lot on the west side of Bronx Boulevard between Nereid Avenue and East 239th Street, Block 05065, Lot(s) 53, Borough of **Bronx, Community Board: 12**. Variance (§72-21) to permit the development of a 23-space open parking area accessory to a proposed 90-bed Use Group 3A non-profit institution with sleeping accommodations contrary to ZR §42-10 filed under BSA Calendar Number 2017-205-BZ. M1-1 zoning district. M1-1 district.  
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## 2017-207-BZ

2030 Broadway, located on the southeast corner of Broadway and West 70th Street, Block 01141, Lot(s) 51, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36) to permit the operation of physical culture establishment (CorePower Yoga) on the second floor of an existing building contrary to ZR §32-10. C4-6A/R8B Upper West Side/Central Park West Historic District. C4-6A/R8B district.  
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## 2017-208-BZ

700 Broadway, located on the north east corner of West 4th Street and Broadway, Block 00545, Lot(s) 7501, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to permit the operation of physical culture establishment (Rumble Fitness) on a portion of the cellar and first floor an existing building contrary to ZR §32-10. M1-5B NoHo Historic District. M1-5B district.  
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## 2017-209-BZ

1622 East 29th Street, located on East 29th Street between Avenue P and Quentin Road, Block 06791, Lot(s) 8, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (ZR §23-142); perimeter wall height (ZR §23-631) and less than the required rear yard (ZR §23-47). R3-2 zoning district. R3-2 district.  
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## 2017-210-BZ

131 Bedford Avenue, located on the east side of Bedford approximately 342' south of Rockaway Point Boulevard., Block 16350, Lot(s) 400, Borough of **Brooklyn, Community Board: 14**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district. R4 district.  
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## 2017-211-BZ

38 Brighton 4th Court, located on Brighton 4th Court between Brighton 4th and 5th Streets, Block 08664, Lot(s) 446, Borough of **Brooklyn, Community Board: 13**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R6 zoning district. R6 district.  
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## 2017-212-BZ

25 Brighton 7th Court, located on Brighton 7th Court between Brighton 7th and 8th Streets, Block 08667, Lot(s) 762, Borough of **Brooklyn, Community Board: 13**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R6 zoning district. R6 district.  
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# DOCKETS

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## 2017-213-BZ

1808 Coney Island Avenue, located on the west side of Coney Island Avenue between Avenues N and O., Block 06592, Lot(s) 39, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to permit the development of a 20-bed community residence and treatment facility (Use Group 3A) (Dynamic Youth Community) contrary to ZR §32-10 (contrary to use regulations); ZR §33-26 (rear yard regulations) and ZR §33-292 (district boundary yard regulations). C8-2 (Special Ocean Parkway District) C8-2 (SOPD) district.

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## 2017-214-BZ

1459 East 24th Street, located on East 24th Street between Avenue N and Olean Street, Block 07678, Lot(s) 25, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area & open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district. R2 district.

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## 2017-215-BZ

900 3rd Avenue, located on 3rd Avenue between East 54th & East 55th Streets, Block 01309, Lot(s) 32, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (Title Boxing Club) located on a portion of the first and cellar floors of an existing thirty-six (36) story commercial use building contrary to ZR §32-10. C6-6 Special Midtown District. C6-6 (SMD) district.

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## 2017-216-BZ

411 Wales Avenue, located on Wales Avenue between East 143rd and East 144th Streets., Block 02574, Lot(s) 82, Borough of **Bronx, Community Board: 1**. Special Permit (§73-19) to permit a school (UG 3) (Rosalyn Yalow Charter School) within an existing two-story manufacturing building contrary to ZR §42-10. M1-2 zoning district. M1-2 district.

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## 2017-217-BZ

4855 Hylan Boulevard, located on the north side of Hylan Boulevard between Allen Place and Barclay Avenue, Block 06401, Lot(s) 1, 3, 5 & 6, Borough of **Staten Island, Community Board: 3**. Special Permit (§73-126) to permit a two-story with cellar ambulatory diagnostic or treatment health care facility (UG 4) contrary to ZR §22-14(A). R3X (Special South Richmond Development District) (Lower Density Growth Management Area). R3X(SSRDD) district.

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## 2017-218-A

35 Howe Street, located within the intersection formed by Howe Street and North Burgher Avenue, Block 00302, Lot(s) 19, Borough of **Staten Island, Community Board: 1**. Proposed single family detached residential building which is within the unbuilt portion of the mapped street, contrary to General City Law 35. R3A R3A 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 JULY 18, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, July 18, 2017, 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

### 182-85-BZ

APPLICANT – Eric Palatnik, P.C., for 209-11 20<sup>th</sup> Street, LLC, owner.

SUBJECT – Application September 27, 2016 – Extension of Term of a previously approved Variance (§72-21) for a one story building for the storage of commercial vehicles for a (UG16) contractor's establishment which expired on September 9, 2016. R6B zoning district.

PREMISES AFFECTED – 209-11 20<sup>th</sup> Street, Block 637, Lot 64, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

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### 156-92-BZ

APPLICANT – Eric Palatnik, P.C., for Parisi Patel, Inc., owner.

SUBJECT – Application December 20, 2016 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved variance (§72-21) which permitted medical office use in an existing building contrary to side yard regulation at the basement and first floor levels, which expired December 1, 2016. R5 zoning district.

PREMISES AFFECTED – 1835 Bay Ridge Parkway, Block 6216, Lot 60, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

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### 159-00-BZ

APPLICANT – Eric Palatnik, P.C., for Al-Iman Center, Inc., owner.

SUBJECT – Application September 21, 2015 – Extension of Term & Amendment (72-01): extension of term of a previously granted variance of a Use Group 3 school and an Amendment for elimination of the term of the variance and a change and minor plumbing and portion alterations. C8-2 zoning district.

PREMISES AFFECTED – 383 3<sup>rd</sup> Avenue, Block 980, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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## APPEALS CALENDAR

### 2016-4260-A & 2016-4261-A

APPLICANT – Alfonso Duarte, for Benedetta Lipicic, owner.

SUBJECT – Application October 3, 2014 – Proposed new accessory garage located in the bed of a mapped street contrary to Section 35 of the General City Law. R1-2 zoning district.

PREMISES AFFECTED – 240-45 Dephew Avenue, Block 8103, Lot 113, Borough of Queens.

**COMMUNITY BOARD #11Q**

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## REGULAR MEETING JULY 18, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, July 18, 2017, 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

### 2016-4140-BZ

APPLICANT – Akerman, LLP, for M. Sopher & Co. LLC, owner.

SUBJECT – Application March 16, 2016 – Special Permit (§73-52) to extend by 25'-0 a commercial use into a residential zoning district contrary to ZR §§22-10 and 77-11. C1-4/R7-1 and R7-1 district.

PREMISES AFFECTED – 1959 University Avenue, Block 3216, Lot 70, Borough of Bronx.

**COMMUNITY BOARD #5BX**

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### 2016-4271-BZ

APPLICANT – Eric Palatnik, P.C., for 93 Amherst Street LLC, owner.

SUBJECT – Application October 21, 2016 – Special Permit (§73-622) for the enlargement of an existing one family home contrary to floor area, open space and lot coverage (ZR 23-141) and side yard (ZR 23-461). R3-1 zoning district.

PREMISES AFFECTED – 201 Hampton Avenue, Block 8727, Lot 30, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### 2016-4340-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Flushing Point Holding, LLC, owner.

SUBJECT – Application November 23, 2016 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21.

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# CALENDAR

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C4-2 zoning district.

PREMISES AFFECTED – 131-02 40<sup>th</sup> Road, Block 5066,  
Lot(s) 110-150, Borough of Queens.

**COMMUNITY BOARD #7Q**

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**2017-1-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for  
2883 Third Avenue Realty Associates, owner; Blink 2883  
3<sup>rd</sup> Avenue, Inc., lessee.

SUBJECT – Application January 3, 2017 – Special Permit  
 (§73-36) to operate a physical culture establishment (*Blink*)  
 within an existing building. C4-4 zoning district.

PREMISES AFFECTED – 570 Melrose Avenue aka 2883  
Third Avenue, Block 2374, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #1BX**

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**2017-36-BZ**

APPLICANT – Law Office of Jay Goldstein, for 55  
Prospect LLC, owner; Shadowbox Dumbo LLC, lessee.

SUBJECT – Application February 6, 2017 – Special Permit  
 (§73-36) to permit the legalization of a physical cultural  
 establishment (*Shadowbox*) located on the first floor of an  
 existing building contrary to ZR §42-10. M1-6 zoning  
 district.

PREMISES AFFECTED – 55 Prospect Street, Block 63, Lot  
1, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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*Ryan Singer, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 20, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**202-62-BZ**

APPLICANT – Warshaw Burstein, LLP, for NY Dealers Stations, LLC, owner.

SUBJECT – Application June 4, 2015 – Extension of Term and Waiver (§11-411) to extend the term and a Waiver of a previously granted variance for an automotive service station, which expired on April 3, 2011; Waiver of the Rules. C2-2/R4-1 zoning district.

PREMISES AFFECTED – 950 Allerton Avenue, southeast corner of the intersection of Allerton Avenue and Williamsbridge Road, Block 04447, Lot 062, Borough of Bronx.

**COMMUNITY BOARD #11BX**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of the variance, previously granted by the Board, which expired on April 3, 2011; and

WHEREAS, a public hearing was held on this application on October 16, 2015, after due notice by publication in *The City Record*, with continued hearings on February 2, 2016, April 5, 2016, May 3, 2016, June 14, 2016, July 19, 2016, and January 31, 2017, and then to decision on June 20, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, Bronx, has no objection to this application; and

WHEREAS, the subject site is located on the south side of Allerton Avenue, between Williamsbridge Road and Paulding Avenue, in an R4-1 (C2-2) zoning district, in the Bronx; and

WHEREAS, the site has approximately 161 feet of frontage along Allerton Avenue, 207 feet of frontage along Williamsbridge Road, 139 feet of frontage along Paulding Avenue, 16,326 square feet of lot area and is occupied by gasoline service station with an accessory one-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 3, 1956, when, under BSA Calendar Number 375-55-BZ, the Board granted a variance

for a term of fifteen (15) years, expiring April 3, 1971, to permit the site to be occupied as a gasoline service station and accessory uses on condition that all buildings and uses on the premises be removed and the premises be leveled substantially to the grade of the abutting streets, that the site be constructed and arranged substantially as indicated on the plans, that the accessory building be of the design and arrangement and location as shown except that the toilet rooms be arranged so that the doors thereto not be contiguous, that there be no cellar under such building, that the accessory building in all other respects comply with the requirements of the Building Code, that the accessory building be faced with face brick on all sides, that along the building lines to the west, south and east, there be erected a masonry wall with similar face brick to a height of not less than 5’-6”, and properly coped with suitable terminating posts, that the portion of the site to the south shown as a planting area be properly protected with curbing not less than 8 inches in height and 6 inches in width and be maintained with suitable planting, that the balance of the site not occupied by accessory building and pumps be paved with concrete or asphaltic pavement, that the pumps be of a low approved type and erected not nearer than 15 feet to either street building line, that the number of gasoline storage tanks be limited to twelve 550-gallon approved tanks, that curb cuts be restricted to two curb cuts to Williamsbridge Road located where shown and of a width shown on the drawings and three curb cuts to Allerton Avenue located as shown and of the width as indicated, that signs be restricted to permanent signs attached to the façade of the accessory building and to the illuminated globes of the pumps, excluding all roof signs and temporary signs but permitting the erection within the intersection of Williamsbridge Road and Allerton Avenue of a post standard for supporting a sign, which may be illuminated and permitting such sign to extend beyond the building line for a distance of not more than 4 feet, that there may be minor repairs with hand tools only for adjustment maintained within the accessory building, that sidewalks and curbing abutting the site be constructed or repaired to the satisfaction of the Borough President, that such portable firefighting appliances be maintained as the Fire Commissioner directs and that all permits be obtained, including a certificate of occupancy, and work completed as required by the Zoning Resolution; and

WHEREAS, on April 24, 1957, under BSA Calendar Number 375-55-BZ, the Board granted an extension of time to complete construction, which had expired April 3, 1957; and

WHEREAS, on November 6, 1957, the Board amended the variance to permit the reduction of the planting area with planting installed as shown on the revised plans, the omission of the car-washing portion and the addition of a post standard supporting a business sign; and

WHEREAS, on October 23, 1962, under the subject calendar number, the Board granted an application under ZR § 11-412 to permit the construction of an enlargement to the accessory building on condition that a 3-foot brick wall,

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# MINUTES

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with a 2'-6" iron picket fence on top of it, be constructed along Paulding Avenue from the service building to the intersection of Allerton Avenue, that the curb cut shown on Paulding Avenue be eliminated and that the windows shown on the Paulding Avenue wall of the accessory building be eliminated; and

WHEREAS, on June 29, 1971, under the subject calendar number the Board granted an extension of term of the variance for ten (10) years, expiring April 3, 1981, on condition that the gasoline pumps conform to revised drawings and that a new certificate of occupancy be obtained; and

WHEREAS, on May 29, 1973, under BSA Calendar Number 9-73-BZ, the Board permitted the enlargement in area of the automotive service station with accessory uses and the addition of the uses to include automotive laundry with less than the required accessory reservoir space on condition that the propose automobile laundry be limited to a free wash by qualifying patrons of the service station and that substantial construction be completed by May 29, 1974; and

WHEREAS, on February 5, 1974, under the subject calendar number, the Board amended the variance to revise the gasoline pumps; and

WHEREAS, on January 16, 1979, under BSA Calendar Number 375-55-BZ, the Board amended the variance to revise the existing ground sign; and

WHEREAS, on July 8, 1980, under the subject calendar number, the Board granted an extension of term of the variance for ten (10) years, expiring April 3, 1991, on condition that the station be operated at all times in such fashion as to minimize traffic congestion and that a new certificate of occupancy be obtained by July 8, 1981; and

WHEREAS, on June 11, 1985, under the subject calendar number, the Board amended the variance in conjunction with a change to self-service pumps for the sale of gasoline to permit the construction of a new canopy over two new gasoline pump islands with new self-serve pumps, to convert a portion of the accessory building to an attendant's booth and to increase the width of the existing curb cuts on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic and that substantial construction be completed by June 11, 1986; and

WHEREAS, on June 11, 1985, under BSA Calendar Number 260-85-A, the Board granted an appeal from the Fire Commissioner to permit self-service pumps for a term of five (5) years, expiring June 11, 1990, on condition, among other things, that a trained attendant shall be on duty at all times to monitor the operation of the pumps and shall have no other duties while any self-service pump is in operation, that it be the attendant's duty to require the engine of any vehicle be shut off before the start of the fuel operation and to prohibit smoking within the immediate area of the fuel operation and that it be the attendant's duty to prevent the dispensing of gasoline, diesel or other motor vehicle fuel into portable containers; and

WHEREAS, on December 4, 1991, under the subject

calendar number, the Board granted an extension of term for ten (10) years, expiring April 3, 2001, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic and that a new certificate of occupancy be obtained by December 4, 1992; and

WHEREAS, on November 5, 2003, under the subject calendar number, the Board waived its rules, extended the term of the variance for ten (10) years, expiring April 3, 2011, and amended the variance to legalize the conversion of the repair bay to a convenience store accessory to the existing gasoline service station and the alteration of existing signage on condition that the premises be maintained free of debris and graffiti, that any graffiti located on the site be removed within 48 hours, that landscaping be provided and maintained in accordance with the Board-approved plans, that lighting shall be positioned down and away from residential uses and that the above conditions and all conditions from prior resolutions appear on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term of the variance for ten (10) years; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing for an extension of term more than two (2) years but less than ten (10) years after the expiration of the term; and

WHEREAS, the applicant has demonstrated that the use has been continuous since the expiration of term and that substantial prejudice would result without such a waiver; and

WHEREAS, at hearing, the Board questioned the presence of the temporary, wooden shed and the state of the site's fencing, gate, brick wall and wilting landscaping; and

WHEREAS, in response the applicant provided evidence of improved site conditions, including new plantings, improved fencing and a concrete pad in the former location of the shed; and

WHEREAS, at hearing, the applicant represented that the concrete pad would not be used for another shed but would instead serve as amenity space for an employee lunch area; and

WHEREAS, the Board finds that a ten (10) year extension of term of the variance is appropriate, with the conditions set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and *reopens* and *amends* the resolution, dated October 23, 1962, as amended through November 5, 2003, so that as amended this portion of the resolution reads: "to grant an extension of term of the variance for a term of ten (10) years from the expiration of the last grant, to expire April 3, 2021; *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received June 7, 2017'-Twelve (12) sheets; and *on further condition*:

THAT no storage shed shall be installed on the pad or elsewhere on the site;

# MINUTES

THAT the site shall be maintained at all times clean and free of debris and graffiti;

THAT building walls and fencing shall be painted and repaired as necessary;

THAT landscaping shall be maintained in accordance with the Board-approved plans and replaced as necessary to ensure a continuous, dense buffer, eight (8) feet in height, between the site and adjacent properties;

THAT driving surfaces shall be maintained and repaired as necessary;

THAT no temporary storage shed shall be permitted;

THAT no signage shall be permitted, except the signage shown on the Board-approved plans;

THAT no open storage of any kind shall be permitted;

THAT any graffiti located on the site shall be removed within 48 hours;

THAT lighting shall be positioned down and away from residential uses;

THAT there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT this station shall be operated at all times in such a fashion to minimize traffic congestion;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the above conditions and all conditions from prior resolutions shall appear on the certificate of occupancy;

THAT an amended certificate of occupancy shall be obtained within one (1) year, by June 20, 2018; 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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2017.

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## 164-04-BZ

APPLICANT – Moshe M. Friedman, P.E., for 2241 Westchester Avenue Realty Corp., owner; Castle Hill Fitness Group, LLC, lessee.

SUBJECT – Application March 16, 2017 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*Planet Fitness*) which expired on March 17, 2017. C2-4/R6 zoning district.

PREMISES AFFECTED – 2241 Westchester Avenue aka 21-1 Glede Avenue, Block 3963, Lot 57, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to obtain a Certificate of Occupancy, which expired on February 17, 2017; and

WHEREAS, a public hearing was held on June 20, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the subject site is located on the northwest corner of Westchester Avenue and Glebe Avenue, within an R6 (C2-4) zoning district, in the Bronx; and

WHEREAS, the site has approximately 138 feet of frontage along Westchester Avenue, 165 feet of frontage along Glebe Avenue, 22,790 square feet of lot area and is occupied by a two-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 7, 2006, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR §§ 73-36 and 73-03, legalizing an existing physical culture establishment (“PCE”) on the second floor of the building for a term of ten (10) years, expiring July 15, 2014, on condition that there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; that the hours of operation be limited to Monday through Friday 5:00 a.m. to 12:00 a.m. and Saturday and Sunday 7:00 a.m. to 9:00 p.m.; that all massages be performed only by practitioners with valid and current New York State massage licenses; that fire safety measures, including a sprinkler system, shall be installed and maintained as indicated on the Board-approved plans; that an interior fire alarm system be provided; and that a Certificate of Occupancy be obtained within one (1) year, by February 7, 2007; and

WHEREAS, on October 5, 2010, under the subject calendar number, the Board granted a one (1) year extension of time to obtain a Certificate of Occupancy, expiring October 5, 2011, and an amendment to the previously approved special permit allowing a change in operator to Planet Fitness, changes to minor interior modifications, and a change in hours of operation, on condition that the hours of the operation be Monday through Thursday 5:00 a.m. to 12:00 a.m., Friday from 5:00 a.m. to 10:00 p.m. and Saturday and Sunday from 7:00 a.m. to 7:00 p.m.; that the site be maintained free of garbage and debris; that there be no further change in ownership or operating control of the physical culture establishment without prior application; and that the conditions be listed on the Certificate of Occupancy; and

WHEREAS, on December 16, 2014, under the subject calendar number, the Board granted an extension of the term of the special permit for ten (10) years, expiring July 15, 2024, on additional condition that graffiti be removed within 48 hours and that a Certificate of Occupancy be obtained by December 16, 2015; and

WHEREAS, on May 17, 2016, under the subject calendar number, the Board granted an additional extension of time to obtain a Certificate of Occupancy, until February 17, 2017, on condition that the applicant make all administrative corrections necessary to obtain Fire Department signoff of the physical culture establishment’s interior fire alarm and that the Fire Department provide such sign off; and



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# MINUTES

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WHEREAS, the time to obtain a Certificate of Occupancy having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant represents that the site complies with all conditions of the previous grants and that a Certificate of Occupancy can be obtained within 12 months of the grant; and

WHEREAS, the most recent Temporary Certificate of Occupancy was issued for the subject site on February 28, 2017, and expired on May 29, 2017, and was submitted to the Board in connection with this application; and

WHEREAS, the applicant further states that the issuance of a Final Certificate of Occupancy has been delayed due to outstanding DOB signoffs for open applications; and

WHEREAS, based upon its review of the record, the Board finds that 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 February 7, 2006, as amended through May 17, 2016, so that as amended this portion of the resolution reads: “to grant an extension of time to obtain a Certificate of Occupancy to June 20, 2018; *on condition*:

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Thursday 5:00 a.m. to 12:00 a.m., Friday from 5:00 a.m. to 10:00 p.m. and Saturday and Sunday from 7:00 a.m. to 7:00 p.m.;

THAT all massages shall be performed only by practitioners with valid and current New York State massage licenses;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT the site shall be maintained free of garbage and debris;

THAT graffiti shall be removed within 48 hours of its appearance at the site;

THAT fire safety measures—including a sprinkler system and an interior fire alarm system—shall be maintained as indicated on the BSA-approved plans;

THAT the above conditions shall be listed on the Certificate of Occupancy;

THAT a Certificate of Occupancy shall be obtained by June 20, 2018;

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 objections(s); and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June

20, 2017.

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**558-51-BZ**

APPLICANT – Eric Palatnik, P.C., for BP Products North America Inc., owner.

SUBJECT – Application August 14, 2015 – Extension of Term (§11-411) to seek the term of a previously granted variance for a gasoline service station and maintenance which expired December 21, 2016. C2-2/R5D zoning district.

PREMISES AFFECTED – 68-22 Northern Boulevard, Block 1186, Lot 19, Borough of Queens.

**COMMUNITY BOARD #19Q**

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for continued hearing.  
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**822-59-BZ**

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application January 8, 2016 – Extension of Time to Complete Construction of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 9, 2015. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1774 Victory Boulevard, Block 709, Lot 28, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for continued hearing.  
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**36-95-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 65-75 Owners Corp., owner; World Gym, Inc., lessee.

SUBJECT – Application December 5, 2014 – Extension of Term and Waiver (§72-01): to extend the term of a previous grant permitting a physical culture establishment (*World Gym*) within an existing cellar and one-story commercial building. C1-2/R3-1 zoning district.

PREMISES AFFECTED – 65-75 Woodhaven Boulevard aka 85-01 66<sup>th</sup> Avenue, Block 3139, Lot 1, Borough of Queens.

**COMMUNITY BOARD #6Q**

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for continued hearing.  
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# MINUTES

## 344-03-BZ

APPLICANT – Howard Goldman, for City of New York, owner; Nick’s Lobster House, lessee.

SUBJECT – Application August 12, 2015 – Application for an extension of term of the legalization of the reconstruction and extension of an existing building operating as an eating and drinking establishment in a C3 district, contrary to ZR 32-00. C3 zoning district.

PREMISES AFFECTED – 2777 Flatbush Avenue, Block 8591, Lot 980, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for continued hearing.

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## 159-08-BZ

APPLICANT – Eric Palatnik, P.C., for 68-70 Spring Partners, LLC, owners.

SUBJECT – Application February 7, 2017 – Extension of time to complete construction of a previously approved Variance (§72-21) to permit the construction of a seven-story and penthouse residential building, with twelve (12) dwelling units and ground floor retail use, contrary to ZR42-10 and 42-10(D)(2)(b) set to expire on October 28, 2017. M1-5B zoning district.

PREMISES AFFECTED – 68-70 Spring Street, Block 482, Lot 19, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 19-12-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 38-30 28<sup>th</sup> Street, LLC, owner.

SUBJECT – Application October 7, 2016 – Application for an extension of time to complete construction of the building and obtain a Certificate of Occupancy on a previously approved grant granted common law vested right of complete construction and permitting in an M1-3 zoning district which expired on October 7, 2016. M1-2/R5B (LIC) zoning district.

PREMISES AFFECTED – 38-30 28<sup>th</sup> Street, Block 386, Lot 27, Borough of Queens.

### COMMUNITY BOARD # 1Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4  
Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy for an eight-story hotel building at the subject

site; and

WHEREAS, a public hearing was held on this application on June 20, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the west side of 28th Street, between 38th Avenue and 39th Avenue, in an M1-2/R5B zoning district and the Special Long Island City Mixed Use District, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage along 28th Avenue, 99 feet of depth, 2,451 square feet of lot area and is occupied by a partially constructed eight-story, with cellar, hotel building (the “Building”); and

WHEREAS, on July 16, 2007, the Department of Buildings (“DOB”) issued Permit No. 402232534-01-AL (the “Alteration Permit”) authorizing construction of the Building in accordance with the M1-3D zoning district regulations; and

WHEREAS, on October 7, 2008 (the “Enactment Date”), the City Council voted to adopt the Dutch Kills Rezoning, which rezoned the site from M1-3D to M1-2/R5B, within the Special Long Island City District; and

WHEREAS, on June 5, 2012, under the subject calendar number, the Board adopted a resolution recognizing that a vested right to continue construction under the Alteration Permit had accrued under the common law doctrine of vested rights, and the Board reinstated the Alteration Permit for a term of two (2) years, expiring June 5, 2014; and

WHEREAS, on October 7, 2014, under the subject calendar number, the Board renewed the Alteration Permit and all related permits for various work types and granted an extension of time to complete construction and obtain a certificate of occupancy for a term of two (2) years, expiring October 7, 2016, on condition that approval for the backflow preventer be obtained from the New York City Department of Environmental Protection (“DEP”) before issuance of the renewed Alteration Permit; and

WHEREAS, the applicant represents that, as of October 7, 2016, construction has not been completed and a certificate of occupancy has not been issued for the Building; and

WHEREAS, accordingly, the applicant now seeks an additional two-year term in which to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant notes that, subsequent to the 2014 grant and prior to the permit’s expiration on October 7, 2016, the following work was performed: installation of metal stud walls for the first floor and basement, drop ceilings within rooms, electrical panels on all floors, sewer line connection, 8” private water main with hydrant as well as 6” water service, two backflow prevention devices, metal partitions in the basement, fire pump buster pump, hot water heaters, sheetrock in the basement, ceramic tile in the bathrooms, and plastered and painted walls and ceilings; and

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WHEREAS, the applicant states that it has expended a total of \$4,534,056 to date, which represents 87 percent of the total costs to complete the Building; and

WHEREAS, the applicant represents that DEP has approved the backflow prevention device, and the applicant has provided proof of DEP's approval; and

WHEREAS, at the Board's request, the applicant provided photographs of the site and further information indicating the Alteration Permit has not lapsed, canceled checks for costs incurred since the Board's prior extension of time, updated total costs, information as to the serious loss the applicant would face should the time to complete construction not be extended and an explanation as to why a two-year extension is being sought; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions, as set forth below.

*Therefore it is Resolved*, that this application to renew Alteration Permit No. 402232534-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete construction and obtain a certificate of occupancy for two years from the date of the prior extension of time, to expire October 7, 2018, subject to the following conditions:

THAT construction shall be completed and a certificate of occupancy shall be obtained by October 7, 2018;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; 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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2017.

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## 166-12-A

APPLICANT – NYC Department of Buildings.  
OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.

SUBJECT – Application June 4, 2012 – Application to revoke the Certificate of Occupancy. R8B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 26, Borough of Manhattan.

### COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for decision, hearing closed.

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## 107-13-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application April 18, 2013 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R7- 2 zoning district. R7B zoning district.

PREMISES AFFECTED – 638 East 11th Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

### COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for decision, hearing closed.

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## ZONING CALENDAR

### 2016-4122-BZ

#### CEQR #16-BSA-078K

APPLICANT – Eric Palatnik, P.C., for 902 Quentin Road, LLC, owner.

SUBJECT – Application February 19, 2016 – Special Permit (§73-44) to reduce the required number of accessory parking spaces contrary to §36-21 for ambulatory diagnostic or treatment facility use (UG 4) from eighty seven (87) to forty four (44) parking spaces. C8-2/C4-2 zoning district.

PREMISES AFFECTED – 902-912 Quentin Road, Block 6666, Lot(s) 1, 5, 8, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez...4  
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 8, 2016, acting on New Building Application No. 302205940, reads in pertinent part:

“The proposed number of accessory off-street parking spaces is less than required by ZR 36-21”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, on a site partially within a C8-2 and partially within a C4-2 zoning district and in the Special Ocean Parkway District, a reduction in the required number of accessory off-street parking spaces for an ambulatory diagnostic or treatment facility listed in Use Group 4, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this

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application on April 25, 2017, after due notice by publication in *The City Record*, with a continued hearing on June 20, 2017, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application because of limited parking in the surrounding area; and

WHEREAS, the subject site is located on the southeast corner of Quentin Road and East 9th Street, partially within a C8-2 and partially within a C4-2 zoning district and in the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, on February 11, 2016, a zoning lot description was recorded in the Office of the City Register describing the subject zoning lot as comprised of Tax Lots 1, 5 and 8 on Block 6666; and

WHEREAS, the site has 223 feet of frontage along Quentin Road, 111 feet of frontage along East 9th Street, 22,912 square feet of lot area and is occupied, on Tax Lots 1 and 5, with an 8-story, with cellar and sub-cellar, community-facility building occupied by non-profit institution without sleeping accommodation and ambulatory diagnostic health care facility uses (Use Group 4) with 98 parking spaces located in the sub cellar, cellar and first floor; and, on Tax Lot 8, with a one-story, plus cellar, motor vehicle repair shop; and

WHEREAS, on Tax Lots 1 and 5, the applicant proposes to extend the existing ambulatory diagnostic or treatment facility into a portion of the first floor currently dedicated to parking for a total, on that floor, of 10,816 square feet of floor area on the portion of the site located within a C8-2 zoning district and 858 square feet of floor area on the portion of the site located within a C4-2 zoning district; and

WHEREAS, in total, the proposed building will contain 33,708 square feet of floor area on the portion of the site located within a C8-2 zoning district and 858 square feet of floor area on the portion of the site located within a C4-2 zoning district dedicated to ambulatory diagnostic or treatment facility and 33,999 square feet of floor area dedicated to non-profit institutional use with a total occupancy count of 541 for this use; and

WHEREAS, the applicant represents that, pursuant to ZR § 36-21, 114 accessory parking spaces are required for the non-profit institution and ambulatory diagnostic health care facility, calculated at a rate of one per 20 persons for the non-profit institution, one per 400 square feet of floor area for the ambulatory diagnostic health care facility in the C8-2 zoning district and one per 300 square feet of floor area for the ambulatory diagnostic health care facility in the C4-2 zoning district—a total of 114 parking spaces—however, the applicant seeks to provide 71 spaces; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-

21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
PARKING SPACES REQUIRED FOR  
AMBULATORY DIAGNOSTIC  
OR TREATMENT FACILITIES LISTED IN  
USE GROUP 4 AND  
COMMERCIAL USES IN PARKING  
REQUIREMENT CATEGORY B1

Parking Spaces Required

Per Number of Square

Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar space*, except *cellar space used* for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for an ambulatory diagnostic or treatment facility listed in Use Group 4 at the subject site from one space per 400 square feet of floor area to one space per 800 square feet of floor area in the C8-2 zoning district and from one space per 300 square feet of floor area to one space per 600 square feet of floor area in the C4-2 zoning district provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant submitted an affidavit stating that the building will continue to be occupied by a Use Group 4 ambulatory diagnostic or treatment facility; and

WHEREAS, the applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the Use Group 4 ambulatory diagnostic or treatment facilities are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to

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# MINUTES

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meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Board finds the affidavit credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed Use Group 4 ambulatory diagnostic or treatment facility at the site; and

WHEREAS, the Board notes that its determination is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, in response to the concerns of Community Board 15 about limited parking and traffic congestion in the area, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces would impact the surrounding community; and

WHEREAS, in response, the applicant submitted a parking study demonstrating that parking demand would reach 64 parking spaces during the peak demand period of 10 a.m. to 11 a.m., demonstrating that the provision of 71 parking spaces on-site is sufficient to meet demand; and

WHEREAS, the applicant also submitted a study of local transit options indicating that multiple public-transit options are located within a convenient walking distance of the subject site; and

WHEREAS, the applicant further submitted a traffic engineering report evidencing that, based on industry-standard guidelines and local data sources, the proposed parking configuration would function adequately in conjunction with the continued implementation of on-site valet operators; and

WHEREAS, the applicant submitted a parking layout approved by DOB; and

WHEREAS, in response to questions from the Board, the applicant submitted a plan for parking operations that provides for two valet staff members, a signaling system, five reservoir spaces to increase maneuverability, a visibility-conscious ramp design, accessibility for persons with disabilities, an on-street standing zone for ambulettes dropping off passengers at the building entrance, mirrors and a camera system as well as signage advertising free on-site parking; and

WHEREAS, the applicant provided a copy of the application submitted to the New York City Department of Transportation for an ambulette standing zone in front of the building entrance; and

WHEREAS, the evidence in the record discredits the general assertions and anecdotes expressed by Community Board 15, Brooklyn, and the Board does not find that there is limited parking in the area during periods of peak demand for the proposed Use Group 4 ambulatory diagnostic or treatment facility; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of parking regulations is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the parking

modification will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-44 and 73-03 have been met; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16BSA078K, dated September 1, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to *permit*, on a site partially within a C8-2 and partially within a C4-2 zoning district and in the Special Ocean Parkway District, a reduction in the required number of accessory off-street parking spaces for an ambulatory diagnostic or treatment facility listed in Use Group 4, contrary to ZR § 36-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received June 20, 2017”–Sixteen (16) sheets, and *on further condition*:

THAT no certificate of occupancy shall be issued if the ambulatory diagnostic or treatment facility listed in Use Group 4 is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT the above condition shall be stated on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by June 20, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2017.

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## 2016-4178-BZ

### CEQR #16-BSA-114M

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 350 Lafayette Owner LP, owner.

SUBJECT – Application April 25, 2016 – Variance (§72-21) to allow retail (Use Groups 6 and 10) below the floor level of the second story contrary to ZR §42-14(D)(2)(b), and Use Group 10 retail use, contrary to ZR §42-12. M1-5B zoning district.

PREMISES AFFECTED – 11-13 Bond Street, aka 348-354 Lafayette Street, Block 529, Lot 15, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montane.....4  
Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 21, 2016, acting on DOB Application No. 122629003 reads in pertinent part:

Proposed Use Group 6 and 10 for a single tenant retail building with retail uses below the floor level of the second (2nd) story is within an M1-5B Zoning District which is contrary to ZR 42-14(D)(2) and is not permitted; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located within an M1-5B zoning district, Use Group 6 retail on the ground floor of an existing three- to four-story building, contrary to ZR § 42-14(D)(2)(b); and

WHEREAS, a public hearing was held on this application February 14, 2017, after due notice by publication in *The City Record*, with a continued hearing on April 25, 2017, and then to decision on June 20, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montane performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application on condition that the Board ascertains that the subject building is truly appropriate for a single tenant; any approved Use Group 10 use be limited to arts and design establishments and not banks, drugstores and apparel stores; that no eating and drinking establishments be within the building or on the rooftop; that there be no below-

grade selling space; that the rooftop will be landscaped and maintained; that there will be no event space on the roof and no public access of any kind to the roof except for essential maintenance of the building and plantings; that the applicant will continue to communicate with neighbors during the conversion; that illumination, including in-window advertising/display signage and other lighting, not cast light into residential windows and be reduced within one hour of closing or by 10 p.m., whichever is earlier; and that if a single user store is approved, the top floor be used for back of house activities and not as an additional selling floor; and

WHEREAS, at hearing, the Board heard testimony from a representative of the NoHo Bowery Stakeholders, Inc., a community benefit organization, in support of this application; and

WHEREAS, the subject site is located on the southwest corner of Bond Street and Lafayette Street, within an M1-5B zoning district and the NoHo Historic District, in Manhattan; and

WHEREAS, the site has approximately 25 feet of frontage along Bond Street, 115 feet of frontage along Lafayette Street, 3,260 square feet of lot area and is occupied by a three- to four-story building; and

WHEREAS, the applicant represents that the existing building was constructed as a three-story building in 1913 for an animal hospital, enlarged in 1924 with a partial-fourth floor and rooftop terrace, converted to a factor and offices in 1964 after the animal hospital vacated the premises and was most recently utilized as women’s shelter operated by the New York State Department of Social Services; and

WHEREAS, the applicant originally proposed Use Group 6/10A retail use on the ground floor, contrary to ZR § 42-14(D)(2)(b), which only permits uses listed in Use Group 7, 9, 11, 16, 17A, 17B, 17C or 17E below the floor level of the second story, and Use Group 10A retail use in the remainder of the building, contrary to ZR § 42-12, which limits Use Group 10A uses in the subject zoning district to depositories for storage of office records, microfilm or computer tapes, or for data processing; docks for ferries; office or business machine stores, sales or rental; photographic or motion picture production studios; and radio or television studios; and

WHEREAS, in response to comments from the Board that UG 10A use was not justified by the submissions, particularly the financial analysis, which did not evidence a premium for Use Group 10A space, the applicant revised the application and now proposes to occupy the building with a single Use Group 6 retail tenant on the ground floor of the building and conforming accessory uses on the other floors and seeks a waiver of only ZR § 42-14(D)(2)(b); and

WHEREAS, the subject proposal additionally includes interior alterations—including the construction of a continuous first floor level accessible at grade from Lafayette Street, removing split levels to create a 17 foot tall first floor, reconfiguration of the cellar to accommodate existing and new utility services, installation of new fire stairs at the south end of the building and a second set of egress stairs at the north end of the building and enclosure of the open space at the fourth floor roof to create a full fourth floor—and façade alterations; and

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WHEREAS, the applicant state that, pursuant to ZR § 72-21(a), the functional obsolescence of the existing building—specifically, its small floorplate, split level configuration and lack of a loading dock—is a unique physical condition that creates a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations; and

WHEREAS, the applicant represents that the second through fourth floors of the building have floorplates with approximately 3,282 square feet of floor area, which is inadequate for conforming uses that require larger floorplates, and that the split level first floor and cellar levels—which allowed horses to be brought into the cellar from one entrance on Lafayette Street and patrons and doctors to enter on the ground floor level from a separate entrance on Lafayette Street—are smaller, with between 1,150 and 1,500 square feet of floor area and, thus, even more inadequate for conforming uses; and

WHEREAS, the applicant submits that conforming wholesale commercial and/or manufacturing uses would also require suitable loading facilities, which the subject building lacks, as well as a dedicated freight elevator and/or internal stairs wide enough to facilitate the transfer of goods across the various floors of the building and, currently, circulation in the building is limited to a passenger elevator and several narrow staircases, ranging in width from 2'-7" to 3'-8", and the building lacks a loading dock; and

WHEREAS, in light of the foregoing, the Board finds that the functional obsolescence of the existing building is a unique physical condition that creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, with regards to the (b) finding, the applicant submits that there is no reasonable possibility that a conforming development at the subject site will bring a reasonable return and, in support of that contention, submitted a financial analysis of (1) a single Use Group 16 showroom on the first floor and conforming uses garnering market rents on the upper floors (the "AOR Scenario") and (2) the subject proposal; and

WHEREAS, the financial analyses submitted with this application conclude that the AOR Scenario would generate a project loss of approximately \$1.2 million and the subject proposal would generate a return of approximately \$850,000; and

WHEREAS, upon review of the applicant's submissions, the Board finds, in accordance with ZR § 72-21(b), that, due to the site's unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant states that the subject proposal will not substantially impair the appropriate use or development of adjacent properties and not be detrimental to the public welfare, in accordance with ZR § 72-21(c); specifically, as the site is located within the NoHo Historic District, characterized by institutional, loft and commercial office buildings dating from the 19th and early 20th

centuries, many of them cast iron, rising in heights ranging from three- to eight-stories with Use Group 6 retail and eating and drinking establishment uses on the ground floor and offices, residential and joint living-work quarters for artists ("JLWQA") on the floors above, the proposal is consistent with the existing neighborhood character; and

WHEREAS, the applicant asserts that any loading and unloading of goods will take place at the Jones Alley entrance to the building, rather than the main entry located on Lafayette Street, and will have a minimal impact on pedestrian and street traffic and that all mechanical units located on the roof will be located as far away from the adjacent building located at 9 Bond Street as possible to minimize noise impacts; and

WHEREAS, in response to the conditions suggested by Community Board 2, Manhattan, unrelated to the applicant's original request for Use Group 10A on the ground floor, which was subsequently removed, the applicant states that it agrees not to locate an eating and drinking establishment on the rooftop, but does not agree to the prohibition of eating and drinking establishments throughout the entire building; and agrees that there shall be no below-grade selling space, that the roof shall be landscaped and maintained without any event space or public access, that the applicant will communicate with neighbors during conversion of the building, that illumination will not cast light in to residential windows and be reduced within one hour of closing or by 10 pm, whichever is earlier; and

WHEREAS, accordingly, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents and the Board finds that the hardship claimed as grounds for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant submits that the subject proposal is the minimum variance necessary to afford relief because it is the only scenario that provides a return and will enable the applicant to successfully redevelop the site; and

WHEREAS, accordingly, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the project is classified as a Type I Action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 16BSA114M, dated October 19, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water

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and Sewer Infrastructure; Solid Waste and Sanitation; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by letter dated February 21, 2017, the New York City Department of Environmental Protection (“DEP”) states that DEP finds the December 2016 Phase II Work Plan and Health and Safety Plan (“HASP”) acceptable, provided that the name and phone number of an alternate Site Health and Safety Officer and a list of other relevant emergency telephone numbers are included in the HASP and the proposed soil and soil vapor sampling locations are individually labelled on the Sampling Locations Plan in the Phase II Work Plan; and

WHEREAS, DEP also requested that, upon completion of the investigation activities at the site, the applicant submit a detailed Phase II report—including, at a minimum, an executive summary, narrative of the field activities, laboratory data and conclusions, comparisons of soil and soil vapor analytical results, updated site plans depicting sample locations, boring logs and remedial recommendations, if warranted—to DEP for review and approval; and

WHEREAS, the applicant submitted a revised Phase II Work Plan and HASP incorporating DEP’s requested modifications; and

WHEREAS, by letter dated May 5, 2017, DEP states that the April 2017 Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) are acceptable, provided that the RAP is modified to indicate that indoor air sampling using a photoionization detector is conducted at the completion of renovation and construction activities and that the name and phone number of an Alternative Site Health and Safety Officer be added to the CHASP; and

WHEREAS, DEP further requested that upon completion of the clean fill/top soil investigation activities, a detailed clean soil report—including, at a minimum, an executive summary, narrative of field activities, laboratory data and comparison of soil analytical results—be submitted to DEP for review and approval prior to importation and placement on-site; and that, upon the completion of the project, a Remedial Closure Report, certified by a Professional Engineer and indicating that all remedial requirements have been properly implemented, be submitted to DEP for review and approval; and

WHEREAS, the applicant submitted a RAP and CHASP revised in accordance with DEP’s requests; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental

Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located within an M1-5B zoning district, Use Group 6 retail on the ground floor of an existing three- to four-story building, contrary to ZR § 42-14(D)(2)(b); *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 2, 2017”—Twelve (12) sheets; and *on further condition*:

THAT upon completion of the investigation activities at the site, the applicant submit a detailed Phase II report—including, at a minimum, an executive summary, narrative of the field activities, laboratory data and conclusions, comparisons of soil and soil vapor analytical results, updated site plans depicting sample locations, boring logs and remedial recommendations, if warranted—to DEP for review and approval;

THAT upon completion of the clean fill/top soil investigation activities, a detailed clean soil report—including, at a minimum, an executive summary, narrative of field activities, laboratory data and comparison of soil analytical results—be submitted to DEP for review and approval prior to importation and placement on-site;

THAT upon the completion of the project, a Remedial Closure Report, certified by a Professional Engineer and indicating that all remedial requirements have been properly implemented, be submitted to DEP for review and approval;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2017.

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**2016-4249-BZ**

**CEQR #17-BSA-016M**

APPLICANT – Kramer Levin Naftalis & Frankel LLP for Margaret Lee, Youngwoo & Associates LLC, owner.

SUBJECT – Application September 8, 2016 – Variance (§72-21) to allow the development of a commercial building contrary to ZR §22-10 (to allow commercial use (UG 5 & 6) within a R7-2 zoning district, ZR §33-122 (exceed the maximum permitted commercial floor area within a C8-3 zoning district, ZR §§33-432 & 33-442 (C8-3 sky exposure plane regulations) and ZR §36-683 (Location of the



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entry/exit of an accessory loading berth with a C8-3 zoning district). C8-3 & R7-2 zoning district.

PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot(s) 77 & 83, Borough of Manhattan.

## COMMUNITY BOARD #12M

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montane.....4

Negative: .....0

### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 7, 2016, acting on DOB Application No. 121190763 reads in pertinent part:

1. ZR 22-10: Proposed Use Group 5 and 6 are not permitted as of right in an R7-2 District as per 22-10;
2. ZR 33-122: Proposed commercial floor area exceeds the maximum permitted floor area of 2.0 FAR in the C8-3 district as per ZR 33-122;
3. ZR 33-432 and 33-442: Proposed sky exposure plan [*sic*] does not comply with the requirements of ZR 33-432 and 33-442;
4. ZR 36-683: Proposed entrance and exit from the accessory loading berth does not provide the minimum distance of 30 feet from the residential district boundary as per ZR 36-683; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located partially within a C8-3 zoning district and partially within an R7-2 zoning district, the development of a commercial building that does not comply with zoning regulations relating to use, maximum commercial floor area, sky exposure plane and the location of the entry and exit of the accessory loading berth set forth in ZR §§ 22-10, 33-122, 33-432, 33-442 and 36-683; and

WHEREAS, a public hearing was held on this application on January 31, 2017, after due notice by publication in *The City Record*, with continued hearings on April 4, 2017, and June 6, 2017, and then to decision on June 20, 2017; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 12, Manhattan, recommends approval of this application on condition that certain community enhancements be provided<sup>1</sup> and that the

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<sup>1</sup> In a letter to Community Board 12, Manhattan, dated December 22, 2016, the applicant memorialized its commitment to provide the following community enhancements: public access to the hotel lobby and outdoor courtyard whenever those spaces are also open to patrons of the hotel and tenants of the office space; permanent dedication of five percent of the development’s office space to community based organizations; community use of conference and lecture space in the development up to six

applicant report to the Community Board prior to, during and following the completion of environmental cleanup of the site; and

WHEREAS, the Board has received letters in support of the proposal from New York State Senator Marisol Alcantara, New York State Assemblywoman Carmen De La Rosa, United States Congressman Adriano Espaillat, the Northern Manhattan Arts Alliance and the Washington Heights Business Improvement District; and

WHEREAS, at hearing, the Board heard testimony in support of the proposal from a representative of New York City Councilmember Ydanis Rodriguez, who noted the high demand for commercial office space in the area and that the proposed development would be a great economic generator; and

WHEREAS, the Board additionally received a letter in opposition to the proposal alleging that the site does not suffer from any unique physical conditions that pose a hardship to its development as-of-right and is, thus, not eligible for a variance; and

WHEREAS, the subject site is located on the west side of Amsterdam Avenue, bound by West 181st Street to the north and West 180th Street to the south, partially within a C8-3 zoning district and partially within an R7-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 220 feet of frontage along Amsterdam Avenue, 150 feet of frontage along West 181st Street, 150 feet of frontage along West 180th Street, 32,925 square feet of lot area and is currently occupied by a vacant one-story building; and

WHEREAS, the Board has exercised jurisdiction over portions of the subject site since July 2, 1935, when, under BSA Cal. No. 556-26-BZ, the Board granted a variance at 2420-2436 Amsterdam Avenue, 513-515 West 180th Street and 502 West 181st Street to permit the construction and maintenance of a gasoline service station in a business district; and

WHEREAS, the Board subsequently approved plans, granted several extensions of terms, extensions of time and amendments and modified a decision of a Borough Superintendent regarding Fire Prevention Code compliance for the site under BSA Cal. Nos. 556-26-BZ, 8-78-BZ, 314-82-A and 243-03-BZ; and

WHEREAS, most recently, on March 9, 2004, under BSA Cal. No. 243-03-BZ, the Board granted an application

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times a year at no cost for 20 years; dedicated gallery space in the hotel lobby or other common areas of the building used to profile the work of local artists and residents and a curator on staff at the development to coordinate public exhibits up to four times a year; an agreement to work with New York City agencies, Community Board 12, Manhattan, and other local stakeholder to recruit and hire local residents for construction and permanent jobs associated with the development; and provision of employee tuition reimbursement and internships in hotel and food and beverage operations for local students enrolled in related programs.

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pursuant to ZR § 11-412 to reestablish the then-lapsed variance permitting the operation of a gasoline service station with accessory uses and, further, the conversion of a portion of the existing building to an accessory convenience store for a term of ten (10) years, expiring October 17, 2008; and

WHEREAS, the applicant now proposes to develop the site with a commercial building having a total of 213,822 square feet of floor area and a floor area ratio ("FAR") of 6.5 contained within a series of building volumes, the tallest of which rises to 22-stories and a height of 280'-3" on the portion of the site fronting West 181st Street; and

WHEREAS, the development is proposed to include 85,855 square feet of floor area for a 212-room hotel located in a four-story portion of the development fronting West 180th Street and an 11-story portion fronting Amsterdam Avenue; 114,898 square feet of floor area of office space located in the portions of the development fronting West 181st Street; and 13,067 square feet of floor area of retail space located on the ground floor of level of the development fronting both Amsterdam Avenue and West 181st Street ; and

WHEREAS, the proposed development proposes commercial use within the southwestern portion of the site located within an R7-2 zoning district, contrary to ZR § 22-10; proposes more than the maximum 2.0 FAR (54,876 square feet of floor area) of commercial use on the portion of the site located with a C8-3 zoning district, contrary to ZR § 33-122; penetrates the sky exposure plane contrary to ZR §§ 33-432 and 33-443; and locates a loading berth approximately six feet from an R7-2 zoning district boundary, contrary to ZR § 36-683; and

WHEREAS, accordingly, the applicant seeks the herein relief requested herein; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the history of development of the lot with automotive-related commercial uses, subsurface petroleum contamination on the site and its location within both a residential and a commercial zoning district are unique physical conditions that create a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations; and

WHEREAS, a southwestern portion of the lot (5,487 square feet of lot area, or approximately 17 percent) is located within an R7-2 zoning district, where many commercial uses are prohibited, and the remaining (27,438 square feet of lot area, or approximately 83 percent) is located within a C8-3 zoning district, where residential uses are not permitted as-of-right; and

WHEREAS, however, the applicant submits that the site has been occupied by a gasoline service station and accessory uses since the 1930s, prior to the designation of a portion of the site within an R7-2 zoning district in 1961, and that the subject development proposes to continue the history of commercial use; and

WHEREAS, the applicant also represents that the site is contaminated with petroleum as a result of its development history, specifically that the New York State

Department of Environmental Conservation ("NYSDEC") assigned Spill Number 07-12231 to the site in February 2008 in connection with a leak from an underground storage tank and issued a conditional closure report on October 11, 2013, requiring that appropriate remedial and vapor mitigation measures be taken in the event the site was redeveloped; and

WHEREAS, the applicant submits that the subject site is the only property within a 1,000-foot radius with a reported NYSDEC Spill; and

WHEREAS, soil groundwater and soil vapor sampling was conducted throughout the site in July 2016 and found that petroleum-impacted groundwater is located in two bedrock wells near the northwestern portion of the site; petroleum- and metals-impacted soil exist at depths between ten feet and 30 feet below grade in the northwestern portion of the site; and petroleum staining, semi-volatile organic compounds and metal concentrations can be found in the central portion of the site; and

WHEREAS, as a result of this subsurface contamination, the applicant represents that engineering and construction measures above and beyond those typically associated with site redevelopment are required at the subject site and, further, such measures are unique to the subject site due to its prior development; and

WHEREAS, the applicant additionally submits that shallow bedrock on the site, present at a depth ranging from six feet below grade at the eastern portion of the site to 30 feet below grade at the northern portion of the site with approximately 50 percent of the site underlain with bedrock at a depth of less than 12 feet below grade, is unique and creates a practical difficulty in developing the site in conformance with the applicable zoning regulations, particularly the accessory off-street parking space regulations; and

WHEREAS, the applicant submits that in order to accommodate the 1 space per 1,000 square feet of floor area required for a commercial development on the site pursuant to ZR § 36-21, a cellar would have to be excavated to a depth of 18 feet through bedrock and that a need for such costly excavation is unique to the subject site; and

WHEREAS, in support of that contention, the applicant submitted a uniqueness study of all the 208 tax lots within 1,000 feet of the subject site (the "Study Area") concluding that eight other lots within the Study Area (or four percent) are vacant or undeveloped, but all of these lots are located within an R7-2 zoning district and thus, unlike the subject site, are not likely to require the excavation of bedrock in order to accommodate parking required in connection with their development; and

WHEREAS, the uniqueness study analyzed the as-of-right development potential of the eight lots and concluded that three of the lots have lot area of less than 10,000 square feet and could, therefore, have their parking requirement waived for residential use pursuant to ZR § 25-242 and two of these lots are also located on the campus of Yeshiva University and would have no parking requirement if developed with a community facility associated with the

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university pursuant to ZR § 25-31; one of the lots is occupied by the Trans Manhattan Expressway and is unlikely to be developed at all; and the four remaining lots are contiguous, currently utilized in tandem for open parking, and if developed together with a residential use, could accommodate all of the required parking in a partial cellar only 12 feet deep; and

WHEREAS, the applicant additionally analyzed the underdeveloped tax lots—defined as being developed with an FAR of 2.0 or less—located within the Study Area, of which there are 54 (or 26 percent of all lots in the Study Area): 35 lots have Certificates of Occupancy indicating that the developments on these lots contain cellars and, thus, would not require additional excavation to accommodate any parking that may be required as part of their redevelopment; 15 lots are located within an R7-2 or R7-2(C1-4) zoning district with less than 10,000 square feet of lot area and, thus, any parking required for their redevelopment with residential uses could be waived pursuant to ZR § 25-242; two lots having more than 10,000 square feet of lot area are owned by Yeshiva University and the New York City Department of Education, suggesting that both would be redeveloped with a community facility use for which there is no parking requirement and, thus, excavation for a cellar to accommodate required parking would be unnecessary; one lot is located within a C8-3 zoning district, but only contains 2,500 square feet of lot area and is surrounded by overbuilt commercial buildings with full lot coverage on the adjacent lots and, thus, unlikely to be redeveloped for commercial or community facility use; and one site is located in a C4-4 zoning district, contains 7,500 square feet of lot area and is currently occupied with a commercial development with a basement and thus could, arguably, accommodate any parking required as part of its redevelopment without additional excavation; and

WHEREAS, based on the above, the Board finds that the history of development of the site, the subsurface contamination and the split lot condition constitute unique physical conditions that create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, with regards to the (b) finding, the applicant submits that there is no reasonable possibility that a conforming development at the subject site will bring a reasonable return and, in support of that assertion, submitted a financial analysis of (1) an as-of-right development of a six-story residential building containing 18,860 square feet of floor area on the portion of the site located within an R7-2 zoning district and a series of building volumes, similar in massing to the proposed building, containing a 52,940 square feet of floor area dedicated to a 114-room hotel and 142,150 square feet of floor area dedicated to community facility use on the portion of the site located within a C8-3 zoning district with one 18-foot deep cellar across the entire site (the “AOR Scenario”); (2) the AOR Scenario with a partial 18-foot deep cellar setback 22 feet from Amsterdam Avenue requiring less bedrock excavation (the “AOR Alternative Scenario 1”); (3) the AOR Scenario with a 12-foot deep cellar and an 18-foot sub-cellar setback 22 feet and 36 feet, respectively, from Amsterdam Avenue,

comparable to the two cellars in the subject proposal (the “AOR Alternative Scenario 2”); and (4) the subject proposal, demonstrating that only the subject proposal would provide a reasonable return; and

WHEREAS, the applicant states that the residential, hotel and community facility uses in the AOR Scenario would generate income insufficient to cover the premium construction costs associated with site remediation and costly bedrock excavation; the reduced cellar in AOR Alternative Scenario 1 would require the relocation of parking and support spaces from floor space in the cellar to floor area above grade, thereby reducing revenue; and that, similar to the AOR Scenario, the revenue realizable from as-of-right uses will be insufficient to cover the premium costs associated with the excavation of two partial cellars in AOR Alternative Scenario 2; and

WHEREAS, the applicant represents that in 2014, the site entered the New York State Brownfield Cleanup Program and an agreement was made with NYSDEC to, at a minimum, clean up contaminated soil and historic fill having concentrations above the site specific soil clean up objectives, remediate any groundwater identified as contaminated and construct a soil vapor mitigation system during development; and that costs associated with these remediation efforts increase the premium costs of the proposal by between \$2.89 million and \$3.14 million, depending on the level of remediation achieved; and

WHEREAS, the Board notes that encouraging the remediation of environmental contamination to the highest level feasible is good public policy; and

WHEREAS, the site is eligible for Brownfield Redevelopment Tax Credits due to its participation in the Brownfield Cleanup Program, but the applicant submits that such tax credits may not be received by the taxpayer until several years after the cessation of the remediation activities for which the credits are claimed and, thus, are not available to fund project development; the applicant additionally informs the Board that, under certain circumstances, some tax credit amounts may be subject to recapture; accordingly, the income anticipated to be received from these tax credits, estimated at \$1.75 million, has not been included as income in the financial analyses for any of the scenarios; and

WHEREAS, the financial analysis concludes that the AOR Scenario would generate a project loss of approximately \$5.5 million; AOR Alternative Scenario 1 would generate a project loss of approximately \$7.2 million; AOR Alternative Scenario 2 would generate a project loss of approximately \$16.7 million; and the subject proposal would yield a return of approximately \$479,000; and

WHEREAS, upon review of the applicant’s submissions, the Board finds, in accordance with ZR § 72-21(b), that, due to the site’s unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant states that subject proposal will not substantially impair the appropriate use or development of adjacent property and not be detrimental to

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the public welfare, in accordance with ZR § 72-21(c); specifically, that the site is located at the intersection of two wide streets in an immediate area characterized by three- and four-story commercial buildings and a five-story residential building to the west, five- and eight-story mixed-use residential and commercial buildings to the north, a three-story commercial building and a five-story residential building to the south and Highbridge Park and George Washington Bridge roadways to the east; and that the edges of the neighborhood are framed by taller buildings, including four 18-story residential buildings to the south of the site, five 12-story residential buildings to the west of the site, an 18-story community facility building to the northeast of the site, a 17-story community facility building located to the north of the site and three residential towers of between 20- and 22-stories located to the northwest of the site; and

WHEREAS, the applicant states that the massing of the building is informed by and explicitly synthesizes these various building masses in its design, which consists of a series of stacked volumes—a four-story base fronting Amsterdam Avenue, West 180th Street and West 181st Street, a seven-story mid-rise section atop this base fronting Amsterdam Avenue and West 181st Street, an one-story transitional volume and a tower that fronts on West 181st Street—that roughly match the brick residential buildings that characterize the neighborhood; further, the development’s height along West 180th Street is consistent with the five-story residential buildings located on that block while the taller portion is located at the intersection of Amsterdam Avenue and West 181st Street, consistent with a tenet of urban planning that encourages higher scale development at the intersection of wide streets; and

WHEREAS, at hearing, the Board suggested that a reduction in the height of the proposed tower and a corresponding increase in its width and floorplates may be more consistent with neighborhood character; and

WHEREAS, the applicant submitted plans for such a modification, illustrating that such a proposal would not eliminate the waivers requested with regards to the sky exposure plane regulations and, further, would require an additional rear yard waiver; and

WHEREAS, finally, the applicant suggests that the redevelopment of the subject site with the proposed, which includes ground floor retail and street trees, would constitute a substantial improvement over the existing conditions, which consist of a one-story building and a paved parking lot; and

WHEREAS, in light of the foregoing, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents and the Board finds that the hardship claimed as grounds for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant represents that the subject proposal is the minimum variance necessary to afford relief

and, in support of this contention, submitted the analysis of two lesser variance scenarios: (1) the subject proposal with 20,384 square feet of floor area dedicated to community facility use on the upper four floors of the office tower portion of the development (“LV1”) and (2) the subject proposal with 18,180 square feet of floor area on the lower floors of the office tower (“LV2”), both of which would reduce the degree of the waiver requested for commercial floor area, contrary to ZR § 33-122, and, in the case of LV1 alone, would comply with the sky exposure plane regulations and eliminate the need for a waiver of ZR §§ 33-432 and 33-442; and

WHEREAS, the financial analysis of LV1 and LV2 concluded that each scenario resulted in a project loss of approximately \$5.7 million and \$6.27 million, respectively, and are, thus, infeasible; and

WHEREAS, accordingly, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the project is classified as an Unlisted Action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Environmental Assessment Statement Short Form CEQR No. 17-BSA-016M, dated June 2, 2017; and

WHEREAS, the EAS documents that the project as proposed would not have significant impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by a report dated May 11, 2016, the New York City Landmarks Preservation Commission states that the subject site is of no architectural or archaeological significance; and

WHEREAS, by correspondence dated December 19, 2016, the New York City Department of Parks and Recreation states that it has no comments with regards to the shadow assessment and conclusions provided in connection with the subject proposal; and

WHEREAS, by correspondence dated January 26, 2017, the New York City Department of Environmental Protection (“DEP”) requests that the following conditions, relating to the subject site’s participation in the Brownfield Cleanup Program, be applied to the Board’s decision: Board approval is conditioned on the subject site’s participation in the Brownfield Cleanup Program; a letter of acceptance into the Brownfield Cleanup Program and an executed Brownfield Cleanup Agreement are required for the issuance of any building permits associated with the proposed development; on certificate of occupancy shall be issued until a certificate of completion has been issued by NYSDEC; and failure to complete the remedy for cleanup

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approved by NYSDEC and receive a certificate of completion requires amendment to the grant of the variance and the submission of test results and a Remedial Action plan for review and approval by DEP; and

WHEREAS, by letter dated May 16, 2017, the New York City Department of Transportation (“DOT”) suggested minor signal timing modifications to traffic lights located at the intersection of West 181st Street and Amsterdam Avenue and the intersection of West 180th Street and Amsterdam Avenue in order to accommodate the vehicle trips generated by the proposed development; DOT additionally requested that the Board and/or the applicant inform DOT six months prior to the completion and occupancy of the proposed development; and

WHEREAS, with regards to noise, by letter dated June 1, 2017, DEP states that, as a result of the noise impact analysis, the following minimum composite OITC window/wall noise attenuation rating are required: building frontages on West 181st Street require rating of 33 dBA from the street level to an elevation of 80 feet and 30 dBA for elevation of 80 to 160 feet above ground level; the building frontage on Amsterdam Avenue require a rating of 31 dBA from the street level to an elevation of 100 feet and 28 dBA for an elevation of 100 to 200 feet above ground level; and the noise attenuation for commercial and office uses shall be 5 dBA lower; and

WHEREAS, DEP also required that an alternate means of ventilation be incorporated into the design and construction of the proposed development; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration 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 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located partially within a C8-3 zoning district and partially within an R7-2 zoning district, the development of a commercial building that does not comply with zoning regulations relating to use, maximum commercial floor area, sky exposure plane and the location of the entry and exit of the accessory loading berth set forth in ZR §§ 22-10, 33-122, 33-432, 33-442 and 36-683; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 5, 2017”-Thirty-Two (32) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 213,822 square feet of commercial floor area (6.5 FAR), including 7,736 square feet of commercial floor area in the portion of the site located within an R7-2 zoning district; no setback from West 181st Street; and an entrance and exit from the

accessory loading berth less than 30 feet from the residential district boundary;

THAT this approval is conditioned on the subject site’s participation in the Brownfield Cleanup Program;

THAT no building permits associated with the subject development shall issue without submission of a letter of acceptance into the Brownfield Cleanup Program and an executed Brownfield Cleanup Agreement to DOB;

THAT no certificate of occupancy shall be issued until a certificate of completion has been issued by NYSDEC;

THAT failure to complete the remedy for cleanup approved by NYSDEC and receive a certificate of completion requires amendment to the grant of the variance and the submission of test results and a Remedial Action plan for review and approval by DEP;

THAT the applicant notify DOT six months prior to the completion and occupancy of the proposed development;

THAT building frontages on West 181st Street require rating of 33 dBA from the street level to an elevation of 80 feet and 30 dBA for elevation of 80 to 160 feet above ground level;

THAT the building frontage on Amsterdam Avenue require a rating of 31 dBA from the street level to an elevation of 100 feet and 28 dBA for an elevation of 100 to 200 feet above ground level;

THAT the noise attenuation for commercial and office uses shall be 5 dBA lower;

THAT an alternate means of ventilation be incorporated into the design and construction of the proposed development;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2017.

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# MINUTES

## 174-14-BZ

APPLICANT – Jim Kusi, for Robert Calcano, owner.  
SUBJECT – Application July 23, 2014 – Re-instatement (§11-411) of a previously approved variance permitting the operation an Automotive Service Station (UG 16B) with accessory uses which expired November 6, 1994; Waiver of the Rules. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 820 East 182<sup>nd</sup> Street aka 2165-75 Southern Boulevard, Block 3111, Lot 59, Borough of Bronx.

### COMMUNITY BOARD #2BX

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for adjourned hearing.

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## 317-14-BZ

APPLICANT – Brian Cave LLP, for Acadia 3780-3858 Nostrand Avenue LLC, owner.

SUBJECT – Application December 4, 2014 – Special Permit (§73-44): that would allow the reduction in the number of off street parking spaces for ambulatory diagnostic treatment facilities listed in use group 4 and Uses in Parking Requirement Category Br, located within and C2-2/R4 zoning district.

PREMISES AFFECTED – 3780-3860 Nostrand Avenue, Block 7445, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for continued hearing.

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## 105-15-BZ

APPLICANT – Eric Palatnik, P.C., for Aleksandr Finkelshtein, Contract Vendee.

SUBJECT – Application May 12, 2015 – Variance (§72-21) to permit the development of a four (4) story building consisting of Use Group 6 commercial offices on the first and second floor and community facility uses on the third and fourth floors. R4 zoning district.

PREMISES AFFECTED – 2102-2124 Avenue Z, Block 7441, Lot 371, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for continued hearing.

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## 2016-4127-BZ

APPLICANT – Dennis D. Dell’Angelo, for 1547 East 26<sup>th</sup> Street, LLC, owner; Israel Stern, lessee.

SUBJECT – Application February 26, 2016 – Special Permit (§73-622) for the enlargement of an existing single-family residence contrary to floor area and lot coverage (ZR 23-141); perimeter wall height (ZR 23-631) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1547 East 26<sup>th</sup> Street, Block 6773, Lot 77, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to September

12, 2017, at 10 A.M., for continued hearing.

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## 2016-4138-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 323 Sixth LLC, owner; IFC Center, lessee.

SUBJECT – Application March 16, 2016 – Variance (§72-21) for an enlargement of an existing motion picture theater (*IFC Center*) contrary to both use and bulk requirements. C1-5/R7-2 & R6 zoning district.

PREMISES AFFECTED – 323-27 Avenue of the Americas, Block 589, Lot(s) 19, 30, 31, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for adjourned hearing.

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## 2016-4165-BZ

APPLICANT – Glen V. Cutrona, for Shore to Shore Foster, LLC, owner.

SUBJECT – Application April 6, 2016 – Variance (§72-21) to permit the construction of an eating and drinking establishment (UG 6) (*Tim Horton’s*) with an accessory drive thru contrary to ZR §22-10. R3X (SRD) zoning district.

PREMISES AFFECTED – 5801 Amboy Road, Block 6896, Lot 53, Borough of Staten Island.

### COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Otteley-Brown and Commissioner Montanez...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for decision, hearing closed.

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## 2016-4166-BZ

APPLICANT – Eric Palatnik, P.C., for 2577 East 17<sup>th</sup> Street, LLC, owner.

SUBJECT – Application April 6, 2016 – Special Permit (§73-44) to reduce the required number of accessory parking spaces contrary to §36-21 for ambulatory diagnostic or treatment facility use and Use Group 6 uses with Parking Requirement Category B1. C8-1 zoning district.

PREMISES AFFECTED – 2579 East 17<sup>th</sup> Street, Block 7438, Lot 46, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for continued hearing.

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## 2016-4181-BZ

APPLICANT – Law Office of Lyra J. Altman, for Alber Bukai and Subhi Bukai, owners.

SUBJECT – Application May 2, 2016 – Special Permit (§73-622) for the enlargement and conversion of an existing two family dwelling to a single family dwelling, contrary to side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R5 zoning district.

PREMISES AFFECTED – 1981 East 14<sup>th</sup> Street, Block 7293, Lot 54, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for continued hearing.

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## REGULAR MEETING TUESDAY AFTERNOON, JUNE 20, 2017 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez.

### ZONING CALENDAR

## 2016-4470-BZ

### CEQR #17-BSA-056M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 140 BW LLC, owner; Crunch LLC, lessee.

SUBJECT – Application December 22, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Crunch Fitness*) within an existing building. C5-5 (Lower Manhattan Special District) within the Marine Midland Bank Building (New York City Landmark).

PREMISES AFFECTED – 140 Broadway, Block 48, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #1M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 22, 2016, acting on Alteration Application No. 122935609, reads in pertinent part:

“Proposed physical culture establishment, in C5-5 (LM) zoning district, is contrary to Section 32-10 ZR and requires a special permit from the BSA”;  
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C5-5 zoning district and the Special Lower Manhattan District, the operation of a physical culture establishment in the sub-cellar and on the first floor of a 51-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 20, 2017, after due notice by publication in *The City Record*, and then to decision on June 20, 2017; and

WHEREAS, Vice-Chair Chanda and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Broadway, between Liberty Street and Cedar Street, in a C5-5 zoning district and the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the site has approximately 144 feet of frontage along Broadway, 318 feet of frontage along Liberty

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Street, 184 feet of frontage along Nassau Street, 311 feet of frontage along Cedar Street, 52,636 square feet of lot area and is occupied by a 51-story, with cellar and sub-cellars, commercial building; and

WHEREAS, the building is the former Marine Midland Bank Building, an individual landmark designated by the New York City Landmarks Preservation Commission ("LPC") on June 25, 2013; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 proposed PCE will occupy 28,611 square feet of floor space (1,317 square feet of floor area) as follows: 27,294 square feet of floor space in sub-cellar level B, including exercise-equipment areas, group-fitness spaces, a yoga studio, a spinning studio, locker rooms with saunas and an office, and 1,317 square feet of floor area on the first floor, serving as a lobby; and

WHEREAS, the PCE will be operated as Crunch Fitness with proposed hours of operation of Monday to Friday, 5:00 a.m. to 11:30 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the proposed PCE will be located below ground, under an existing bank vault, storage space and mail room with only a minor portion below office space, within an existing commercial building; and

WHEREAS, in addition, the applicant submits that sound attenuation measures will be provided within the space so as to not disturb other tenants in the building and to ensure that sound levels in adjacent building areas do not exceed 45 dBA, including rubber matting and ceiling-suspended gypsum board; and

WHEREAS, at the Board's request, the applicant provided the results of a noise survey conducted at the premises, concluding that 35 pound weight drops would be rendered inaudible at the lobby level with the use of the 2-1/2" mat utilized during testing and the following recommendations. received from a consultant regarding limiting the transmission of sound from the proposed PCE: a sound barrier ceiling consisting of two layers of 5/8" gypsum board suspended from spring hangers with insulation throughout the ceiling space; speakers should be isolated and subwoofers mounted resiliently on the floor using neoprene waffle pads; sound level limiters be hardwired into the speaker system; resilient headers on all walls associated with impact noise or containing a room



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with elevated noise levels (i.e. the “Throw Wall” within the Group Training Room”); installation of a 2-1/2” thick rubber tile floor in areas containing weight stack equipment and free weights; resilient fitness flooring in the cardio equipment area; installation of a specialized floor system—consisting of a finish layer of interlocking recycled rubber tiles, a layer of softer polymer, and dimpled recycled rubber layer at the bottom—in the CrossFit activity areas; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to the use of the premises, the applicant states that the PCE provides facilities for classes, instruction and programs for physical improvement, including spinning and yoga; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE will be fully sprinklered and that an approved interior fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection to an FDNY-approved central station—will be installed in the entire PCE space; and

WHEREAS, by letter dated April 19, 2017, the Fire Department states that it has no objection to this application; and

WHEREAS, the LPC issued Certificate of Appropriateness No. 18-3035 (Docket No. 181978) dated March 8, 2016, expiring May 12, 2021, for alterations associated with the subject application; and

WHEREAS, on April 24, 2017, LPC permitted an amendment to the work approved under the Certificate of Appropriateness; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA056M, dated December 22, 2016; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on

Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type I Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, in a C5-5 zoning district and the Special Lower Manhattan District, the operation of a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 1, 2017”- Six (6) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring June 20, 2027;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the BSA-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the BSA-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by June 20, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the

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Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2017.

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## 2017-13-BZ

### CEQR #17-BSA-067M

APPLICANT – Jay B. Itkowitz, Esq., for Harvey Axelrod, owner; Rescue Spa New York LLC, lessee.

SUBJECT – Application January 17, 2017 – Special Permit (§73-36) to operate a physical culture establishment (*Rescue Spa*) within the cellar and first floor of an existing building. M1-5M zoning district. (Ladies' Mile Historic District)  
PREMISES AFFECTED – 29 East 19<sup>th</sup> Street, Block 848, Lot 23, Borough of Manhattan.

### COMMUNITY BOARD # 5M

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 5, 2017, acting on Alteration Application No. 122947231, reads in pertinent part:

“Proposed Physical Culture Establishment in M1-5M zoning district is not permitted pursuant to ZR 42-10 and is referred to the Board of Standards and Appeals for special permit under ZR 73-36”; and

WHEREAS, this is an application, under ZR §§ 73-36 and 73-03, to permit, in an M1-5M zoning district, the operation of a physical culture establishment (“PCE”) in the cellar and on the first floor of an 8-story mixed-use building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 20, 2017, after due notice by publication in *The City Record*, and then to decision on June 20, 2017; and

WHEREAS, Community Board 5, Manhattan, waived its recommendation for this application; and

WHEREAS, the subject site is located on the north side of East 19th Street, between Broadway and Park Avenue South, in an M1-5M zoning district, in the Ladies’ Mile Historic District, in Manhattan; and

WHEREAS, the site has approximately 60 feet of frontage along East 19th Street, 92 feet of depth, 5,520 square feet of lot area and is occupied by an 8-story, with cellar, mixed-use commercial-and-residential building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-

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04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE will occupy approximately 8,992 square feet of floor space as follows: 4,406 square feet of floor area in the cellar, consisting of a waiting area, treatment rooms, locker rooms with steam rooms, and storage, and 4,620 square feet of floor area on the first floor, including check-in, a waiting area, retail space, treatment rooms, a hair-styling area, manicure and pedicure areas, an eyebrow studio, offices, restrooms and check-out; and

WHEREAS, the PCE will be operated as Rescue Spa with proposed hours of operation 9 a.m. to 10 p.m. daily; and

WHEREAS, the applicant represents that the proposed PCE will not impair the character or future use or development of the surrounding area because the PCE will be fully contained in an existing structure, will generate very little noise, will only play light music and will not be a nuisance to tenants of the subject mixed-use building; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regard to the use of the premises, the applicant states that the proposed PCE will include facilities for the practice of massage by New York State licensed masseurs and masseuses; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the building is fully sprinklered and that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and connection to a Fire Department-approved central station—will be installed in the entire PCE space; and

WHEREAS, by letter dated June 16, 2017, the Fire Department states that, based on its review of the drawings and supporting documentation for the proposed PCE, it has no objection to this application; and

WHEREAS, the New York City Landmarks

Preservation Commission (“LPC”) issued Certificate of Appropriateness No. 96-0171 (Docket No. 96-4774) dated June 14, 1996, expiring June 4, 2002, for an existing flagpole and nylon banner; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA067M, dated January 10, 2017; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 *per se*, in an M1-5M zoning district, the operation of a physical culture establishment, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 26, 2017”- Four (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring June 20, 2027;

THAT all massages shall be performed only by New York State licensed massage professionals;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any spa equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space, as indicated on the BSA-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by June 20, 2021;

THAT this approval is limited to the relief granted by

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the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 20, 2017.

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*Ryan Singer, Executive Director*

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**10-15-BZ**

APPLICANT – Goldman Harris LLC, for Steven Elghanayan/Epic Lafayette LLC, owner; Kevin P. McGrath/Five Points Academy, lessee.

SUBJECT – Application January 15, 2015 – Special Permit (§73-36) to allow a physical culture establishment (*Five Points Academy*) in the cellar and ground floor of the premises, located within an M1-5B zoning district.

PREMISES AFFECTED – 148 Lafayette Street, Block 233, Lot 26, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 1:00 P.M., for postponed hearing.

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**2016-4224-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Elie Fein, owner.

SUBJECT – Application July 1, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1869 East 21<sup>st</sup> Street, Block 6804, Lot 63, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for continued hearing.

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**2016-4301-BZ**

APPLICANT – Eric Palatnik, P.C., for Robertas A Urbonas, owner.

SUBJECT – Application November 9, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-142); side yard (ZR 23-48); lot area and width (ZR 23-32) and less than the required rear yard (ZR 23-47). R5-OP zoning district.

PREMISES AFFECTED – 136 Oxford Street, Block 8757, Lot 97, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for continued hearing.

# 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.

Volume 102, No. 27

July 6, 2017

### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

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2017-210-BZ	131 Bedford Avenue, Queens
2017-211-BZ	38 Brighton 4 Court, Brooklyn
2017-212-BZ	25 Brighton 7 Court, Brooklyn
2016-4299-BZ	280 Richards Street, Brooklyn

Correction .....494

**Affecting Calendar Numbers:**

2016-1221-BZ	269 West 23 <sup>rd</sup> Street, Manhattan
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# DOCKETS

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New Case Filed Up to June 27, 2017  
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**2017-219-BZ**

754 Targee Street, located on Targee Street between Pierce and DeKalb Streets, Block 02903, Lot(s) 17, Borough of **Staten Island, Community Board: 1**. Special Permit (§73-243) to permit the continued use and (Use Group 6) eating and drinking establishment (Popeyes) with an accessory drive-through. C1-2 zoning district. C1-2 district.  
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**2017-220-BZ**

132-02 89th Avenue, located on the south side of 89th Avenue at the terminus of 132nd Street, Block 09361, Lot(s) 20, Borough of **Queens, Community Board: 9**. Special Permit (§73-50) to legalize an encroachment within the required side yard line coincident with a residential zoning district boundary line (§43-30). M1-21 zoning district. M1-1 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING JULY 25, 2017, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 25, 2017, 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

#### 19-15-BZ

APPLICANT – Herrick, Feinstein LLP, for Andon Investment L.P., owner; Retro Fitness (dba Fitness of New York LLC), lessee.

SUBJECT – Application September 28, 2016 – Amendment of a previously approved Special Permit (§73-36) to permit a physical culture establishment (*Retro Fitness*) to be located at second-story level (plus entrance at ground-floor level) of a new two-story building. R7-1/C2-2 zoning district.

PREMISES AFFECTED – 92-77 Queens Boulevard, Block 2075, Lot 39, Borough of Queens.

**COMMUNITY BOARD #6Q**

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### APPEALS CALENDAR

#### 2016-4327-A

APPLICANT – Sky House Condominium, owner.

SUBJECT – Application November 10, 2016 – Appeal challenging NYC Department of Building's determination that the Tower complies with the New York City Zoning Resolution and the New York City Housing Maintenance Code. C5-2 zoning district.

PREMISES AFFECTED – 15 East 30<sup>th</sup> Street, Block 860, Lot (s) 12, 69, 63, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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#### 2017-4-A

APPLICANT – Eric Palatnik, P.C., for Lavan Muthu, owner.

SUBJECT – Application January 6, 2017 – Proposed construction of a two story, mixed use residential and commercial building located within the bed of a mapped street, contrary to General City Law Section 35. C1-3/R4 zoning district.

PREMISES AFFECTED – 339 Victory Boulevard, Block 115, Lot 63, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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## REGULAR MEETING JULY 25, 2017, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 25, 2017, 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

#### 20-15-BZ

APPLICANT – Alexander Levkovich, for Steven Israel, owner; Mishkan Yerushalayim, lessee.

SUBJECT – Application February 5, 2015 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship community facility at the premises contrary to floor area ratio, open space, lot coverage, wall height, front yard, side yards, rear yard, sky exposure plane, and parking regulations. R4 (OP) zoning district.

PREMISES AFFECTED – 461 Avenue X, Block 7180, Lot 75, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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#### 2016-4179-BZ

APPLICANT – Eric Palatnik, P.C., for Moses Steinberg, owner.

SUBJECT – Application April 27, 2016 – Special Permit (§73-19) to permit the legalization of a School (*Congregation Machna Shelva* (UG 3). Companion Variance (§72-21) (BSA Calendar Number: 246-15-BZ) to permit the creation of a mezzanine on the first floor M1-1 zoning district.

PREMISES AFFECTED – 1462 62<sup>nd</sup> Street, Block 5734, Lot 45, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

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#### 246-15-BZ

APPLICANT – Eric Palatnik, P.C., for Moses Steinberg, owner.

SUBJECT – Application April 27, 2016 – Variance (72-21) seek a variance for the legalization of the existing Use Group 3 Yeshiva at the third floor, the creation of a mezzanine on the first floor, and the use of the entire four-story and cellar structure, located within an M1-1 zoning district. (companion case 2016-4179-BZ)

PREMISES AFFECTED – 1462 62<sup>nd</sup> Street, Block 5734, Lot 35, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

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# CALENDAR

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**2016-4215-BZ**

APPLICANT – Eric Palatnik, P.C., for Aleksandr S. Cherny, owner.

SUBJECT – Application June 8, 2016 – Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, open space and lot coverage and providing less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 262 Exeter Street, Block 8742, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**2016-4259-BZ**

APPLICANT – Eric Palatnik, P.C., for Ed Khoury and Irene Kokossion, owners.

SUBJECT – Application September 23, 2016 – Special Permit (73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yard requirements (ZR 23-461) and less than the minimum rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 8033 Shore Road, Block 5975, Lot 181, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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*Ryan Singer, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JUNE 27, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Montanez.

Absent: Commissioner Ottley-Brown.

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## SPECIAL ORDER CALENDAR

### 581-56-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Salamander Realty Corp., owner.

SUBJECT – Application May 16, 2016 – Amendment (§11-413) of a previously approved variance which permitted the operation of a Storage Warehouse (UG 16). The amendment seeks to change the use to a trade school, meeting hall and offices (Use Groups 6 & 9). R5 zoning district.

PREMISES AFFECTED – 24-01 to 24-11 36<sup>th</sup> Avenue aka 35-45 to 35-57 24<sup>th</sup> Street, Block 338, Lot 1, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Montanez.....3

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 14, 2016, acting on Alteration Application No. 420649855, reads in pertinent part:

“ZR 22-10” “Proposed change of use from existing storage warehouse, distribution, office and sales, commercial use to a trade school, meeting hall and offices (use group 6 and 9) in a residential zoning district (R5) is not permitted as of right. This proposed use is contrary to section 22-10 ZR. There are no bulk regulations for commercial uses in a residence district. Proposed use is contrary to BSA Cal No. 581-56 BZ. Refer to the Board and Standards and Appeals for their resolution”; and

WHEREAS, this is an application under ZR § 11-413 for an amendment to a variance, previously granted by the Board, to permit, in an R5 zoning district, a change of use from use as a storage warehouse and offices (Use Groups 16 and 6) to a trade school, meeting hall and offices (Use Groups 9 and 6); and

WHEREAS, a public hearing was held on this application on May 23, 2017, after due notice by publication in *The City Record*, and then to decision on June 27, 2017; and

WHEREAS, Vice-Chair Chanda and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Queens, recommends approval of this application, noting that it believes the change in use from a stapling and fastening warehouse use to a union trade school and meeting hall would not have significant impacts on nearby residential uses; and

WHEREAS, the subject site is located on the northeast corner of 36th Avenue and 24th Street, in an R5 zoning district, in Queens; and

WHEREAS, the site has approximately 125 feet of frontage along 36th Avenue, 143 feet of frontage along 24th Street, 17,267 square feet of lot area and is occupied by a one-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 1957, when, under the subject calendar number, the Board granted a variance to permit the construction of a commercial building used for offices, storage warehouse, distribution, sales and maintenance as well as open parking and truck loading and unloading on condition that the building not be increased in height or area beyond that shown on the Board-approved plans and that such portable fire-fighting appliances be maintained as the Fire Commissioner directs; and

WHEREAS, the applicant now seeks to change the use of the subject site from a storage warehouse and offices (Use Groups 16 and 6) to a trade school, meeting hall and offices (Use Groups 9 and 6); and

WHEREAS, the applicant represents that the proposed change of use complies with ZR § 11-413, which requires that changing from one non-conforming use to another comply with ZR §§ 52-31 to 52-36; and

WHEREAS, at hearing, the Board questioned the maintenance of the fencing and landscaping, the use of razor wire around the site perimeter, the presence of steel containers in the parking lot and graffiti on the roll-down doors and requested further information about the operations of the proposed trade school and meeting hall; and

WHEREAS, in response, the applicant submitted photographs of improved site conditions, amended the drawings to correct zoning calculations and provided a dense landscaped buffer consisting of a three-foot-wide planting strip with seven arborvitae, which will grow to a minimum height of six feet, and provided a detailed operational plan for the proposed trade school and meeting hall; and

WHEREAS, the Board agrees with Community Board 1 and finds that, in accordance with ZR § 11-413, the propose changed of use will not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, based on the foregoing, the Board has determined that the requested amendments to the variance are 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

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January 22, 1957, so that as amended this portion of the resolution reads: “under ZR § 11-413 to permit, in an R5 zoning district, a change of use from use as a storage warehouse and offices (Use Groups 16 and 6) to a trade school, meeting hall and offices (Use Groups 9 and 6); *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received June 27, 2017’-Five (5) sheets; and *on further condition*:

THAT the building shall not be increased in height or area beyond that shown on the Board-approved plans;

THAT such portable fire-fighting appliances shall be maintained as the Fire Commissioner directs;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by June 27, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 27, 2017.

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## 19-94-BZ

APPLICANT – Andrew Schwarsin, Esq., for Walter R. Schwarsin, owner.

SUBJECT – Application July 13, 2016 – Extension of Term of a previously approved Variance permitting a public parking lot (UG 8) of which a portion of the lot lies in a residential zoning district which expired on July 18, 2015; Waiver of the rules. C4-3/R-5 zoning district.

PREMISES AFFECTED – 37-18 75<sup>th</sup> Street, Block 1285, Lot 47, Borough of Queens.

## COMMUNITY BOARD #3Q

### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Montanez.....3

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a variance, previously granted by the Board, which expired July 18, 2015; and

WHEREAS, a public hearing was held on this application on January 24, 2017, after due notice by publication in *The City Record*, with a continued hearing on March 28, 2017, and then to decision on June 27, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Queens, recommends approval of this application for a term of ten (10) years; and

WHEREAS, the subject site is located on the west side of 75th Street, between 37th Avenue and 37th Road, in an R5 (C4-3) zoning district, in Queens; and

WHEREAS, the site has approximately 120 feet of frontage along 75th Street, 100 feet of depth, 12,001 square feet of lot area and is occupied by a parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 25, 1995, when, under the subject calendar number, the Board granted a variance under ZR § 72-21 to permit a public parking lot in Use Group 8 within the residential portion of the site for a term of ten (10) years, expiring July 18, 2005, on condition that all site lighting be directed downward and away from the adjacent residential use, that attendant parking be provided, that fencing be installed and maintained in accordance with the Board-approved plans, that the gates to the parking lot be closed after hours and that the lot be paved in accordance with Administrative Code § 27-479, that the Board’s conditions appear on the certificate of occupancy; and

WHEREAS, on September 15, 1998, under the subject calendar number, the Board denied an application to amend the resolution to add 14 parking spaces; and

WHEREAS, on October 9, 1998, the Board issued a letter of substantial compliance to allow minor changes to the site plans, including enlargements of the curb cut and of the attendant’s booth to accommodate a lavatory, which was never installed; and

WHEREAS, on November 15, 2005, under the subject calendar number, the Board waived its Rules of Practice and Procedure, amended its resolution to permit minor changes to the site plans and granted an extension of term for ten (10) years, to expire July 18, 2015; and

WHEREAS, the term of the variance having expired, the applicant now seeks a further extension of the term of the variance for an additional ten (10) years; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing for an extension of term less than two (2) years after the expiration of the term; and

WHEREAS, the applicant has demonstrated that the use has been continuous since the expiration of term and that substantial prejudice would result without such a waiver; and

WHEREAS, at hearing, the Board questioned the lack of lavatory access for employees, damage to the fencing, the state of the parking lot’s pavement, light trespass on adjacent residences, lack of planting and the actual uses abutting the subject site; and

WHEREAS, in response, the applicant provided information about employees’ restroom access, repaired the fencing, repaved and re-striped the parking lot, submitted a

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light-spread diagram and described the uses in the surrounding area; and

WHEREAS, the Board agrees with Community Board 3 that ten (10) years is a suitable length of time; and

WHEREAS, the Board finds that a ten (10) year extension of the term of the variance is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and *reopens* and *amends* the resolution, dated July 25, 1995, as amended through November 15, 2005, so that as amended this portion of the resolution reads: “to *grant* an extension of term of the variance for ten (10) years from the expiration of the last grant, to expire July 18, 2025; *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received December 14, 2016’-three (3) sheets; and *on further condition*:

THAT the term of the variance shall be limited to ten (10) years, to expire July 18, 2025;

THAT all site lighting shall be directed downward and away from the adjacent residential use;

THAT attendant parking shall be provided;

THAT fencing shall be installed and maintained in accordance with the Board-approved plans;

THAT the gates to the parking lot shall be closed after hours;

THAT the lot shall be paved in accordance with Administrative Code § 27-479;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 27, 2017.

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## 58-96-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 277 Park Avenue, LLC., owner; Manhattan Athletic Club LLC, lessee.

SUBJECT – Application November 28, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (*Manhattan Athletic Club*) which expires on December 10, 2016. C5-2A (DB) zoning district. C5-3 & C6-6 (Special Midtown District) zoning district.

PREMISES AFFECTED – 277 Park Avenue, Block 1302, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Montanez.....3

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, this is an application to amend a previously granted special permit for a physical culture establishment (“PCE”) and an extension of term of the special permit, which expired on December 10, 2016; and

WHEREAS, a public hearing was held on this application on May 23, 2017, after due notice by publication in *The City Record*, and then to decision on June 27, 2017; and

WHEREAS, Vice-Chair Chanda and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 4, Manhattan, waives its recommendation for this application; and

WHEREAS, the subject site is located on the east side of Park Avenue, between East 48th Street, Lexington Avenue and East 46th Street, partially within a C5-3 zoning district and partially within a C6-6 zoning district, in the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 201 feet of frontage along Park Avenue, 405 feet of frontage along East 48th Street, 201 feet of frontage along Lexington Avenue, 405 feet of frontage along East 47th Street, 81,338 square feet of lot area and is occupied by a 50-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 10, 1996, when, under the subject calendar number, the Board granted a special permit to permit the operation of PCE for a term of ten (10) years, expiring December 10, 2006, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that all massage therapists at the subject PCE shall possess a valid New York State license for such practice which license shall be prominently displayed at the premises and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on April 10, 2007, the Board amended its grant to modify the PCE’s interior layout and add 479 square feet of floor area on the first floor to accommodate boxing facilities and extended the term of the special permit for ten (10) years, expiring December 10, 2016, on condition that there be no change in ownership or operating control of the PCE without prior approval from the Board, that the Board’s conditions appear on the certificate of occupancy, that a certificate of occupancy be obtained within one (1) year, by April 10, 2008, and that Local Law 58/87 be as reviewed and approved by the Department of Buildings; and

WHEREAS, the applicant now seeks an extension of term of the special permit for an additional ten (10) years and an amendment to permit interior layout changes, reflecting a smaller reception area and additional massage

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room; and

WHEREAS, the facility remains in operation as Manhattan Athletic Club with the following hours of operation: 5:30 a.m. to 10:00 p.m., Monday through Friday, and 9:00 a.m. to 6:00 p.m., Saturday and Sunday; and

WHEREAS, the applicant notes that the PCE continues to occupy 13,428 square feet of floor area: 495 square feet in the basement and 12,454 square feet on the first floor, as previously approved by the Board; and

WHEREAS, the applicant explains that the drawings have been corrected to reflect the PCE floor area of 13,428 square feet, which includes 495 square feet of floor area for the PCE entrance at the basement level; and

WHEREAS, as discussed at hearing, the Board declines to opine on the banners at the subject site and notes that no sign regulations have been waived by the Board, and accordingly all signage shall comply with the applicable sign regulations; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, by letter dated June 23, 2017, the Fire Department states that, based upon its review of the drawings and supporting documentation, it has no objection to this application; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03 subsections (d) and (g) are inapplicable to this application; and

WHEREAS, § 73-36 mandates a term not to exceed ten (10) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to extend ten (10) years; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment and ten (10) year extension 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 December 10, 1996, as amended April 10, 2007, so that as amended this portion of the resolution shall read: “to grant modifications to the interior layout, reflecting a smaller reception area and additional massage room, and an extension of term for an additional ten (10) years, expiring December 10, 2026; *on condition* that the use and operation of the PCE shall substantially conform to the Board-

approved plans, and that all work and site conditions shall comply with drawings marked ‘Received November 28, 2016’-Two (2) sheets; and *on further condition*:

THAT this special permit shall be limited to a term of ten (10) years, expiring December 10, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massage therapists at the subject physical culture establishment shall possess a valid New York State license for such practice, which license shall be prominently displayed at the premises;

THAT the above conditions shall appear on the certificate of occupancy;

THAT an amended certificate of occupancy shall be obtained within one (1) year, by June 27, 2018;

THAT Local Law 58/87 compliance shall be as reviewed and approved by the Department of Buildings;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; and

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 27, 2017.

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## 98-97-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 278 Eighth Associates LLC, owner; TSI West 23<sup>rd</sup> Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 30, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture Establishment (*New York Sports Club*) which expired on November 1, 2016. C2-7A zoning district.

PREMISES AFFECTED –270 Eighth Avenue, Block 773, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Montanez.....3

Negative: .....0

Absent: Commissioner Otley-Brown.....1

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit for a physical culture establishment (“PCE”) previously granted by the Board, which expired November 1, 2016; and

WHEREAS, a public hearing was held on this application on June 27, 2017, after due notice by publication

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in *The City Record*, and then to decision on June 27, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 4, Manhattan, waives its recommendation for this application; and

WHEREAS, the subject site is located on the east side of Eighth Avenue, between West 24th Street and West 23rd Street, in a C2-7A zoning district, in Manhattan; and

WHEREAS, the site has approximately 198 feet of frontage along Eighth Avenue, 100 feet of depth, 19,750 square feet of lot area and is occupied by a two-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 24, 1998, when, under the subject calendar number, the Board granted a special permit for the PCE in the subject building for a term of ten (10) years, expiring November 1, 2006, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that signage be maintained in accordance with the Board-approved plans, that rooftop HVAC and mechanical equipment comply with the New York City Noise Code, that the hours of operation be limited to 6:00 a.m. to 11:00 p.m., Monday through Thursday, 6:00 a.m. to 10:00 p.m., Friday, and 9:00 a.m. to 6:00 p.m., Saturday and Sunday, that the above conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained within one (1) year, by February 24, 1999; and

WHEREAS, on September 14, 2010, under the subject calendar number, the Board waived its Rules of Practice and Procedure, granted an extension of term of the special permit for ten (10) years, expiring November 1, 2016, and amended its resolution to change the hours of operation to Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the term of the special permit having expired, the applicant now seeks a further extension of term for an additional ten (10) year term; and

WHEREAS, the facility remains in operation as New York Sports Club with the following hours of operation: Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant notes that the PCE continues to occupy 19,990 square feet of floor space in the building: 240 square feet of floor space in the cellar and 19,750 square feet of floor area on the second floor, as previously approved by the Board; and

WHEREAS, at hearing, the applicant explained that, despite the previously approved plans, which reflect 19,760 square feet of floor area, the actual floor area used by the PCE is in fact 19,750; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, by letter dated June 26, 2016, the Fire Department states that, based upon its review of the

drawings and supporting documentation, it has no objection to this application; and

WHEREAS, by letter dated December 28, 2016, Community Board 4, Manhattan, states that it has recently conducted an inspection of the PCE, finding that the PCE was a well-run facility, and that Community Board 4's office has no record of complaints about the PCE; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03 subsections (d) and (g) are inapplicable to the subject application; and

WHEREAS, § 73-36 mandates a term not to exceed ten (10) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to extend ten (10) years; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension 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, as adopted on February 24, 1998, as amended through September 14, 2010, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten (10) years from November 1, 2016, to expire on November 1, 2026; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked 'Received November 30, 2016'-Five (5) sheets; and *on further condition*:

THAT the term of this grant shall expire November 1, 2026;

THAT the hours of operation shall be: Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m. and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT signage shall be maintained in accordance with the Board-approved plans;

THAT rooftop HVAC and mechanical equipment comply with the New York City Noise Code;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT an amended certificate of occupancy shall be obtained within one (1) year, by June 27, 2018;

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THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; and

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, June 27, 2017.

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## **240-55-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties LLC, owner.

SUBJECT – Application December 24, 2015 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair facility (UG 16B) which is set to expire on November 3, 2018; Amendment (§11-413) to permit a change in use from automotive repair facility (UG 16B) to automotive sales (UG 9A); Extension of Time to Obtain a Certificate of Occupancy which expired on April 1, 2015; Waiver of the Rules to permit the filing for an Extension of Term in excess of 1 year prior to the expiration and for filing in excess of 30 day but less than 1 year of the expiration of the time to obtain a Certificate of Occupancy. C2-2/R6B & R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Block 7305, Lot 19, Borough of Queens.

### **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for adjourned hearing.

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## **949-57-BZ**

APPLICANT – Akerman, LLP, for Pelham Bridges Realities, LLC, owner; NY Dealers Stations, LLC, owner.

SUBJECT – Application July 7, 2015 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on October 29, 2014; Waiver of the Rules. R5D zoning district.

PREMISES AFFECTED – 2100 Williamsbridge Avenue, Block 4310, Lot 30, Borough of Bronx.

### **COMMUNITY BOARD #11BX**

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for continued hearing.

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## **70-97-BZ**

APPLICANT – Law Office of Fredrick A. Becker for 575 Lex Property Owner LLC, owner; TSI East 51<sup>st</sup> Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 10, 2016 – Extension of Term of a Special Permit (§73-36) to permitting the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on November 1, 2016. C6-6 and C6-4.5 (MID) zoning district.

PREMISES AFFECTED – 575 Lexington Avenue, Block 1306, Lot 23, Borough of Manhattan.

### **COMMUNITY BOARD #6M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Montanez.....3

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for decision, hearing closed.

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## **4-98-BZ**

APPLICANT – Eric Palatnik, P.C., for Madison Queens & Guy Brewer, LLC, owner.

SUBJECT – Application July 24, 2015 – Amendment of a previously approved variance (72-21) which permitted the operation of a drug store (UG 6) contrary to uses regulations. The amendment seeks to eliminate the term of the variance and reflect non-compliance with respect to bulk. C1-3/R3X zoning district.

PREMISES AFFECTED – 127-04 Guy Brewer Boulevard, corner of Guy Brewer Boulevard and Baisley Boulevard, Block 12269, Lot 29, Borough of Queens.

### **COMMUNITY BOARD #12Q**

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for continued hearing.

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## **214-00-BZ**

APPLICANT – Sheldon Lobel, P.C., for Zaliv, LLC, owner.

SUBJECT – Application November 13, 2015 – Extension of Term of a previously approved Special Permit (73-242) which permitted the operation of an eating and drinking establishment (UG 6) which expired on November 16, 2015; Extension of Time to Obtain a Certificate of Occupancy which expired on March 20, 2013; Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2761 Plumb 2<sup>nd</sup> Street, Block 8841, Lot 500, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for adjourned hearing.

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## 302-01-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Creston Avenue Realty LLC, owner.

SUBJECT – Application April 19, 2017 – Amendment of a pre-1961 variance which permitted an open parking lot accessory to a commercial building. The Amendment seeks to develop an as-of-right building on the site retaining the accessory parking. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, Block 3175, Lot 26, Borough of Bronx.

### COMMUNITY BOARD # 7BX

#### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Montanez.....3

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for decision, hearing closed.

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## 182-02-BZ

APPLICANT – Eric Palatnik, P.C., for Gaseteria Oil Corporation, owner.

SUBJECT – Application July 22, 2014 – Extension of Term of a previously approved (§72-21) permitting the operation of an Automotive Service Station (UG 16B) with an accessory convenience store which expired January 7, 2013; Waiver of the Rules. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 2990 Victory Boulevard, Block 2072, Lot 42, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for adjourned hearing.

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## 180-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TCAM Core Property Fund Operating LP, owner; Equinox 85<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application February 4, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (Equinox) which expires on February 28, 2016. C2-8A/R8B zoning district.

PREMISES AFFECTED – 1511 Third Avenue (a/k/a 201 East 85<sup>th</sup> Street) Block 1531, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for adjourned hearing.

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## 336-05-BZ

APPLICANT – Klein Slowik PLLC, for WB Realty Partners LLC, owner; CPM Enterprises LLC, lessee.

SUBJECT – Application October 12, 2016 – Extension of Term of a previously approved Special permit (§73-36) permitting the operation of a Physical Culture Establishment (drive 495) in the subject building, occupying the third and a portion of the second floor which expired on September 12, 2016. M1-5B (SoHo-Cast Iron Historic District).

PREMISES AFFECTED – 495 Broadway aka 66-68 Mercer Street, Block 484, Lot 24, Borough of Manhattan.

### COMMUNITY BOARD #2M

#### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Montanez.....3

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

### 255-15-A

APPLICANT – David L. Businelli, for Michael Ricco, owner.

SUBJECT – Application November 12, 2015 – 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 and waiver under 72-01-(g). R3-1 zoning district.

PREMISES AFFECTED – 106 Ebbitts Street, Block 4056, Lot 86, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for continued hearing.

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### 2016-4256-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Stecher Street LLC, owner.

SUBJECT – Application September 20, 2016 – Proposed construction of a one family, two-story dwelling not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law. R1-2 (SRD) zoning district.

PREMISES AFFECTED – 147 Stecher Street, Block 6565, Lot 11, Borough of Staten Island.

### COMMUNITY BOARD #3SI

#### THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Montanez.....3

Negative:.....0

Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for decision, hearing closed.

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## ZONING CALENDAR

### 200-15-BZ

#### CEQR #16-BSA-022K

APPLICANT – Dennis D. Dell’Angelo, for Baruch M. Wieder, owner.

SUBJECT – Application August 27, 2015 – Special Permit (§ZR 73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1364 East 23<sup>rd</sup> Street, Block 7568 Lot 76, Borough of Brooklyn.

#### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Montanez.....3

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 28, 2015, acting on Alteration Application No. 321166064, reads in pertinent part:

1. Proposed F.A.R. and O.S.R. constitutes an increase in the degree of existing non compliance contrary to Sec. 23-141 of the N.Y.C. Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required side yard contrary to Sec. 23-46 Z.R. and less than the required rear yard contrary to Sec. 23-47 Z.R.; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing single-family detached residence that 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, 23-46 and 23-47; and

WHEREAS, a public hearing was held on this application on February 28, 2017, after due notice by publication in *The City Record*, with continued hearings on April 4, 2017, and June 6, 2017, and then to decision on June 27, 2017; and

WHEREAS, 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 on condition that a distance of 3 feet be required between the residence and garage; and

WHEREAS, the subject site is located on the west side of East 23rd Street, between Avenue M and Avenue N, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along East 23rd Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by a three-story, with

cellar, single-family detached residence; and

WHEREAS, ZR § 73-622 provides:

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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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

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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 23-631, 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; and

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 detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing single-family detached residence at the front, rear and south side, increasing the floor area from 2,555 (0.64 FAR) to 3,845 square feet (0.96 FAR), decreasing the open space ratio from 1.08 to 0.60, reducing the rear yard from 30'-6" to 20 feet and maintaining the existing 3'-11" north side yard; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted and a minimum open space ratio of 1.50 is required under ZR § 23-141; two side yards with widths of at least 5 feet each are required under ZR § 23-46; and a rear yard of at least 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant submits that the enlarged building will not alter the essential character of the neighborhood or district in which it is located, nor impair the future use or development of the surrounding area; and

WHEREAS, in support of this contention, the applicant presented a photographic study of the floor area ratios of single- and two-family residences within 400 feet of the subject site, concluding that 27 of 102 lots (27 percent) in the study area had FARs greater than 0.75; and

WHEREAS, the applicant also analyzed the rear yards of single- and two-family residences within 400 feet of the subject site, concluding that 23 of 102 lots (23 percent) in the study area have rear yards with depths of less than 30 feet at the first floor, 17 lots (74 percent of rear yards less than 30 feet) have rear yards with depths of less than 20 feet and 11 lots (65 percent of rear yards less than 20 feet) have two-story construction at the rear yard, consistent with the proposed enlargement; and

WHEREAS, the applicant further states that, on the subject block, there are ten lots that have non-complying rear yards with depths of less than 30 feet; and

WHEREAS, at the Board's request, the applicant reduced the height [KS1] of the enlarged building proposed and studied the height of single- and two-family residences within 400 feet, concluding that 30 of the 102 (47 percent) single- and two-family residences have heights above 35 feet and that 10 residences on the social block (29 percent) have heights above 35 feet, consistent with the proposed height; and

WHEREAS, in response to the concerns of Community Board 14, Brooklyn, the applicant also amended the drawings to reflect that a minimum distance of 3 feet will be provided between the existing garage and the residence; and

WHEREAS, at hearing, the Board questioned the bulk of the enlarged building in the context of the existing neighborhood, so the applicant revised the drawings to reduce the building's imposition on the rear yard at the second and third floors; and

WHEREAS, accordingly, the Board finds that the proposed enlarged building will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 16-BSA-022K, dated August 27, 2015; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-622 and 73-03 to *permit*, in an R2 zoning district, an enlargement of an existing single-family detached residence that does not comply with the zoning requirements for floor area ratio, open space, side yards and rear yards, contrary to ZR §§ 23-141, 23-46 and 23-47; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 13, 2017"- Twelve (12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,845 (0.96 FAR), a minimum open space ratio of 0.60, a north side yard of at least 3'-11" and a rear yard of at least 20 feet, as illustrated on the Board-approved drawings;

THAT removal of existing building material in excess of that shown on the Board-approved plans shall void this

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approval;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 27, 2017.

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## 2017-61-BZ

APPLICANT – Sheldon Lobel, P.C., for CA Plaza, LLC, owner.

SUBJECT – Application March 10, 2017 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-20. C4-2 & C4-3 zoning district. Waiver of section §1-05.3 of the Rules of Practice and Procedure to allow filing of a Department of Buildings Objection form more than 30 days after the final determination by the Commissioner of Buildings.

PREMISES AFFECTED – 36-18 Main Street, Block 4971, Lot 15, Borough of Queens.

## COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Montanez.....3

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, decision on behalf of the Queens Borough Commissioner, dated September 12, 2013, acting on Department of Buildings (“DOB”) Application No. 401816923 reads in pertinent part:

“Proposed building height . . . exceeds the height per ZR 61-20, required to obtain BSA special permit as per 73-66”; and

WHEREAS, this is an application under § 73-66 to permit, on a site located partially within a C4-3 zoning district and partially within a C4-2 zoning district, the construction of a building that exceeds the maximum height permitted in the vicinity of major airports, contrary to ZR § 61-21; and

WHEREAS, a public hearing was held on this application on May 2, 2017, after due notice by publication in *The City Record*, with a continued hearing on June 27, 2017, and then to decision on that same date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the subject site and neighborhood; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Main Street, between Northern Boulevard and 37th Avenue, partially within a C4-3 zoning district and partially within a C4-2 zoning district, in Queens; and

WHEREAS, the site has approximately 74 feet of frontage along Main Street, 151 feet of frontage along Prince Street, 35,857 square feet of lot area and is currently under development with a mixed-used commercial and community facility building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 13, 1939, when, under BSA Cal. No. 642-39-A, the Board granted an appeal and modified the decision of the borough superintendent of buildings to permit the installation of a sign exceeding 30 square feet and extending more than 25 feet above the sidewalk on a one-story building on condition that no additional sign be constructed on the building; and

WHEREAS, on May 11, 1948, under BSA Cal. No. 213-48-A, the Board varied the Labor Law to permit the arrangement of doors and bars on windows contrary to Sections 271 and 272 of that law for a one-story building utilized for the rolling and plating of precious metals as well as offices for 10 persons; and

WHEREAS, in the current application, the applicant seeks a special permit, pursuant to ZR § 73-66, to permit the construction of a building composed of three sections: a 14-story portion fronting Main Street with a total elevation of 212.58 feet above mean sea level (“AMSL”), 211.48 feet NAVD 88 or 209.83 feet Queens Datum; a 12-story portion fronting Prince Street with a total elevation of 184.75 feet AMSL, 183.65 NAVD 88 or 182.00 feet Queens Datum, contrary to ZR § 61-21; and a three-story portion in between, connecting the other two portions (the “Building”); and

WHEREAS, pursuant to ZR § 61-21:

Notwithstanding any other provisions of this Resolution, except as provided in Section 61-22 (Permitted Projection within Any Flight Obstruction Area), the highest projection of any *building or other structure* hereafter constructed or of any existing *building or other structure* hereafter relocated, *enlarged* or reconstructed shall not penetrate:

- (a) the *approach surfaces*, the *transitional surfaces*, the *horizontal surface*, or the *conical surface*, whichever is more restrictive, within the Airport Approach District of the *flight obstruction area*; and
- (b) the *horizontal surface* or the *conical surface* within the Airport Circling District of the *flight obstruction area*; and

WHEREAS, the applicant represents that, pursuant to ZR § 61-21 and the definitions contained in ZR § 61-30, the approach surfaces are the most restrictive at the subject site and permit a maximum height of 156.00 feet AMSL, 154.90 NAVD 88 or 153.25 feet Queens Datum; and

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WHEREAS, ZR § 73-66 provides that:

The Board of Standards and Appeals may permit the construction, *enlargement*, or reconstruction of a *building or other structure* in excess of the height limits established under Section 61-21 (Restriction on Highest Projection of Building or Structure) or 61-22 (Permitted Projection Within any Flight Obstruction Area), provided that the applicant submits a site plan, with elevations, showing the proposed *building or other structure* in relation to such maximum height limits, and that the Board finds that such proposed *building or other structure, enlargement*, or reconstruction would not constitute a hazard (either under the existing layout of the airport or under any planned reorientation or lengthening of the airport runways) to the safety of the occupants of such proposed *building*, to other *buildings* in the vicinity or to the safety of air passengers, and would not disrupt established airways.

The Board shall refer the application to the Federal Aviation Administration for a report as to whether such construction will constitute a danger to the safety of air passengers or disrupt established airways; and

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, in support of this application, the applicant has submitted a site plan showing the proposed Building with elevations, the maximum as-of-right height permitted at the site and the maximum obstruction height approved by the Federal Aviation Administration (“FAA”); and

WHEREAS, regarding the Board’s determination that such proposed building would not constitute a hazard, the Board notes that the FAA regulates the heights of buildings within proximity to airports and that, since the subject site is located within the flight obstruction area for LaGuardia Airport, the Board defers to the FAA’s determinations regarding the any potential hazards posed by the proposed building; and

WHEREAS, the application was referred to the FAA, which issued a Determination of No Hazard to Air Navigation, dated May 27, 2016, under Aeronautical Study No. 2016-AEA-4405-OE stating that the FAA’s aeronautical study of the Building, conducted under the provisions of 49 U.S.C. Section 44718 and, if applicable, Title 14 of the Code of Federal Regulations, part 77, revealed that, at a maximum height of 216 feet AMSL, the Building would exceed obstruction standards but not be a hazard to air navigation provided that the structure continue to be marked/lighted utilizing red lights (the “FAA Determination”); and

WHEREAS, accordingly, the maximum building height approved by the FAA is 216 feet AMSL, 214.90 feet NAVD 88 or 213.25 feet Queens Datum; and

WHEREAS, the Board notes that the heights proposed

for the 14-story portion of the Building fronting Main Street and 12-story portion of the Building fronting Prince Street have total elevations of less than 216 feet AMSL; and

WHEREAS, the Board notes that the obstruction standards referenced by the FAA in its determination are similar, but not identical, to those found in the Zoning Resolution and that the maximum building height of 216 feet AMSL includes temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure, but equipment shall not exceed the overall height of 216 feet AMSL and any temporary construction equipment of greater height would require separate notice to the FAA; and

WHEREAS, the FAA Determination further required that (1) FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the provide is abandoned or within five (5) days after the construction reaches its greatest height; (2) the FAA be kept appraised as to the status of the development at the site, warning that any failure to respond to periodic FAA inquiries could invalidate the FAA Determination; and (3) any construction that requires the use of a crane or cranes for the structure should be e-filed with the FAA at least 90-120 days prior to crane operations exceeding the structures’ AMSL height with a lift plan, jump schedule, crane specification documents and marking and lighting plan attached to ensure expeditious FAA evaluation; and

WHEREAS, by its explicit terms, any changes in coordinates, heights and frequencies or use of greater power than those indicated therein will void the FAA Determination and any future construction or alternation, including increase to heights, power, or the additional of other transmitters will require separate notice to the FAA; and

WHEREAS, all FAA conditions contained in the FAA Determination have been adopted and incorporated into the Board’s grant herein, therefore any act constituting a violation of the FAA Determination will necessarily violate the subject Resolution; and

WHEREAS, by letter dated August 20, 2012, the Port Authority of New York and New Jersey, which operates LaGuardia Airport, communicates its agreement with the FAA Determination and requests that all conditions stated in the FAA Determination be followed; and

WHEREAS, based on the above, 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 is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant states that the subject proposal will not interfere with any public improvement projects; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-66 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

*Therefore it is Resolved*, that the Board of Standards and

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Appeals issues a Type II determination under 6 NYCRR 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 §§ 73-66 and 73-03, to permit, on a site partially within a C4-3 zoning district and partially within a C4-2 zoning district, the construction of a building that exceeds the maximum height limits around airports, contrary to ZR § 61-21; *on condition* that all work will substantially conform to the drawings filed with this application and marked "Received June 27, 2017"-Twenty-Six (26) sheets; and *on further condition*:

THAT the maximum height of the building, including all appurtenances, shall be as follows: 216 feet AMSL, 214.90 feet NAVD 88 or 213.25 feet Queens Datum;

THAT the proposed building shall be marked/lighted utilizing red lights, as required by the FAA, at all times;

THAT FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the provide is abandoned or within five (5) days after the construction reaches its greatest height;

THAT the FAA be kept apprised as to the status of the development at the site, warning that any failure to respond to periodic FAA inquiries could invalidate the FAA Determination;

THAT any construction that requires the use of a crane or cranes for the structure should be e-filed with the FAA at least 90-120 days prior to crane operations exceeding the structures' AMSL height with a lift plan, jump schedule, crane specification documents and marking and lighting plan attached to ensure expeditious FAA evaluation;

THAT no temporary construction equipment may exceed a height of 216 feet AMSL;

THAT any temporary construction equipment having a height greater than 216 feet AMSL and/or any future construction or alteration, including increase to heights, power or the addition of other transmitters, requires separate notice to the FAA;

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 27, 2017.

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## 322-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Gloria B. Silver, owner.

SUBJECT – Application December 18, 2013 – Reinstatement (§11-411) of a previously approved variance which permitted accessory parking on the zoning lot for the use Group 6 commercial building, which expired on September 23, 1990; Waiver of the Rules. R6/C1-2 and R6 zoning district.

PREMISES AFFECTED – 42-01 Main Street, southeast corner of the intersection of Main Street and Maple Avenue, Block 5135, Lot 1, Borough of Queens.

### COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Montanez.....3  
Negative:.....0  
Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for decision, hearing closed.

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## 330-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jack Guindi, owner.

SUBJECT – Application December 30, 2014 – Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461); perimeter wall height (ZR 23-263) and less than the required minimum rear yard (ZR23-47); R3-2 zoning district.

PREMISES AFFECTED – 1746 East 21<sup>st</sup> Street, Block 6783, Lot 18, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Montanez.....3  
Negative:.....0  
Absent: Commissioner Ottley-Brown .....1

**ACTION OF THE BOARD** – Laid over to August 15, 2017, at 10 A.M., for decision, hearing closed.

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## 134-15-BZ

APPLICANT – Sheldon Lobel, P.C., for David Aronowicz, owner; Cinderella 248, LLC, lessee.

SUBJECT – Application June 5, 2015 – Special Permit (§73-36) to allow the operation of a Physical Culture establishment (*Orange theory Fitness*) in the existing building on the first floor and cellar of a one story commercial building, located within an R7A/C2-4 zoning district.

PREMISES AFFECTED – 248 Flatbush Avenue, Block 936, Lot 12, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and

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Commissioner Montanez.....3  
Negative:.....0  
Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to July 11, 2017, at 10 A.M., for decision, hearing closed.

## 161-15-BZ

APPLICANT – Sheldon Lobel, P.C., for Church of Pentecost U.S.A., Inc., owner.

SUBJECT – Application July 23, 2015 – Variance (§72-21) to permit the enlargement of an existing house of worship (UG 4) contrary to lot coverage and rear yard requirements. R6A/R5A zoning district.

PREMISES AFFECTED – 621 East 216<sup>th</sup> Street, Block 4649, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for continued hearing.

## 179-15-BZ

APPLICANT – Moshe M. Friedman, P.E., for 127 Taaffe LLC, owner.

SUBJECT – Application August 10, 2015 – Variance (§72-21) to permit the development of a four-story, multifamily residential building (UG2) contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 129 Taaffe Place, Block 1897, Lot 6, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for continued hearing.

## REGULAR MEETING TUESDAY AFTERNOON, JUNE 27, 2017 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Montanez.

Absent: Commissioner Ottley-Brown.

## ZONING CALENDAR

### 2016-4354-BZ

#### CEQR #17-BSA-049K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 5111 4<sup>th</sup> Avenue Equity Realty Holdings, LLC, owner; Blink Sunset Park, Inc., lessee.

SUBJECT – Application December 6, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Blink*) within an existing building. C2-4/R7A zoning district.

PREMISES AFFECTED – 5109 4<sup>th</sup> Avenue, Block 799, Lot 6, Borough of Brooklyn.

#### COMMUNITY BOARD #7BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Montanez.....3

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 2, 2016, acting on Alteration Application No. 321042297, reads in pertinent part:

“Proposed Physical Culture Establishment in R7A / C2-4 Zoning district is contrary to section 32-10 ZR and requires a special permit from BSA (73-36);” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an R7A (C2-4) zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the cellar, first floor and second floor of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 27, 2017, after due notice by publication in *The City Record*, and then to decision on the same day; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and WHEREAS, Community Board 7, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of 4th Avenue, between 51st Street and 52nd Street, in an R7A (C2-4) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 50 feet of frontage along 4th Avenue, 100 feet of depth, 5,000 square

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feet of lot area and is occupied by a two-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by

ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 proposed PCE will occupy a total of 9,185 square feet of floor space as follows: 2,535 square feet of floor space in the cellar, used for strength-training and cardiovascular-equipment areas, a locker room and janitor's closet; 2,552 of floor area on the first floor, including a reception area, strength-training equipment, elliptical machines, a locker room, an office, storage space and retail; and 4,098 of floor area on the second floor, with areas dedicated to stretching, dumbbells, a jungle gym, cardiovascular fitness and strength training as well as a break room; and

WHEREAS, the PCE will be operated as Blink Fitness with proposed hours of operation Monday to Saturday, 5:30 a.m. to 11:00 p.m., and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the proposed PCE will be located on a busy commercial thoroughfare and will be entirely within an existing commercial building, surrounded by other commercial uses; and

WHEREAS, in addition, the applicant submits that noise abatement measures—including rubber flooring and demising walls with batt insulation—will be provided in the PCE space to ensure that sound levels in other portions of the building will not exceed a maximum interior noise level of 45 dBA, including sound emanating from any sound system installed; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regard to use of the premises, the applicant states that the proposed PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE will be fully sprinklered and that an approved fire alarm—

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including area smoke detectors, manual pull stations at each required exist, local audible and visual alarms and connection of the interior fire alarm and sprinkler system to an FDNY-approved central station—will be installed in the entire PCE space; and

WHEREAS, by letter dated June 23, 2017, the Fire Department states that, based on its review of the drawings and supporting documentation for the proposed PCE, it has no objection to this application; and

WHEREAS, by letter dated May 6, 2015, the New York City Office of Environmental Remediation (“OER”) issued a Notice to Proceed stating that a Notice of Satisfaction from OER is required prior to the issuance of any final or temporary certificate of occupancy for the subject building, a condition that has been incorporated herein; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-049K, dated December 6, 2016; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.3 and 617.5, §§ 5-02(a) and 5-02(b)(2) 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*, in an R7A (C2-4) zoning district, the operation of a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 31, 2017”- Five (5) sheets; and *on further condition*:

THAT a Notice of Satisfaction from the New York City Office of Environmental Remediation is required prior to the issuance of any final or temporary certificate of occupancy for the subject building, a condition that has been incorporated herein;

THAT the term of this grant shall be for ten (10) years, expiring June 27, 2027;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be

provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm and sprinkler system to an FDNY-approved central station—shall be installed in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by June 27, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 27, 2017.

## 2017-210-BZ

### CEQR #17-BSA-143Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application June 13, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 131 Bedford Avenue, Block 16350, Lot 400, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Montanez.....3

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R4 zoning district, the reconstruction and enlargement of a single-family detached residence in compliance with flood-resistant



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construction standards that does not comply with the zoning requirements for front yards, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on June 27, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Rockaway Point Boulevard and Doris Lane, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 28 feet of frontage along Bedford Avenue, 92 feet of depth, 2,556 square feet of lot area and is occupied by a one-story single-family detached residence that is non-compliant with the applicable front-yard regulations; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction and enlargement of a one-story one-family detached residence with open space having a depth of 11.8 feet fronting Bedford Avenue; and

WHEREAS, at the subject site, front yards must be 10 feet or, if deeper, at least 18 feet under ZR § 23-45; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

(a) that there would be a practical difficulty in complying with *flood-resistant construction*

*standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;

- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct and enlarge the existing residence, which, as it exists, is non-compliant with front-yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the front-yard requirement and that waiver of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the majority of residences within the surrounding neighborhood are single-family residences, a significant number of which are on lots that do not meet requirements for lot size or frontage and have non-complying yard configurations; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction and enlargement satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA143Q, dated June 13, 2017.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure; *issues* a Type II determination under 6 NYCRR Part 617.5

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and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review; and makes the required findings under ZR § 64-92 to *permit*, in an R4 zoning district, the reconstruction and enlargement of a one-story single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, contrary to ZR § 23-45; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received June 13, 2017”- Seven (7) sheets; and *on further condition*:

THAT there shall be a front yard of at least 11.8 feet along Bedford Avenue, as illustrated on the Board-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by June 27, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 27, 2017.

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## 2017-211-BZ

### CEQR #17-BSA-144K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application June 14, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 38 Brighton 4<sup>th</sup> Court, Block 8664, Lot 446, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

**ACTION OF THE BOARD** – Application granted on

condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Montanez.....3

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R6 zoning district and the Special Ocean Parkway District, the reconstruction of a two-story single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side yards and rear yards, contrary to ZR §§ 23-462(c), 23-47 and 64-A353; and

WHEREAS, a public hearing was held on this application on June 27, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of Brighton 4 Court, between Brighton 4 Street and Brighton 5 Street, in an R6 zoning district and the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along Brighton 4 Court, 40 feet of depth, 1,600 square feet of lot area and is occupied by a one-story single-family detached residence with non-complying side yards and rear yards; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-355-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a single-family residence that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed residence having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the residence being provided with interconnected smoke and carbon monoxide alarms,

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designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the residence where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest windowsill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction of a two-story one-family detached residence with 6'-11" of open space along the west lot line, 6'-1" of open space along the east lot line and 10 feet of open space along the south lot line, contrary to the zoning requirements for side yards and rear yards; and

WHEREAS, at the subject site, side-yard and rear-yard requirements are set forth in ZR §§ 23-462(c) and 23-47; and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a path, allowing ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open space, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in

which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA144K, dated June 14, 2017.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to *permit*, in an R6 zoning district and the Special Ocean Parkway District, the reconstruction of a two-story single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side yards and rear yards, contrary to ZR §§ 23-462(c), 23-47 and 64-A353; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received June 13, 2017"- Eleven (11) sheets; and "Received June 15, 2017"- One (1) sheet; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a minimum of 6'-11" of open space along the west lot line, a minimum of 6'-1" of open space along the east lot line and a minimum of 10 feet of open space along the south lot line, with exterior stairs in the open space at the north and south and a porch column at the north, as illustrated on

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the Board-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by June 27, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 27, 2017

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## 2017-212-BZ

### CEQR #17-BSA-145K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application June 14, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 25 Brighton 7<sup>th</sup> Court, Block 8667, Lot 762, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Montanez.....3

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R6 zoning district and the Special Ocean Parkway District, the reconstruction of a single-family detached residence in compliance with flood-resistant construction standards that

does not comply with the zoning requirements for side yards and rear yards, contrary to ZR §§ 23-462(c) and 23-47; and

WHEREAS, a public hearing was held on this application on June 27, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the south side of Brighton 7 Court, between Brighton 7 Street and Brighton 8 Street, in an R6 zoning district and the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along Brighton 7 Court, 40 feet of frontage along Brighton 7 Walk, 80 feet of depth, 1,600 square feet of lot area and is occupied by a one-story single-family detached residence with non-complying lot area and yards at the rear and side; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-360-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a single-family residence that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the reconstructed residence having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the residence being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the residence where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest windowsill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction of a one-story single-family detached residence with 8 feet of open space along the west lot line, 5 feet of open space along the east lot line and 39.95 feet of open space along the south lot line, contrary to the zoning requirements for side yards and

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rear yards; and

WHEREAS, at the subject site, side-yard and rear-yard requirements are set forth in ZR §§ 23-462(c) and 23-47; and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a pathway, allowing ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open space, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard

requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA145K, dated June 14, 2017.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure *and* issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to *permit*, in an R6 zoning district and the Special Ocean Parkway District, the reconstruction of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side yards and rear yards, contrary to ZR §§ 23-462(c) and 23-47; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received June 14, 2017”-Four (4) sheets and “Received June 15, 2017”-One (1) sheet; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a minimum of 8 feet of open space along the west lot line, a minimum of 5 feet of open space along the east lot line and a minimum of 39.95 feet of open space along the west lot line, with exterior stairs in the open space at the north and south, as illustrated on the Board-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

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THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by June 27, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 27, 2017.

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## 2016-4299-BZ

APPLICANT – Jesse Masyr, Esq., Fox Rothschild LLP, for Thor 280 Richards Street, LLC, owner.

SUBJECT – Application November 4, 2016 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1). M3-1 zoning district.

PREMISES AFFECTED – 280 Richards Street, Block 612, Lot 150, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Montanez.....3

Negative:.....0

Absent: Commissioner Ottley-Brown.....1

**ACTION OF THE BOARD** – Laid over to September 12, 2017, at 10 A.M., for decision, hearing closed.

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*Ryan Singer, Executive Director*

## \*CORRECTION

**This resolution adopted on March 21, 2017, under Calendar No. 2016-1221-BZ and printed in Volume 102, Bulletin Nos. 12-13, is hereby corrected to read as follows:**

## 2016-1221-BZ

### CEQR #16-BSA-075M

APPLICANT – Jay Goldstein, Esq., for Fifth Jam Development, LLC, owner; EVF Row House Inc., lessee.

SUBJECT – Application February 11, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Row House*) on the second floor of an existing commercial building. C2-7A zoning district.

PREMISES AFFECTED – 269 West 23<sup>rd</sup> Street, Block 773, Lot 9, Borough of Manhattan.

### COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Chief Plan Examiner of the Manhattan Borough Office of the Department of Buildings (“DOB”), dated August 29, 2016, acting on DOB Application No. 122514323, reads in pertinent part:

Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right as per section ZR 32-10 and is referred to the Board of Standards and Appeals for a special permit under ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalized, on a site located within a C2-7A zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor and the second floor of an existing two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 27, 2016, after due notice by publication in *The City Record*, with a continued hearing on January 10, 2017, and then to decision on March 21, 2017; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; 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 north side of West 23<sup>rd</sup> Street, between Eighth Avenue and Seventh Avenue, in a C2-7A zoning district, in Manhattan; and

WHEREAS, the site has approximately 38 feet of frontage along West 23<sup>rd</sup> Street, a depth of 99 feet, 3,703 square feet of lot area and is occupied by a two-story commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in

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certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse

effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and Certificate of Occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 130 square feet of floor area on the first floor, consisting of stairs to the second floor, and 2,465 square feet of floor area on the second floor of the existing building containing a reception area, locker rooms, storage and a rowing studio; and

WHEREAS, the PCE has been in operation as Row House since November 2015; and

WHEREAS, the PCE's hours of operation are Monday through Friday, 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, 6:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will not impair the essential character or the future use or development of the surrounding area because it is entirely contained within an existing commercial building and surrounded by other commercial uses; and

WHEREAS, in addition, the applicant submits that sound attenuation measures have been provided within the space so as to not disturb other tenants in the building; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides facilities for a low-impact full body workout combining rowing circuits with interval training; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE is equipped with an interior fire alarm system—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to the building's interior fire alarm connected to an FDNY-approved central station; and

WHEREAS, by letter dated March 8, 2017, the Fire Department recommended that no final decision be made on this application until on-site inspection of the premises was scheduled and received a confirmed date, but at hearing, the Fire Department revised its position, noting that an existing sprinkler and fire alarm system has been approved for the subject building and that it no longer has any objection to approval of this application; and

WHEREAS, pursuant to ZR § 73-03, the Board finds

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that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 16-BSA-075M, dated February 11, 2016.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C2-7A zoning district, the operation of a physical culture establishment on a portion of the first floor and second floor of an existing two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 11, 2016” – Four (4) sheets and “Received March 1, 2017” – One (1) sheet; and on further condition:

THAT the term of the PCE grant will expire on November 1, 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 the existing fire alarm system will be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a revised Certificate of Occupancy shall be obtained within one year;

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, March 21, 2017.

**\*The resolution has been amended.**

**Corrected in Bulletin No. 27, Vol. 102, dated July 6, 2017.**



# 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.

Volume 102, Nos. 28-29

July 19, 2017

### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

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*Commissioners*

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228-13-BZ            157 Columbus Avenue, Manhattan  
134-15-BZ            248 Flatbush Avenue, Brooklyn  
2016-4167-BZ        4180 Ocean Avenue, Brooklyn  
2017-35-BZ            580 Columbus Avenue, Manhattan

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**Affecting Calendar Numbers:**

2017-57-BZ            18-20 Bergen Street, Brooklyn  
2017-29-BZ            2570 Flatbush Avenue, Brooklyn

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New Case Filed Up to July 11, 2017

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**2017-221-BZ**

1781 Bay Ridge Parkway, located on the southeast corner of Bay Ridge Parkway and 18th Avenue, Block 06215, Lot(s) 47, Borough of **Brooklyn, Community Board: 11**. Re-Instatement (§11-411) of previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on July 13, 2009; Waiver of the Rules. C1-2 /R5 zoning district. C1-2/R5 district.

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**2017-222-BZ**

200-01 116th Avenue, located on the north side of 116th Avenue on the corner formed by the intersection of 116th Avenue and 200th Street., Block 11041, Lot(s) 9, Borough of **Queens, Community Board: 12**. Variance (§72-21) to permit the construction of a two-family residence contrary to ZR §23-142 (Floor Area) and ZR §23-45 (Front Yard Requirements) R3A zoning district. R3A district.

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**2017-224-BZ**

2-4 Spring Street, located on Spring Street between Bowery and Elizabeth Street, Block 00478, Lot(s) 22, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to operate a physical culture establishment (HitHouse) within an existing building contrary to ZR §32-10. C6-1 Special Little Italy District. C6-1/LI, SLID district.

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**2017-225-BZ**

305 East 61st Street, located on the north side of East 61st Street between 1st and 2nd Avenues, Block 01436, Lot(s) 5, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to permit the operation of Physical Culture Establishment (Aqua Ancient Baths) in portions of the cellar, basement and first floor of an existing building contrary to ZR §32-10. C2-5/R8B zoning district. C2-5/R8B district.

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**2017-226-A**

18 Tuttle Street, located parallel to Home Place between Lyon Place and Willowbrook Road, Block 01481, Lot(s) 92, Borough of **Staten Island, Community Board: 1**. Proposed construction of a one-family home not fronting a legally mapped street contrary to General City Law 36. R3X zoning district. R3X 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 AUGUST 8, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, August 8, 2017, 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

#### 7-57-BZ

APPLICANT – Edward Lauria, for Ruth Peres, owner.  
SUBJECT – Application December 17, 2015 – Extension of Term (§11-411) of a previously granted variance for a gasoline service station and maintenance which expired September 20, 2015; Waiver of the Rules. R3-2 zoning district.  
PREMISES AFFECTED – 2317 Ralph Avenue aka 2317-27 Ralph Avenue, Block 8364, Lot 34, Borough of Brooklyn.  
**COMMUNITY BOARD #18BK**

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#### 303-05-BZ

APPLICANT – Eric Palatnik, P.C., for 4000 East 102<sup>nd</sup> Street, Corp., owner.  
SUBJECT – Application June 24, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the legalization of the second floor of an existing two story commercial structure for use as a physical culture establishment (*American Youth Dance Theatre*) which expires on August 8, 2016; Amendment seeking to legalize the facility's expansion on the first floor and to legalize a change in operator. R8B zoning district.  
PREMISES AFFECTED – 428 East 75<sup>th</sup> Street, Block 1469, Lot 36, Borough of Brooklyn.  
**COMMUNITY BOARD #8BK**

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#### 26-06-BZ

APPLICANT – Ellen Hay, Slater & Beckerman, P.C., for Acadia West Shore Expressway LLC, owner; Fitness International, LLC, lessee.  
SUBJECT – Application November 9, 2016 – Extension of Term of a previously approved Special Permit (§73-36) to operate a physical culture establishment (*LA Fitness*) which expired on July 25, 2016; Amendment to request a change in the hours of operation and minor interior changes; Waiver of the Rules of Practice and Procedure. M1-1/R3A zoning district.  
PREMISES AFFECTED – 145 East Service Road, Block 2638, Lot 50, Borough of Staten Island.  
**COMMUNITY BOARD #2SI**

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#### 41-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 17<sup>th</sup> and 10<sup>th</sup> Associates LLC, owner; Equinox 17<sup>th</sup> Street, Inc., lessee.  
SUBJECT – Application February 28, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (*Equinox*) on the cellar, ground, and mezzanine levels of a 24-story mix-use building which expires on May 8, 2017. C6-3 Special West Chelsea District.  
PREMISES AFFECTED – 450 West 17<sup>th</sup> Street aka 100 10<sup>th</sup> Avenue, Block 1531, Lot 1, Borough of Manhattan.  
**COMMUNITY BOARD # 4M**

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#### 21-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aquila Realty Company, Inc., owner; Hutch Restaurant Associates LP dba Burger Brother, lessee.  
SUBJECT – Application October 13, 2015 – Extension of Term & Amendment (73-243) request an extension of the term of a previously granted special permit that legalized an eating and drinking establishment with a drive-through at the subject premises and an Amendment to approved hours of operation. C1-2/R4A zoning district.  
PREMISES AFFECTED – 2801 Roebling Avenue aka 1590 Hutchinson River Parkway  
**COMMUNITY BOARD #10BX**

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#### 46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.  
SUBJECT – Application November 5, 2015 – Extension of Time to Complete Construction of an offsite parking lot to accommodate the required parking, which expires, November 15, 2015, located within a C4-2 zoning district.  
PREMISES AFFECTED – 1401 Sheepshead Bay Road, Block 7459, Lot 1, Borough of Brooklyn.  
**COMMUNITY BOARD #15BK**

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### APPEALS CALENDAR

#### 2016-4268-A

APPLICANT – Tarter Krinsky & Drogin LLP, for Shurgard Storage Centers, Inc., owners.  
SUBJECT – Application October 11, 2016 – Appeal from Department of Buildings determination that a sign is not entitled to con-conforming use status as advertising sign at the existing size and height.  
PREMISES AFFECTED – 30 Prince Street aka 265-269 Gold Street, Block 122, Lot 10, Borough of Brooklyn.  
**COMMUNITY BOARD #2BK**

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# CALENDAR

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## REGULAR MEETING AUGUST 8, 2017, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 8, 2017, 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

#### 87-15-BZ

APPLICANT – Law Office of Jay Goldstein, for Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application April 17, 2015 – Variance (§72-21) to permit the development of a new community facility (UG 3) contrary to underlying bulk requirements. R5 zoning district.

PREMISES AFFECTED – 182 Minna Street, Block 5302, Lot 74, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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#### 2016-4270-BZ

APPLICANT – Sheldon Lobel, P.C., for 540 Fifth Avenue Corp., owner.

SUBJECT – Application October 12, 2016 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*iLoveKickboxing*) in the cellar and first floor of an existing building. C4-3A zoning district.

PREMISES AFFECTED – 540 5<sup>th</sup> Avenue, Block 1041, Lot 41, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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#### 2016-4334-BZ

APPLICANT – Sheldon Lobel, P.C., for 431 Carroll Street LLC, owner.

SUBJECT – Application August 8, 2017 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1). M1-2 zoning district.

PREMISES AFFECTED – 341 Nevins Street, Block 447, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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#### 2017-10-BZ

APPLICANT – Akerman, LLP, for Rockaway Seagirt Housing Development Fund Corp. c/o The Arker Companies, LLC, owners.

SUBJECT – Application January 12, 2017 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for ambulatory diagnostic and treatment health care facility use (UG 4A) parking category (PRC-B1) to be located within a mixed-use building. C2-2/R6 zoning district.

PREMISES AFFECTED – 34-11 Beach Channel Drive, Block 15950, Lot(s) 14, 24, Borough of Queens.

**COMMUNITY BOARD #14Q**

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#### 2017-11-BZ

APPLICANT – Sheldon Lobel, P.C., for MHA, LLC, owner.

SUBJECT – Application January 13, 2017 – Special Permit (§73-36) to operate a physical culture establishment (ILOVEKICKBOXING) within a portion of the ground floor of an existing one-story commercial building. C2-4/R7A zoning district.

PREMISES AFFECTED – 3261 Westchester Avenue, Block 4248, Lot 56, Borough of Bronx.

**COMMUNITY BOARD #10BX**

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#### 2017-24-BZ

APPLICANT – Walter T. Gorman, P.E.P.C., for Power Test Realty Company Limited Partnership, owner; Capitol Petroleum Group, lessee.

SUBJECT – Application January 25, 2017 – Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Mobile) with accessory uses which expired on March 19, 2004; Waiver of the Rules. R3A zoning district.

PREMISES AFFECTED – 1400 Bay Street aka 5 Fingerboard Road, Block 2864, Lot 57, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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*Ryan Singer, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JULY 11, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**163-04-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Mylaw Realty Corporation, owner; Crunch Fitness, lessee. SUBJECT – Application July 11, 2017 – Reopen. Extension of time to obtain a certificate of occupancy for a previously granted physical culture establishment (Crunch Fitness) which expired on October 29, 2014; Waiver of the Rules. C2-4/R7A zoning district.

PREMISES AFFECTED – 671/99 Fulton Street, Block 2096, Lot(s) 66, 69, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT – Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....4

Negative: .....0

**THE RESOLUTION –**

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of time to obtain certificates of occupancy and an extension of term of a special permit for a physical culture establishment (“PCE”) previously granted by the Board, which expired July 12, 2015; and

WHEREAS, a public hearing was held on this application on February 14, 2017, after due notice by publication in *The City Record*, with continued hearings on March 21, 2017, and then to decision on July 11, 2017; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Fulton Street and Saint Felix Street, in an R7A (C2-4) zoning district and an Inclusionary Housing Designated Area, in Brooklyn; and

WHEREAS, the site has approximately 166 feet of frontage along Fulton Street, 175 feet of frontage along Saint Felix Street and 14,182 square feet of lot area; and

WHEREAS, the site is occupied by a two-story commercial building at 691 Fulton Street (Lot 69) and an adjacent one-story commercial building at 695 Fulton Street (Lot 66); and

WHEREAS, the PCE occupies a portion of the first floor of both buildings and the mezzanine of the two-story building; and

WHEREAS, the Board has exercised jurisdiction over

the subject site since July 12, 2005, when, under the subject calendar number, the Board granted an application to permit a PCE to be located within a portion of an existing two-story commercial building for a term of ten (10) years, expiring July 12, 2015, on condition that all massages be performed only by New York State licensed massage therapists, that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that the hours of operation be limited to 6 a.m. to 11:00 p.m., Monday through Friday, and 8:00 a.m. to 11:00 p.m., Saturday and Sunday, that the above conditions appear on the certificate of occupancy, that Local Law 58/87 compliance be reviewed and approved by the Department of Buildings (“DOB”), that fire safety measures be installed and maintained as illustrated on the Board-approved plans and that an interior fire alarm system be provided as set for the on the Board-approved plans and approved by DOB; and

WHEREAS, on April 24, 2007, under the subject calendar number, the Board amended the resolution to allow the enlargement and expansion of the PCE into an adjoining building, to reflect a change in the name of the operator and to permit operation 24 hours per day on condition that there be no change in ownership or operating control of the PCE without prior approval from the Board, that all massages be performed only by New York State licensed massage professionals, that the above conditions appear on the certificates of occupancy and that Local Law 58/87 compliance be as reviewed and approved by DOB; and

WHEREAS, on July 17, 2012, under the subject calendar number, the Board granted an extension of time to obtain certificates of occupancy, which expired April 24, 2011, on condition that there be no change in ownership or operating control of the PCE without prior approval from the Board, that all massage be performed only by New York State licensed massage professionals, that the above conditions appear on the certificate of occupancy, that a certificate of occupancy be obtained by July 17, 2013, and that Local Law 58/87 compliance be as reviewed and approved by DOB; and

WHEREAS, on October 29, 2013, under the subject calendar number, the Board granted another extension of time to obtain certificates of occupancy, which expired July 17, 2013, on condition that there be no change in ownership or operating control of the PCE without prior approval from the Board, that all massages be performed only by New York State licensed massage professionals, that the above conditions will appear on the certificates of occupancy, that certificates of occupancy be obtained by October 29, 2014, and that Local Law 58/87 compliance be as reviewed and approved by DOB; and

WHEREAS, originally, the applicant had not requested an extension of term, though the term of the special permit had already expired; and

WHEREAS, with the application revised accordingly, the applicant now seeks an extension of term of the special permit and an extension of time to obtain certificates of occupancy; and

WHEREAS, in addition, the applicant requests

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waivers, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing for an extension of term less than two (2) years after the expiration of the term and of Rule § 1-07.3(d)(2) to permit the filing of this application more than thirty (30) days after the expiration of the time to obtain certificates of occupancy; and

WHEREAS, the applicant has demonstrated that the use has been continuous since the expiration of term and that substantial prejudice would result without such a waiver; and

WHEREAS, the applicant represents that attempts to obtain certificates of occupancy have been stymied by the bankruptcy filing of the PCE operator's parent company, as well as several audits at Department of Buildings, but submits that efforts are already underway to resolve the outstanding objections and that all necessary work at the site can be completed within one (1) year of the approval of this application; and

WHEREAS, the facility remains in operation as Crunch Fitness with hours of operation 24 hours, daily; and

WHEREAS, the applicant notes that the PCE continues to occupy 11,981 square feet of floor area with 5,692 square feet of floor space in the cellar and 9,206 square feet on the first floor of 671 Fulton Street and 92,775 square feet of floor area on the first floor of 699 Fulton Street; and

WHEREAS, by letter dated March 8, 2017, the Fire Department states that it has no objection to an extension of time to a obtain certificates of occupancy; and

WHEREAS, additionally, the Fire Department represents that it has no objection to an extension of term of the special permit; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03 subsections (d) and (g) are inapplicable to the subject application; and

WHEREAS, ZR § 73-36 mandates a term not to exceed ten (10) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to extend ten (10) years; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the

Board finds that a ten (10) year extension is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and *reopens* and *amends* the resolution, dated July 12, 2005, as amended through October 29, 2013, so that as amended this portion of the resolution reads: "to grant an extension of the term of the special permit for ten (10) years from the expiration of the last grant, to expire on July 12, 2025; *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received March 2, 2017' - Five (5) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT all massages shall be performed only by New York State licensed massage professionals;

THAT the above conditions shall appear on the certificates of occupancy;

THAT certificates of occupancy, final for both lots, shall be obtained within one (1) year from the date of this resolution, by July 11, 2018;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 11, 2017.

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## 228-13-BZ

APPLICANT – Pryor Cashman LLP, for 45 West 67<sup>th</sup> Street Development Company, owner; Crossfit, NYC lessee.

SUBJECT – Application June 20, 2016 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (Cross Fit) located in the cellar level of an existing 31-story building which expired on May 20, 2016. C4-7 (SLSD) zoning district.

PREMISES AFFECTED – 157 Columbus Avenue, Block 1120, Lot 7501, Borough of Manhattan.

## COMMUNITY BOARD #7M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of

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# MINUTES

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term of a special permit for a physical culture establishment (“PCE”) previously granted by the Board, which expired on May 20, 2016; and

WHEREAS, a public hearing was held on this application on June 6, 2017, after due notice by publication in *The City Record*, and then to decision on July 11, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application on condition that the PCE obtain a temporary certificate of occupancy (“TCO”) listing 18 conditions of the special permit listed on the current TCO within 60 days of renewal, that no PCE activities occur on the public thoroughfare on the block and that the PCE comply with the conditions of the special permit; and

WHEREAS, the subject site is located on the northeast corner of Columbus Avenue and West 67th Street, in an R8 (C4-7) zoning district and the Special Lincoln Square District, in Manhattan; and

WHEREAS, the site has approximately 100 feet of frontage along Columbus Avenue, 150 feet of frontage along West 67th Street, 15,063 square feet of lot area and is occupied by a 31-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 20, 2014, when, under the subject calendar number, the Board granted an application to permit the operation of a PCE in the cellar for a term of four (4) years, expiring May 20, 2016, on condition that the PCE use be limited to the C4-7 zoning district portion of the site, that the wall separating the C4-7 portion of the site from the R8 zoning district portion of the site be maintained, as reflected on the Board-approved plans, that no PCE use be permitted in the R8 portion of the site, that the hours of operation for the PCE be limited to Monday through Friday, from 6:00 a.m. to 9:30 p.m. and Saturday and Sunday from 9:00 a.m. to 6:00 p.m., that no private training or other PCE activity will be held outside of the noted hours of operation, that competitions or other similarly-attended events be prohibited, that sound-attenuating measures, including a raised flooring system and padded fitness flooring will be installed and maintained throughout the entire PCE space and sound-foam panels will be installed and maintained along certain walls, as reflected on the approved plans, that the sound attenuation measures will be installed by November 20, 2014, that the use of the facility will comply with New York City Noise Code regulations, there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that any massages will be performed only by New York State licensed massage professionals, that Local Law 58/87 compliance 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 and that the above conditions will appear on the Certificate of Occupancy; and

WHEREAS, the term of the special permit having

expired, the applicant now seeks an extension of term for ten (10) years; and

WHEREAS, the facility remains in operation as Crossfit NYC with the following hours of operation: 6:00 a.m. to 9:30 p.m., Monday to Friday, and 9:00 a.m. to 6:00 p.m., Saturday and Sunday; and

WHEREAS, the applicant represents that the PCE continues to occupy 6,461 square feet of floor space in the cellar, including a reception area, open workout areas as well as space for pullups, rowing, and squats; and

WHEREAS, by letter dated May 31, 2017, the Fire Department states that, based upon its review of the drawing and supporting documentation, it has no objection to this application; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, with regard to concerns from Community Board 7, Manhattan, and residents of the neighborhood, at hearing, the Board questioned whether the PCE would conduct classes using the City’s sidewalks, and the applicant represented that the PCE has not done so and would not in the future; and

WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03 subsections (d) and (g) are inapplicable to the subject application; and

WHEREAS, § 73-36 mandates a term not to exceed ten (10) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to extend ten (10) years; and

WHEREAS, with regard to the absence of reference to the PCE on the last issued TCO, the applicant explains that, because the special permit had expired, the certificate of occupancy could not be renewed with reference to the PCE until the special permit was renewed; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension 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 May 20, 2014, 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, expiring May 20, 2026, *on condition* that the site shall substantially conform to drawings as filed with this application, marked ‘Received



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March 6, 2017'-Five (5) sheets; and *on further condition:*

THAT the term of the PCE grant shall expire on May 20, 2026;

THAT the PCE use shall be limited to the C4-7 zoning district portion of the site; the wall separating the C4-7 portion of the site from the R8 zoning district portion of the site shall be maintained, as reflected on the Board-approved plans, and no PCE use shall be permitted in the R8 portion of the site;

THAT the hours of operation for the PCE shall be limited to Monday through Friday, from 6:00 a.m. to 9:30 p.m. and Saturday and Sunday from 9:00 a.m. to 6:00 p.m.;

THAT no private training or other PCE activity shall be held outside of the noted hours of operation;

THAT competitions or other similarly-attended events shall be prohibited;

THAT sound-attenuating measures, including a raised flooring system and padded fitness flooring, shall be maintained throughout the entire PCE space, and sound-foam panels shall be maintained along certain walls, as reflected on the Board-approved plans;

THAT the use of the facility shall comply with New York City Noise Code regulations;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT any massages shall be performed only by New York State licensed massage professionals;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be maintained as shown on the Board-approved plans;

THAT the above conditions and the conditions of Community Board 7, Manhattan, shall appear on all temporary certificates of occupancy and on the final certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by July 11, 2021;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, July 11, 2017.

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## ZONING CALENDAR

### 134-15-BZ

#### CEQR #15-BSA-213K

APPLICANT – Sheldon Lobel, P.C., for David Aronowicz, owner; Cinderella 248, LLC, lessee.

SUBJECT – Application June 5, 2015 – Special Permit (§73-36) to allow the operation of a Physical Culture establishment (*Orange theory Fitness*) in the existing building on the first floor and cellar of a one story commercial building, located within an R7A/C2-4 zoning district.

PREMISES AFFECTED – 248 Flatbush Avenue, Block 936, Lot 12, Borough of Brooklyn.

#### COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 15, 2016, acting on Alteration Application No. 320624543, reads in pertinent part:

“ZR 32-10” “ZR 32-31” “Proposed use, ‘physical culture or health establishment’, is not permitted as-of-right in C2-4 zoning district and a BSA special permit is required”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, in an R7A (C2-4) zoning district, the operation of a physical culture establishment (“PCE”), contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in *The City Record*, with continued hearings on March 21, 2017, and June 27, 2017, and then to decision on July 11, 2017; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application and requested that the Board take a hard look at the environmental review of this application to clarify whether it is a brownfield or otherwise contaminated; and

WHEREAS, the subject site is located on the west side of Flatbush Avenue, between Saint Marks Avenue and Prospect Place, in an R7A (C2-4) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 33 feet of frontage along Flatbush Avenue, 71 feet of depth, 2,310 square feet of lot area and is occupied by a one-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such

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special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such

conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies a total of 2,485 square feet of floor area as follows: 1,617 square feet of floor space in the cellar, used for storage and locker rooms, and 2,485 square feet of floor area on the first floor, including areas for rowing machines, weight-lifting and treadmills; and

WHEREAS, the PCE has been in operation as Orangetheory Fitness since January 6, 2017; and

WHEREAS, the PCE's hours of operation are 5:00 a.m. to 9:00 p.m., Monday through Thursday, 5:00 a.m. to 8:00 p.m., Friday, 7:00 a.m. to 1:00 p.m., Saturday, and 8:00 a.m. to 2:00 p.m., Sunday; and

WHEREAS, the applicant represents that the PCE is consistent with the mixed residential and commercial uses and character of the surrounding area, that Flatbush Avenue is a heavily traveled commercial street and that the PCE will be located entirely within an existing commercial building; and

WHEREAS, the applicant further states that sound attenuation measures—including a floating floor system, acoustical ceiling, ceiling speaker enclosures and soundproofing walls—have been installed so as to not disturb others in the area; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding neighborhood; and

WHEREAS, with regards to the use of the premises, the applicant states that the PCE provides facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exist, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, at the request of the Fire Department and the Board, the applicant submitted affidavits indicating that both the sprinkler system and fire alarm system have been

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installed according to the plans filed with DOB, are compliant with the New York City Building and Fire Codes and are operational; and

WHEREAS, the Fire Department states that it has no objection to this application; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 15-BSA-213-K, dated June 5, 2015; and

WHEREAS, in response to the Board's inquiry regarding brownfield remediation work at the premises, the applicant provided a summary of work performed at the site in accordance with its participation in the New York State Department of Environmental Conservation ("DEC") Brownfield Program (as Site No. C 224160) as a result of having previously been occupied by a dry-cleaner, notified the Board that the site's redevelopment as a gym was noted in the Remedial Action Work Plan submitted and approved by DEC in 2015, and stated that a Certificate of Completion from DEC is anticipated by the end of the year; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *legalize*, in an R7A (C2-4) zoning district, the operation of a physical culture establishment ("PCE"), contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received March 1, 2017" – Eleven (11) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring January 6, 2027;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation measures shall be installed in the PCE as indicated on the BSA-approved plans;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by July 11, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 11, 2017.

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## 2016-4167-BZ

APPLICANT – Eric Palatnik, P.C., for Ocean Services, Inc., owner.

SUBJECT – Application April 6, 2016 – Special Permit (§73-622) for the enlargement of an existing two story single family home contrary to floor area, lot coverage and open space (ZR 23-141(b)); and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 4180 Ocean Avenue, Block 8737, Lot 92, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 17, 2017, acting on Department of Buildings ("DOB") Application No. 321289636 reads in pertinent part:

Proposed vertical and horizontal enlargement to an existing single family home in an R3-1 district is non-compliant in regard to:

- 1) Proposed floor area ratio is contrary to...ZR 23-142;
- 2) Proposed lot coverage is contrary to...ZR 23-

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- 142;
- 3) Proposed open space is contrary to...ZR 23-142;
- 4) Proposed rear yard is contrary to ZR 23-47; And must be referred to the Board of Standards and Appeals for a special permit pursuant to ZR 73-622; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-1 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area ratio, lot coverage, open space and rear yards, contrary to ZR §§ 23-142 and 23-47; and

WHEREAS, a public hearing was held on this application on June 6, 2017, after due notice by publication in *The City Record*, with a continued hearing on July 11, 2017, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application out of concern that the residence would become a multiple dwelling; and

WHEREAS, the subject site is located on the west side of Ocean Avenue, between Hampton Avenue and Oriental Boulevard, within an R3-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 60 feet of frontage along Ocean Avenue, 100 feet of depth and 6,000 square feet of lot area; and

WHEREAS, the site is occupied by a one-and-a-half story single-family detached residence with 2,969 square feet of floor area, a floor area ratio ("FAR") of 0.50, 33 percent lot coverage, 67 percent open space, and a 27.92 foot rear yard; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be

renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

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 detached single-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing dwelling with front and rear extensions on the first and second floor as well as a new attic, resulting in a dwelling with

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a total of 5,405 square feet of floor area, 0.90 FAR, 39 percent lot coverage and 61 percent open space; no changes are proposed to the depth of the rear yard, which will remain with a depth of 27.92 feet; and

WHEREAS, at the subject site, a maximum FAR of 0.50 (3,000 square feet of floor area), maximum lot coverage of 35 percent and minimum open space of 65 percent are permitted pursuant to ZR § 23-142 and a rear yard of at least 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant submitted an analysis of single- or two-family dwellings located within 400 feet of the subject premises (the “Study Area”) concluding that 42 of the 77 dwellings (55 percent) had FARs greater than 0.50, ranging from 0.52 FAR to 1.13 FAR and approximately 1,582 square feet of floor area to 10,692 square feet; further, 17 of the 26 dwellings on the subject block (65 percent) have FARs greater than 0.50, including 4 of the 5 dwellings located to the immediate south of the subject site on the west side of Ocean Avenue, which range from 0.58 FAR to 0.86 FAR, and 12 of the 13 dwellings (92 percent) on the east side of the subject block, which range from 0.52 FAR to 0.77 FAR; and

WHEREAS, in addition, 21 of the 77 dwellings in the Study Area (27 percent) have lot coverage greater than 35 percent and provide less than 65 percent open space and 16 of the 28 dwellings on the subject block (57 percent) have rear yards of less than 30 feet; and

WHEREAS, the site is also located in Zone AE, an area of special flood hazard, on FEMA’s Preliminary Flood Insurance Rate Map (“FIRM”) and, accordingly, the applicant affirms that the proposed dwelling will comply with all requirements set forth in Appendix G; and

WHEREAS, in particular, the applicant submits that the existing first floor is more than two feet above the Base Flood Elevation (“BFE”) and that the subject proposal maintains the same existing first floor elevation, which is above the Flood Resistant Construction Elevation (“FRCE”), but all areas below the FRCE, including the entire cellar, shall be renovated to provide floor resistant materials; and

WHEREAS, the applicant further submits that because the cost of the proposed enlargement is less than half of the market value of the home, as calculated pursuant to 1 RCNY § 3606-01, the propose enlargement is not a “substantial improvement”; and

WHEREAS, the Board referred this application to DOB’s Technical Affairs and Code Development Unit, which confirmed that the cost of renovations, as provided by the applicant in a Cost Affidavit, does not exceed half of the market value of the residence based on either the 2016 or the 2017 Final Assessment Rolls; and

WHEREAS, the Board received one letter of support and several letters and testimony at hearing in opposition to the subject application, including from the Manhattan Beach Community Group, Inc., purported to be on the basis that the subject site is owned by an unregistered corporation, rather than a named individual, lacking standing to bring this application and a concern that the premises would be utilized as a multiple-dwelling, S.R.O. or for commercial use because of the number of people and cars seen at the premises; and

WHEREAS, in response, the applicant submitted proof that the record owner of the subject property is a domestic business corporation registered to do business in New York State with standing to file and proceed with his application and, at hearing, a resident of the subject premises testified that the residence was, indeed, for the exclusive use of his family, including his parents, his sister and her husband and a younger sister who is permanently disabled and requires visits from various home aides and physical therapists; and

WHEREAS, the Board notes that the plans submitted with this application do not reflect any intention to convert the existing single-family to a multiple-dwelling, in particular, it lacks multiple sets of stairs and kitchens; and

WHEREAS, the Board also received one letter of opposition regarding the height of the proposed residence; and

WHEREAS, in response, the applicant provided an analysis of the roof heights of buildings on the same social block as the premises as well as a streetscape illustrating the envelope of the proposal within the existing streetscape demonstrating that the proposed total height of 32 feet, permitted as-of-right, is consistent with surrounding buildings and, thus, will not adversely affect its neighbors; 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 NYCRR 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, in an R3-1 zoning district, the proposed enlargement of a single-family detached residence that does not comply with the zoning requirements for floor area ratio, lot coverage, open space and rear yards, contrary to ZR §§ 23-142 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 June 22, 2017”-Sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.90, a maximum of 39 percent lot coverage, a minimum of 61 percent open space and a rear yard of at least 27.92 feet, as illustrated on the BSA-approved plan; and

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

THAT the building must comply with Appendix G;

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 special 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 the plan(s)/configuration(s) not related to the relief granted.

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Adopted by the Board of Standards and Appeals, July 11, 2017.

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**2017-35-BZ**

**CEQR #17-BSA-080M**

APPLICANT – Law Office of Jay Goldstein, for Geloda Briarwood Corp., owner; Fhitting Room, lessee.

SUBJECT – Application February 6, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*The Fhitting Room*) on the first floor of an existing building. C1-9 and R7-2 zoning district.

PREMISES AFFECTED – 580 Columbus Avenue, Block 1219, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #7M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 10, 2017, acting on Alteration Application No. 122973274, reads in pertinent part:

“Proposed use as a physical culture establishment, as defined as ZR 12-10, is contrary to ZR 32-10 and must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, in an R7-2 (C1-9) zoning district, a physical culture establishment (“PCE”) on a portion of the first floor of a nine-story, with cellar, mixed-use commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 6, 2017, after due notice by publication in *The City Record*, and then to decision on July 11, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, at hearing and by resolution dated July 5, 2017, Community Board 7 clarified that its recommendation is based on the applicant’s commitment to make certain changes to the project design, including modifying the handicapped lift support partition to increase transparency along the southern retail unity and modifying the cavity between the glass and interior partition to incorporate lighting and install decorative graphics; and

WHEREAS, the subject site is located on the west side of Columbus Avenue, between West 89th Street and West 88th Street, in an R7-2 (C1-9) zoning district, in Manhattan; and

WHEREAS, the site has approximately 201 feet of frontage along Columbus Avenue, 175 feet of frontage

along West 89th Street, 95 feet of frontage along West 88th Street, 27,216 square feet of lot area and is occupied by a nine-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

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WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies a total of 2,528 square feet of floor area on a portion of the first floor, including a reception area, retail space, an office, lockers, showers, utility space and a fitness studio; and

WHEREAS, the PCE has operated as Fitting Room since May 2017 with hours of operation of 5:30 a.m. to 10 p.m., Monday through Friday, and 6:30 a.m. to 7:00 p.m., Saturday and Sunday; and

WHEREAS, the applicant represents that the PCE use is consistent with the mixed residential and commercial character of the surrounding area, that the PCE's limited size and location will not adversely affect the neighborhood, that the surrounding area is heavily trafficked by retail customers and other building tenants and that most patrons are expected to arrive by foot or mass transit; and

WHEREAS, with regard to sound attenuation, the applicant submits that sound attenuation measures—including sheetrock, sound-attenuated batt insulation, isolated slab flooring, perimeter isolation boards and sealed penetrations at studio ceilings and partitions—have been provided within the space so as not to disturb other tenants in the building; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant represents that the PCE provides classes for physical improvement; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, at hearing, the Fire Department stated that, based on its review of the drawings and supporting documentation, it has no objection to this application; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-080M, dated February 6, 2017; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *legalize*, in an R7-2 (C1-9) zoning district, a physical culture establishment (“PCE”) on a portion of the first floor of a nine-story, with cellar, mixed-use commercial and residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 18, 2017” –Three (3) sheets; and *on further condition*:

THAT the applicant shall work with Community Board 7 to increase the amount of transparency at the storefront, consistent with Community Board 7's resolution, through an iterative process;

THAT the term of this grant shall be for ten (10) years, expiring May 1, 2027;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space, as indicated on the BSA-approved plans;

THAT sound attenuation shall be installed in the PCE

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as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by July 11, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 11, 2017.

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**REGULAR MEETING  
TUESDAY AFTERNOON, JULY 11, 2017  
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez.

**ZONING CALENDAR**

**2017-57-BZ**

**CEQR #No. 17-BSA-100K**

APPLICANT – Law Office of Fredrick A. Becker, for Mary McDowell Friends School, owner.

SUBJECT – Application March 2, 2017– Variance (§72-21) to permit the enlargement of an existing School (Mary McDowell Friends School) UG 3 contrary to ZR §24-11 (floor area increased the degree of non-compliance and lot coverage); ZR §23-33 (opposed 2 story addition in the rear yard is not a permitted obstruction); ZR § 23-662a (maximum base height of the street wall exceeds the maximum permitted); and ZR §23-662c (Proposed enlargement does not comply with the initial setback distance. R6A and R6B zoning districts.

PREMISES AFFECTED – 18-20 Bergen Street, Block 384, Lot(s) 15, 16, 172, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 28, 2017, acting on DOB Application No. 321184623 reads in pertinent part:

1. ZR 24-11: Proposed increase in floor area increases the degree of non-compliance;
2. ZR 23-662a: Proposed maximum base height of the street wall exceeds the maximum permitted;
3. ZR 23-662c: Proposed enlargement does not comply with the initial setback distance;
4. ZR 24-33: Proposed 2 story addition in the rear yard is not a permitted obstruction;
5. ZR 24-11: Proposed rear yard addition does not comply with lot coverage; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site partially located within an R6A zoning district and partially located within an R6B, the enlargement of a school that does not comply with the floor area, street wall base height, initial setback, rear yard and lot coverage regulations, contrary to ZR §§ 23-662, 24-11 and 24-33; and

WHEREAS, this application is filed on behalf of Mary McDowell Friends School (the “School”), a Quaker-affiliated school for students with learning disabilities; and

WHEREAS, the School has three campuses offering



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instruction for students in kindergarten through 12th grade and a facility located at the subject site has accommodated kindergarten through 5th grade students since the late 1990s; and

WHEREAS, a public hearing was held on this application on July 11, 2017, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Bergen Street, between Court Street and Smith Street, partially within an R6A zoning district and partially within an R6B zoning district, in Brooklyn; and

WHEREAS, the site has approximately 70 feet of frontage along Bergen Street, a depth of 100 feet, 7,000 square feet of lot area and is occupied by one three-story building with retail use on the ground floor and accessory school storage on the upper floors (18 Bergen Street) and one five-story building (20 Bergen Street) operated by the School; and

WHEREAS, the School proposes to demolish the existing three-story building at 18 Bergen Street, renovate and enlarge the existing 5-story building from 17,500 square feet of floor area to 25,625 square feet, a floor area ratio ("FAR") of 3.66 and 83 percent lot coverage, including a one-story plus mezzanine 23 foot tall extension into the rear yard and an increase of the street wall base height from 60 feet to 62'-9" without a setback; and

WHEREAS, the applicant represents that demolition of the existing building at 18 Bergen Street is necessary because it is of frame construction, which poses structural challenges to its retention and renovation, and, further, its floors do not align with those in the existing school building located next door; demolition of the building also permits the proposed enlargement of the cellar space in the 20 Bergen Street building; and

WHEREAS, at the subject site, based on approximately 88.3 percent of the lot being located within an R6A zoning district and approximately 11.7 percent of the lot being located within an R6B zoning district, the maximum floor area permitted for a community facility is 20,160 square feet of floor area (2.88 FAR) pursuant to ZR § 24-11; the maximum base height permitted is 57'-8" pursuant to ZR § 23-622(a), after which a setback of at least 10 feet is required, pursuant to ZR 23-662(c); a maximum of 60 percent lot coverage is permitted pursuant to ZR § 24-11; and a portion of a building used for community facility uses in excess of one story and in any event 23 feet above curb level is prohibited as a permitted obstruction pursuant to ZR § 24-33; and

WHEREAS, because the proposed enlargement does not comply with the applicable bulk regulations in the subject zoning districts, the applicant seeks the requested variance; and

WHEREAS, the School states that the waivers sought

are necessary in order to meet its programmatic needs, specifically accommodating its current student body (129 students) and a modest increase estimated to be between 15 to 20 students in an adequate number of appropriately sized classrooms and breakout spaces critical for educating students with learning disabilities, an enlarged gymnasium, an enlarged lunchroom and an improved Quaker Meeting Room, which constitutes an essential part of the School's Quaker mission; and

WHEREAS, the School represents that the hallways of the building at 20 Bergen Street are currently utilized for instruction and that such locating is not conducive to distraction-free student instruction; that occupational therapy—a vital support service provided to students—is currently located in a cellar level space of a size inadequate to accommodate equipment that could be utilized to improve students' motor skills; that the existing classroom spaces for the School's STEAM (Science, Technology, Engineering, Art and Math) program are so undersized as to require classes to be split and taught in halves, leading to scheduling conflicts and inefficiencies; that the School's library, science and art classrooms are currently located in the basement without access to natural light and are too small to accommodate the storage of necessary related equipment, which are instead housed in mechanical closets and/or off-site locations; that the columns in the Meeting Room restrict view corridors and lead to distractions during Quaker Meetings, which are intended to be moments of silence, reflection and sharing; and that the undersized lunchroom prevents quality student interactions; and

WHEREAS, the School submits that the proposed enlargement will provide two additional classrooms; enlarge the lunch room from approximately 814 square feet of floor space to 1,325 square feet of floor space so as to accommodate a greater portion of the student body at one time; enlarge the existing undersized gymnasium from 511 square feet of floor space to 1,655 square feet of floor space to allow for sports instruction as well as room to seat the complete elementary school student body; provide an additional 307 square feet of floor space in the cellar for occupational therapy; provide 4 additional breakout spaces, containing approximately 922 square feet of floor area, adjacent to classrooms to allow for small group instruction; relocate the Meeting Room from a space interrupted by columns on the first floor of the existing school building to a column-less space in the proposed rear yard encroachment with a mezzanine; an enlarged library and computer lab; a new dedicated classroom for music instruction large enough for the storage of musical instruments and supplies; and additional administrative office space; and

WHEREAS, in response to Board questions regarding the proposed administrative space, a representative of the School testified at hearing that some administrators were relocated to another one of the School's campuses in order to make room for additional classroom space at the subject site and that the additional administrative office space proposed herein is intended to allow those administrators to return to the subject site and for all of the school's

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# MINUTES

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administrative offices to again be located, more efficiently, at a single site; and

WHEREAS, in response to Board inquiry regarding the smaller size of the proposed Meeting Room as compared to the existing Meeting Room, the same School representative testified that while the proposed Meeting Room will not accommodate the entire student body, it is not the School's practice for the entire student body to utilize the Meeting Room at the same time and that the gym is, instead, utilized for school-wide general assemblies; and

WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), an educational or religious institution's application is to be granted unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such application; and

WHEREAS, based on the above, the Board finds that the programmatic needs of the School create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

WHEREAS, because the School is a not-for-profit organization and the variance is needed to further its not-for-profit mission, the finding set forth in ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the School represents that, pursuant to ZR § 72-21(c), the variance, if granted, will not alter the character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, the applicant notes that Bergen Street has a mapped width of 75 feet and is, thus, a "wide street" as defined in ZR § 12-10; that a school use is permitted as-of-right in the subject zoning districts; that the surrounding neighborhood is characterized by buildings ranging from three-stories to five-stories with residential and ground floor retail uses; and that the proposed enlargement is consistent with the four- and five-story buildings on the subject block that have similar heights, including the existing School building at 20 Bergen; and

WHEREAS, the applicant also submitted a shadow study demonstrating that the proposed enlargement will have no or limited impact on the surrounding area; and

WHEREAS, with regards to traffic, the School submits that 16-17 small buses transport students to and from the premises between 8 a.m. and 8:15 a.m. and 3 p.m. and 3:15 p.m., many of which have vacant seats and can, if necessary, accommodate the anticipated modest increase in student enrollment and, accordingly, the proposed enlargement will have no impact on traffic on Bergen Street; and

WHEREAS, the School represents that no food is

prepared on-site, that students bring their own lunch and that food and waste refuse will be stored in the refrigerated perishable food trash storage space indicated on the proposed cellar floor plan before being placed at the curb prior to pick-up; and

WHEREAS, in light of the foregoing, the Board finds that the proposal will not alter the essential character of the surrounding neighborhood, nor impair the use or development of adjacent properties, and not be detrimental to the public welfare; and

WHEREAS, the School states that the practical difficulties herein complained of are inherent to its unique programming needs and were not caused by the owner of the site or a predecessor in title; and

WHEREAS, the Board finds that the hardship herein was not created by the School; and

WHEREAS, the School represents that, consistent with ZR § 72-21(e), the proposal represents the minimum variance needed to accommodate its programmatic needs; and

WHEREAS, the Board finds that this proposal is the minimum necessary to allow the School to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-100K, dated March 2, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially located within an R6A zoning district and partially located within an R6B, the enlargement of a school that does not comply with the floor area, street wall base height, initial setback, rear yard and lot coverage regulations, contrary to ZR §§ 23-662, 24-11 and 24-33; *on condition* that all work will substantially conform to drawings filed with this application marked "Received June 7, 2017"-Fifteen (15) sheets; and "Received July 12, 2017"- Three (3) sheets; for a total of Eighteen (18) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 25,625 square feet of floor area (3.66 FAR); a maximum of one-floor plus mezzanine encroachment of the building in the rear rising to a maximum height of 23 feet; a maximum lot coverage of 83 percent; a maximum street wall base height of 62'-9" and no front setback, as indicated on the BSA-approved plans;

THAT the above conditions shall be listed on the Certificate of Occupancy;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a Certificate of Occupancy shall be obtained

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# MINUTES

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within four (4) years, by July 11, 2021;

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 shall be considered approved only for the portion related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 11, 2017.

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**2017-29-BZ**

APPLICANT – Goldman Harris LLC, for Brooklyn Flatbush Avenue, LLC, owner.

SUBJECT – Application January 27, 2017 – Special Permit (§73-44) for the reduction in parking from 144 to 72 spaces to facilitate a Use Group 10 furniture store (*Raymour & Flanigan*) in parking category PRC B1. C8-1 zoning district.

PREMISES AFFECTED – 2570 Flatbush Avenue, Block 8590, Lot 31, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown, and Commissioner Montanez.4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 18, 2017, at 10 A.M., for decision, hearing closed.

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*Ryan Singer, Executive Director*

# 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.

Volume 102, No. 30

July 26, 2017

### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

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VACANT

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*Commissioners*

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2017-1-BZ	570 Melrose Avenue, aka 2883 Third Avenue, Bronx

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# DOCKETS

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New Case Filed Up to July 18, 2017  
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**2017-227-BZ**

313-321 West 37th Street, located on the north side of West 37th Street between 8th and 9th Avenues, Block 00761, Lot(s) 22, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the operation a Physical Cultural Establishment (Orangetheory Fitness) on a portion of the first floor of an existing building contrary to ZR §32-10. C6-4M Special Garment Center District. C6-4M SGCD district.  
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**2017-228-BZ**

131-66 40th Road, located on the intersection formed by 40th Road and College Point Boulevard., Block 5060, Lot(s) 37 & 42, Borough of **Queens, Community Board: 7**. Variance (§72-21) to permit the development of a 9-story community facility building (Charles B. Wang Community Health Center) contrary to ZR §33-25 (Side Yard); ZR §33-43 (Height and Setback) and ZR §36-21 (Required Parking). C4-2 zoning district. C4-2 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING AUGUST 15, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, August 15, 2017, 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

### 549-67-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Irene B. Mancus & Joseph H. Mancuso Testamentary Trust, owner.

SUBJECT – Application October 16, 2015 – Extension of Term & Waiver (11-413) seek an extension of term of a previously variance granted pursuant to (72-21) permitting in an R3-2 zoning district an existing coal and oil establishment structural alterations to existing silos to provide storage rooms amend to legalize masonry extension for use as truck garage and removal silos. R3-2 zoning district.

PREMISES AFFECTED – 7-9 Elm Tree Lane, Block 5651, Lot 250, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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### 164-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Rouse SI Shopping Center, LLC, owner; 280 Marsh LLC dba Massage Envy Staten Island, lessee.

SUBJECT – Application August 15, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Massage Envy*) which will expire on October 2, 2017. C4-1 zoning district.

PREMISES AFFECTED – 280 Marsh Avenue (The Crossings @ Staten Island Mall), Block 2400, Lot 300, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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## APPEALS CALENDAR

### 2016-4330-A & 2016-4331-A

APPLICANT – Eric Palatnik, P.C., for 1671 Hylan Blvd. LLC, owner.

SUBJECT – Application November 14, 2016 – To permit the proposed development of a one family home, contrary to Article 3 Section 36 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 16 & 19 Tuttle Street, Block 1481, Lot(s) 96 and 300, Borough of Staten Island

**COMMUNITY BOARD #1SI**

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### 2017-30-A

APPLICANT – Eric Palatnik, P.C., for 1671 Hylan Boulevard LLC, owner.

SUBJECT – Application January 27, 2017 – To permit the proposed development of a one family home, contrary to Article 3 Section 36 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 16 Garage Tuttle Street, Block 1481, Lot 96, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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## REGULAR MEETING AUGUST 15, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, August 15, 2017, 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

### 116-14-BZ

APPLICANT – Gerard J. Caliendo, RA, AIA, for Ben Ohebshalom Med LLC, owner; Crank NYC II Inc., Anthony Maniscalco, lessee.

SUBJECT – Application May 30, 2014 – Special Permit (§73-36) to allow the legalization of an Physical Cultural Establishment (*Crank NYC II*) on the first floor level of an existing five story mixed commercial & residential building in a C1-9 zoning district.

PREMISES AFFECTED – 188 East 93<sup>rd</sup> Street, Block 1521, Lot 40, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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# CALENDAR

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## **2017-14-BZ**

APPLICANT – Davidoff Hutcher & Citron LLP, for FIT Student Housing Corporation, owner.

SUBJECT – Application January 17, 2017 – Variance (§72-21) to permit a one-story above-ground extension for a community facility (UG 3) (Fashion Institute of Technology (FIT) which exceeds the maximum permitted community facility floor area and is contrary to ZR §33-10. C6-2 zoning district.

PREMISES AFFECTED – 230 West 27<sup>th</sup> Street aka FIT Co-Ed Dorm, Block 776, Lot 55, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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## **2017-37-BZ**

APPLICANT – Law Office of Jay Goldstein, for Greenhorn Development, LLC, owner; Rumble Fitness LLC, lessee.

SUBJECT – Application February 7, 2017 – Special Permit (§73-36) to permit the legalization of the operation of a Physical Cultural Establishment (Rumble Fitness) located in a portion of the first floor and cellar of an existing building contrary to ZR §32-10. C6-3X zoning district.

PREMISES AFFECTED – 142 West 23<sup>rd</sup> Street, Block 798, Lot 66, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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## **2017-40-BZ**

APPLICANT – Law Office of Jay Goldstein, for TGA II, LLC, owner; Flywheel Sports, lessee.

SUBJECT – Application February 8, 2017 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Flywheel*) in a portion of the first floor and first floor mezzanine of an existing building contrary to ZR §32-10. C5-2 & C6-4A zoning district.

PREMISES AFFECTED – 420 Park Avenue South (420-422 Park Ave S, 50 East 29<sup>th</sup>), Block 858, Lot 45, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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## **2017-50-BZ**

APPLICANT – Jay Goldstein, Esq., for 819 Realty Group LLC, owner; Beast Fitness Evolved, lessee.

SUBJECT – Application February 21, 2017 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Beast Fitness Evolved*) in a portion of the cellar first floor of an existing building contrary to ZR §32-10. C4-3A zoning district.

PREMISES AFFECTED – 458 5<sup>th</sup> Avenue, Block 1010, Lot 40, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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*Ryan Singer, Executive Director*



# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JULY 18, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

**SPECIAL ORDER CALENDAR**

**156-92-BZ**

APPLICANT – Eric Palatnik, P.C., for Parisi Patel, Inc., owner.

SUBJECT – Application December 20, 2016 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved variance (§72-21) which permitted medical office use in an existing building contrary to side yard regulation at the basement and first floor levels, which expired December 1, 2016. R5 zoning district.

PREMISES AFFECTED – 1835 Bay Ridge Parkway, Block 6216, Lot 60, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 18, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the north side of Bay Ridge Parkway, between 18th and 19th Avenues, within an R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along Bay Ridge Parkway, 4,000 square feet of lot area, and is occupied by a four-story building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 15, 1994, when, under the subject calendar number, the Board granted a variance to permit medical offices (Use Groups 4 and 6) within the existing building, which does not comply with side yard regulations at the basement and first floor levels and does not conform to use regulations on the second and third floors, for a term of twenty (20) years, expiring March 15, 2014; and

WHEREAS, on December 1, 2015, under the subject calendar number, the Board waived its Rules of Practice and Procedure and granted a 20-year extension of term of the variance, expiring March 15, 2034, on condition that trash be stored inside the building until pickup and placed in proper containers, that the third floor use be limited to

conferences and educational purposes, that the above conditions appear on the certificate of occupancy and that a new certificate of occupancy be obtained by December 1, 2016; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that the site complies with all conditions of the previous grants and that a certificate of occupancy can be obtained within 12 months of the grant; and

WHEREAS, the applicant represents that it has experienced a number of administrative delays in obtaining necessary permits but anticipates obtaining a certificate of occupancy within the extension period requested; and

WHEREAS, in response to the Board’s questions at hearing, the applicant confirmed that trash is stored within the building until pickup and that the third floor is being used for educational purposes and conferences; and

WHEREAS, based upon its review of the record, the Board finds that 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 March 15, 1994, as amended through December 1, 2015, so that as amended this portion of the resolution reads: “to grant an extension of time to obtain a certificate of occupancy to July 18, 2018, *on condition* that any and all work shall substantially conform to the Board-approved plans associated with the prior grant; and *on further condition*:

THAT this grant shall be limited to a term of twenty (20) years from March 15, 2014, expiring March 15, 2034;

THAT trash shall be stored inside the building until pickup and placed in proper containers;

THAT use of the third floor shall be limited to conferences and educational purposes;

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 all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT other than as herein amended the resolution above cited shall be complied with in all respects; and

THAT a new certificate of occupancy shall be obtained within one (1) year from the date of this amended resolution, by July 18, 2018.”

Adopted by the Board of Standards and Appeals, July 18, 2017.

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# MINUTES

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## 716-82-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP for Cigarette Realty Co., LLC, owner.

SUBJECT – Application November 9, 2015 – Extension of term of variance (72-21) which permitted retail stores, offices and accessory parking at the rear of the building which expired on June 13, 2013; Extension of Time to Obtain a Certificate of Occupancy which expired on June 13, 2003; Waiver of the Rules. C2-2/R6 & R4 zoning district.

PREMISES AFFECTED – 209-30 Northern Boulevard, Block 7309, Lot 15, Borough of Queens.

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for decision, hearing closed.

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## 182-85-BZ

APPLICANT – Eric Palatnik, P.C., for 209-11 20<sup>th</sup> Street, LLC, owner.

SUBJECT – Application September 27, 2016 – Extension of Term of a previously approved Variance (§72-21) for a one story building for the storage of commercial vehicles for a (UG16) contractor's establishment which expired on September 9, 2016. R6B zoning district.

PREMISES AFFECTED – 209-11 20<sup>th</sup> Street, Block 637, Lot 64, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for decision, hearing closed.

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## 65-94-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for KGH Realty Corp., owner.

SUBJECT – Application March 7, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted an enlargement contrary to side yard regulations and community facility (UG 4) on the ground and cellar floors and commercial offices (UG 6) in the garage which expired on March 5, 2016. R4B zoning district.

PREMISES AFFECTED – 144-02 Jewel Avenue, Block 6642, Lot 2, Borough of Queens.

### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for adjourned hearing.

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## 1-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 117 Seventh Avenue South Properties, LLP, owner TSI Sheridan, LLC dba New York Sports Club, lessee.

SUBJECT – Application February 25, 2016 – Extension of Term for a previously granted special permit (§73-36) for a physical culture establishment (*New York Sports Club*) which expired on June 13, 2015; Waiver of the Rules. C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, Block 610, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for decision, hearing closed.

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## 75-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for The Rupert Yorkville Towers Condominium, owner; TSI East 91<sup>st</sup> Street LLC dba New York Sports Club, lessee.

SUBJECT – Application August 18, 2016 – Extension of Term for a special permit (§73-36) permitting the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on January 28, 2016; Waiver of the Rules. C2-8 zoning district.

PREMISES AFFECTED – 1635 Third Avenue, Block 1537, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.

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## 189-96-BZ

APPLICANT – John C. Chen, R.A., for Ping Yee, owner; Club Flamingo, lessee.

SUBJECT – Application October 24, 2016 – Extension of Term for a previously granted Special Permit (§73-244) of a UG12 Eating and Drinking establishment with entertainment and dancing (*Flamingos*) which expires on May 19, 2016; Waiver of the Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 85-10/12 Roosevelt Avenue, Block 1502, Lot 3, Borough of Queens.

### COMMUNITY BOARD #4Q

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

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# MINUTES

## 168-98-BZ

APPLICANT – Robert J. Stahl for Herbert D. Freeman, 238 Street Holding, LLC, owner.

SUBJECT – Application April 10, 2015 – Extension of Term (§ 11-411) of a previously approved variance which permitted a parking lot for more than five motor vehicles (Use Group 8) which expired on March 23, 2009; Waiver of the Rules. R6/R4A zoning district.

PREMISES AFFECTED – 3050 Bailey Avenue, Block 3261, Lot 12, Borough of Bronx.

### COMMUNITY BOARD #8BX

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for adjourned hearing.

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## 159-00-BZ

APPLICANT – Eric Palatnik, P.C., for Al-Iman Center, Inc., owner.

SUBJECT – Application September 21, 2015 – Extension of Term & Amendment (72-01): extension of term of a previously granted variance of a Use Group 3 school and an Amendment for elimination of the term of the variance and a change and minor plumbing and portion alterations. C8-2 zoning district.

PREMISES AFFECTED – 383 3<sup>rd</sup> Avenue, Block 980, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for continued hearing.

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## 227-02-BZ

APPLICANT – Stanley K. Schlein, Esq., for 4201 Webster Corp., owner.

SUBJECT – Application August 21, 2015 – Extension of Term (§§72-01 and 72-22) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with an accessory convenience store which expired on December 12, 2013; Amendment to the condition of term since the term expired in excess of 2 years but less than ten years; Extension of Time to Obtain a Certificate of Occupancy which expired on December 10, 2006; Waiver of the Board’s Rules. R7-A zoning district.

PREMISES AFFECTED – 527 East 233<sup>rd</sup> Street, Block 3395, Lot 80, Borough of Bronx.

### COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for deferred decision.

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## APPEALS CALENDAR

### 2016-4260-A & 2016-4261-A

APPLICANT – Alfonso Duarte, for Benedetta Lipcic, owner.

SUBJECT – Application October 3, 2014 – Proposed new accessory garage located in the bed of a mapped street contrary to Section 35 of the General City Law. R1-2 zoning district.

PREMISES AFFECTED – 240-45 Depew Avenue, Block 8103, Lot 113, Borough of Queens.

### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated September 19, 2016, acting on Department of Buildings (“DOB”) Application No. 421303707, reads in pertinent part:

Proposed extension to dwelling located in bed [of] mapped street is contrary to Section 35 G.C.L.; and

WHEREAS, a decision on the same date, acting on DOB Application No. 421225819, reads in pertinent part:

Proposed new building accessory garage located in bed of a mapped street is contrary to Section 35 G.C.L.; and

WHEREAS, this is an application to enlarge an existing one-family dwelling and construct a one-car garage 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 18, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located north of Depew Avenue, east of 240th Street and west of 243rd Street (Orient Avenue), within an R1-2 zoning district, in Queens; and

WHEREAS, the site has a width of approximately 100 feet, parallel to and approximately 205 feet north of Depew Avenue, a depth that ranges from 82 feet on its western lot line to 174 feet on its eastern lot line, 13,330 square feet of lot area and is occupied by a two-story one-family dwelling; and

WHEREAS, the site is accessible from Depew Avenue by a ten-foot wide easement running perpendicular to Depew Avenue and across Lot 13, located immediately south of the subject site, recorded under Document ID 2007073100670001 with the New York City Department of Finance Office of the City Register; and

WHEREAS, the applicant proposes to enlarge the existing residence with a two-story addition and construct a one-car accessory garage; both the enlargement and garage are located within the bed of 40th Avenue, a mapped but unbuilt

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# MINUTES

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street; and

WHEREAS, the applicant represents that the enlargement is intended to provide additional living space to the currently undersized residence and that the enlargement and one-car garage must be located in the bed of 40th Avenue because it traverse a large proportion of the site; and

WHEREAS, subject the site is located immediately south of train tracks owned and utilized by the Long Island Railroad (“LIRR”); and

WHEREAS, the applicant submits that the proposed enlargement is more than 35 feet from the tracks and therefore will not affect LIRR operations; and

WHEREAS, despite the applicant’s suggestion that the proposal will not interfere with operation of the LIRR, the Board makes no such determination and defers to DOB regarding any issues that may arise regarding the proximity of the proposed enlargement to the tracks; and

WHEREAS, by letter dated October 12, 2016, the New York City Fire Department states that it has no objection to this proposal on condition that a new placard identifying the building be placed at both the intersection of Depew Street and on the building pursuant to Fire Code Section 505.1; and

WHEREAS, by letter dated April 14, 2017, the New York City Department of Transportation (“DOT”) states that 40th Avenue at this location is mapped to a width of 60 feet and irregular widths and that the City does not have title to the street; further, DOT states that the improvement of 40th Avenue at this location, which would include a taking of the subject lot, is not presently included in DOT’s Capital Improvement Program; and

WHEREAS, by letter dated May 16, 2017, the New York City Department of Environmental Protection (“DEP”) states that there are no existing sewers or water mains in the bed of 40th Avenue at the site; that a 10”-diameter sanitary sewer is located in the bed of 40th Avenue between 240th Street and 243rd Street; and that the site plan provided with this application shows a 35-foot wide sewer corridor within the property line of the subject site for the installation, maintenance and/or reconstruction of the future 10”-diameter sanitary sewer, but that DEP has no objections to the proposal; and

WHEREAS, the Board notes that pursuant to GCL § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved*, that the Board modifies the decisions of the Queens Borough Commissioner, dated September 19, 2016, acting on Department of Buildings Application Nos. 421303707 and 421225819, by the power vested in it by Section 35 of the General City Law to grant this appeal, limited to the decisions noted above *on condition* that construction will substantially conform to the drawings filed with the application marked “Received February 23, 2017”– One (1) sheet; and *on further condition*:

THAT the proposal shall comply with all applicable zoning district requirements and all other applicable laws, rules and regulations;

THAT that a new placard identifying the building be placed at both the intersection of Depew Street and on the building pursuant to Fire Code Section 505.1;

THAT DOB shall review any issues regarding the proximity of the proposed enlargement to the LIRR tracks located to the north of the subject site;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by July 18, 2021;

THAT DOB shall review the plans associated with the Board’s approval for compliance with all relevant provisions of the Zoning Resolution;

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 Certificate of Occupancy;

THAT a Certificate of Occupancy be obtained within four (4) years, by July 18, 2021;

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, July 18, 2017.

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## **235-15-A & 259-15-A**

APPLICANT – Sheldon Lobel, P.C., for Richard Roel, owner.

SUBJECT – Applications October 7, 2015 & November 18, 2015 – Proposed construction of building that does not provide adequate frontage on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R2A zoning district.

PREMISES AFFECTED – 8 Cornell Lane, Block 8129, Lot 156, Borough of Queens.

## **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for adjourned hearing.

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# MINUTES

## ZONING CALENDAR

### 2016-4166-BZ

APPLICANT – Eric Palatnik, P.C., for 2577 East 17<sup>th</sup> Street, LLC, owner.

SUBJECT – Application April 6, 2016 – Special Permit (§73-44) to reduce the required number of accessory parking spaces contrary to §36-21 for ambulatory diagnostic or treatment facility use and Use Group 6 uses with Parking Requirement Category B1. C8-1 zoning district.

PREMISES AFFECTED – 2579 East 17<sup>th</sup> Street, Block 7438, Lot 46, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Adopted by the Board of Standards and Appeals, July 18, 2017.

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### 2017-29-BZ

### CEQR #17-BSA-075K

APPLICANT – Goldman Harris LLC, for Brooklyn Flatbush Avenue, LLC, owner.

SUBJECT – Application January 27, 2017 – Special Permit (§73-44) for the reduction in parking from 144 to 72 spaces to facilitate a Use Group 10 furniture store (*Raymour & Flanigan*) in parking category PRC B1. C8-1 zoning district.

PREMISES AFFECTED – 2570 Flatbush Avenue, Block 8590, Lot 31, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 28, 2016, acting on New Building Application No. 321437487, reads in pertinent part:

“ZR 36-21: The proposed ... accessory parking spaces for Use Group 10 retail (PRC B1) floor area does not comply with 1 space per 300 square feet requirement”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, in a C8-1 zoning district, a reduction in the required number of accessory parking spaces for a Use Group 10 furniture store in parking requirement category B1 from 141 spaces to 70 spaces, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on July 11, 2017, after due notice by publication in *The City Record*, with a continued hearing on July 18,

2017, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Flatbush Avenue and Avenue V, in a C8-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 260 feet of frontage along Flatbush Avenue, 200 feet of frontage along Avenue V, 293 feet of frontage along Hendrickson Street, 55,300 square feet of lot area and is occupied by two one-story commercial buildings and one two-story commercial building; and

WHEREAS, the applicant proposes to demolish the existing buildings and develop a two-story commercial building with a total floor area of 53,484 square feet (0.97 FAR), 42,294 square feet of which will be used for a Use Group 10 furniture store, and 110 parking spaces, 70 of which will be accessory to the Use Group 10 furniture store in parking requirement category B1; and

WHEREAS, the applicant represents that, pursuant to ZR § 36-21, 141 spaces are required for the proposed furniture store, calculated at a rate of one space per 300 square feet of floor area; however, the applicant seeks to provide 70 spaces, 71 fewer spaces than required; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
PARKING SPACES REQUIRED FOR  
AMBULATORY DIAGNOSTIC  
OR TREATMENT FACILITIES LISTED IN  
USE GROUP 4 AND  
COMMERCIAL USES IN PARKING  
REQUIREMENT CATEGORY B1

# MINUTES

Parking Spaces Required Per Number of Square Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar space*, except *cellar space used* for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for Use Group 10 furniture stores in parking requirement category B1 at the subject site from one space per 300 square feet of floor area to one space per 600 square feet of floor area provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant submitted an affidavit stating that the building will be occupied by a Use Group 10 furniture store in parking requirement category B1; and

WHEREAS, the applicant further represents that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the Use Group 10 furniture store is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Boards finds the affidavit credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed commercial use at the site; and

WHEREAS, the Board notes that its determination is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces will affect the surrounding community; and

WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand for parking generated by the proposed Use Group 10 furniture store will be approximately 38 vehicles on weekdays from 6:15 p.m. to 6:30 p.m. and 32 vehicles on Saturday from 1:45 p.m. to 2 p.m., and that such demand can be accommodated by the proposed 70 on-site parking spaces accessory to the furniture store; and

WHEREAS, as requested by the Board for buffering along the perimeter of the site, the applicant provided a landscaping plan providing street trees, a planting strip with boxwoods, creeping juniper ground cover and a low wall with an ornamental black iron railing; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed

modification of parking regulations is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the parking modification will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-44 and 73-03 have been met; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 17BSA075K, dated July 7, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated April 17, 2017, the Landmarks Preservation Commission states that the site has no architectural or archaeological significance; and

WHEREAS, by letter dated June 30, 2017, the Department of Environmental Protection (“DEP”) identified the need for a Phase II Environmental Site Assessment and directed the applicant to submit a Phase II Work Plan and an Investigative Health and Safety Plan for review prior to starting fieldwork; and

WHEREAS, by correspondence dated June 30, 2017, the Department of City Planning states that the proposal will not substantially hinder the achievement of any Waterfront Revitalization Program policy; and

WHEREAS, the Board notes that an (E) designation (E-438) for hazardous materials has been placed on the subject site; and

WHEREAS, the (E) designation requires an environmental review by the New York City Office of Environmental Remediation (“OER”) which must be satisfied before DOB will issue a building permit or temporary or final certificate of occupancy at the subject site; 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

# MINUTES

Review and Executive Order No. 91 of 1997, as amended, and makes each and every one of the required findings under ZR § 73-44 and 73-03 *per*mit, in a C8-1 zoning district, a reduction in the required number of accessory parking spaces for a Use Group 10 furniture store in parking requirement category B1 from 141 spaces to 70 spaces, contrary to ZR § 36-21; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 26, 2017”- Nine (9) sheets and “Received July 14, 2017”- Three (3) sheets; and *on further condition*:

THAT the certificate of occupancy issued for the building within which the Use Group 10 furniture store is located shall state that no certificate shall thereafter be issued if the Use Group 10 furniture store is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT prior to issuing a building permit or temporary or final certificate of occupancy, the Department of Buildings shall be furnished with a notice issued by the Office of Environmental Remediation (“OER”) stating that OER does not object to the issuance of such building permit, or temporary or final certificate of occupancy;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by July 18, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2017.

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## 56-02-BZ

APPLICANT – NYC Board of Standards and Appeals.  
SUBJECT – Application June 21, 2016 – Compliance Hearing of a previously approved Variance (§72-21) which permitted the construction of a four-story plus cellar school, which created non-compliances with respect to floor area ratio, lot coverage, side, front and rear yards, and which is contrary to ZR §24-11, §24-34, §24-35, §24-36 and §24-521. R5 zoning district.

PREMISES AFFECTED – 317 Dahill Road, Block 5369, Lot(s) 82, 83, 84 and 85 (tentative Lot 82), Borough of Brooklyn.

## COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to September

26, 2017, at 10 A.M., for continued hearing.

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## 1-96-BZ

APPLICANT – New York City Board of Standards and Appeals.

SUBJECT – Application August 2, 2016 – Amendment for an extension of an existing school building to add 3<sup>rd</sup> and 4<sup>th</sup> floors. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue, southwest corner of Avenue “C”, Block 5369, Lot 6, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for continued hearing.

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## 30-14-BZ

APPLICANT – Eli Katz of Binyan Expediting, for Cong. Machine Chaim, owner; Yeshiva Bais Sorah, lessee.

SUBJECT – Application February 11, 2014 – Variance (§72-21) proposed enlargement to an existing school (Use Group 3) is contrary to §§42-00 & 43-43. M1-1 zoning district.

PREMISES AFFECTED – 6101 16<sup>th</sup> Avenue aka 1602 61<sup>st</sup> Street aka 1601 62<sup>nd</sup> Street, north east corner of 62<sup>nd</sup> Street and south east side of 16<sup>th</sup> Avenue, Block 5524, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez...4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for decision, hearing closed.

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## 215-14-BZ/214-14-A

APPLICANT – Sheldon Lobel, P.C., for Fernando Fernandez, owner.

SUBJECT – Application September 3, 2014 – Variance (§72-21) to permit four-three-story three family semi-detached residential building at the existing premises in an R5 zoning district, also building in the bed of mapped street pursuant to GCL 35. R5 zoning district.

PREMISES AFFECTED – 50-11 & 50-15 103<sup>rd</sup> Street, 103-10 & 103-16 Alstyne Avenue, Block 1930, Lot 50, Borough of Queens.

## COMMUNITY BOARD #4Q

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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# MINUTES

## 234-15-BZ

APPLICANT – Sarah Tadros Awad, for Nawal Tosson, owner.

SUBJECT – Application October 7, 2015 – Special Permit (§73-622) to permit the legalization of an enlargement and the conversion to a two family home of an existing single-family, semi-detached residential building contrary to floor area ZR 23-141 and perimeter wall height 23-631(b). R4-1 zoning district.

PREMISES AFFECTED – 1223 67<sup>th</sup> Street, Block 5760, Lot 70, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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## 2016-4131-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ateret Torah Center, owner.

SUBJECT – Application March 7, 2016 – Special Permit (§73-19) to permit the construction of a school (UG 3) (Yeshiva Ateret Torah) contrary to use regulation on a portion of the lot and a Variance (§72-21) to permit waivers for height and setback, front yard, street wall height, ridge line and absence of off-street loading facilities. C8-2 and R5 (OP) zoning district.

PREMISES AFFECTED – 901 Quentin Road, Block 6641, Block 38, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to September 19, 2017, at 10 A.M., for continued hearing.

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## REGULAR MEETING TUESDAY AFTERNOON, JULY 18, 2017 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

## ZONING CALENDAR

## 2016-4140-BZ

### CEQR #16-BSA-093X

APPLICANT – Akerman, LLP, for M. Sopher & Co. LLC, owner.

SUBJECT – Application March 16, 2016 – Special Permit (§73-52) to extend by 25'-0" a commercial use into a residential zoning district contrary to ZR §§22-10 and 77-11. C1-4/R7-1 and R7-1 district.

PREMISES AFFECTED – 1959 University Avenue, Block 3216, Lot 70, Borough of Bronx.

### COMMUNITY BOARD #5BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 16, 2016, acting on New Building Application No. 220455451, reads in pertinent part:

The proposed PAA filing to extend the comm. use into the res. portion of the z. lot is denied. The proposed extension of commercial use ... is not permitted pursuant to ZR §§ 22-10 and 77-11 and therefore requires a ZR § 73-52 special permit from the Board of Standards and Appeals; and

WHEREAS, this is an application under ZR §§ 73-52 and 73-03 to permit, in an R7-1 (C1-4) zoning district, a Use Group 6 commercial use to extend 25 feet into the adjacent R7-1 zoning district, contrary to ZR §§ 22-10 and 77-11; and

WHEREAS, a public hearing was held on this application on July 18, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of University Avenue, between West 179<sup>th</sup> Street and West Burnside Avenue, partially in an R7-1 (C1-4) zoning district and partially in an R7-1 zoning district, in the Bronx; and

WHEREAS, the site has approximately 100 feet of frontage along University Avenue, 150 feet of depth, 15,112 square feet of lot area and is vacant; and

WHEREAS, the applicant seeks to permit a Use Group 6 commercial use to extend 25 feet into the R7-1 portion of the subject site and to permit the bulk, off-street parking and loading, and all other regulations of the R7-1 (C1-4) zoning district to apply for the 25 feet that such commercial use is permitted to extend; and

WHEREAS, ZR § 73-52 provides that when a zoning lot that is (a) in single ownership as of December 15, 1961 and (b) divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided that: (1) without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (2) such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant submitted documents reflecting the history of ownership of the subject lot and has demonstrated to the satisfaction of the Board that the zoning lot was in single ownership prior to December 15, 1961; and

WHEREAS, as to the 50-percent lot area requirement,



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# MINUTES

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the applicant submitted a site plan indicating that approximately 9,947 of the site's 15,112 square feet of lot area (approximately 66 percent) is located within a R7-1 (C1-4) zoning district; and

WHEREAS, accordingly, the Board finds that the site meets the threshold requirements for ZR § 73-52; and

WHEREAS, as to economic feasibility, the applicant represents that it would not be economically feasible to use or develop the R7-1 portion of the site for a permitted use; specifically, the applicant states that use of the remainder of the site for a permitted use would necessitate additional entry to and corridors through the proposed building, which would interrupt the commercial use thereof, and that the R7-1 portion of the site features a significant grade change that would require significant excavation; and

WHEREAS, accordingly, absent the requested extension of the Use Group 6 commercial use into the R7-1 zoning district, a substantial portion of the site would be unusable and remain vacant; and

WHEREAS, the Board agrees that it would not be economically feasible to use or develop the remaining portion of the site in the R7-1 zoning district for a permitted use; and

WHEREAS, as to the extension's effect on the surrounding area, the applicant submits that the proposed extension is consistent with existing land use conditions and anticipated projects in the immediate area, in that the area surrounding the site is predominated by high-density commercial and residential uses; and

WHEREAS, further, at the request of the Board and to buffer adjacent residential uses, the applicant proposes to landscape the rear yard with Norway spruce trees and blue rug juniper; and

WHEREAS, in response to questions from the Board about the sloping of the site, the applicant represents that the rear wall of the proposed building will be designed as a retaining wall; and

WHEREAS, finally, the applicant represents that the proposed building complies with the applicable regulations for the R7-1 (C1-4) zoning district and that the portion of the site beyond the 25-foot extension will remain an open area; and

WHEREAS, based on the foregoing, the Board finds that the proposed extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16BSA093X, dated February 28, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-52 and 73-03.

*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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-52 and 73-03 to permit, in an R7-1 (C1-4) zoning district, a Use Group 6 commercial use to extend 25 feet into the adjacent R7-1 zoning district, contrary to ZR §§ 22-10 and 77-11; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 18, 2017" – Ten (10) sheets; and *on further condition*:

THAT a certificate of occupancy shall be obtained within four (4) years, by July 18, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2017.

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# MINUTES

**2017-36-BZ**

**CEQR #17-BSA-081K**

APPLICANT – Law Office of Jay Goldstein, for 55 Prospect LLC, owner; Shadowbox Dumbo LLC, lessee.

SUBJECT – Application February 6, 2017 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (*Shadowbox*) located on the first floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 55 Prospect Street, Block 63, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 5, 2017, acting on Alteration Application No. 321391524, reads in pertinent part:

“Proposed Physical Culture Establishment in M1-6 zoning district is not permitted pursuant to ZR 42-10 and is referred to the Board of Standards and Appeal[s] for special permit under ZR 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, in an M1-6 zoning district, on a portion of the first floor of a nine-story, with cellar, commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on July 18, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Prospect Street, between Adams Street and Pearl Street, in an M1-6 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 205 feet of frontage along Prospect Street, 101 feet of frontage along Adams Street, 100 feet of frontage along Pearl Street, 20,630 square feet of lot area and is occupied by a nine-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

(1) that such *use* is so located as not to impair the essential character or the future use or

development of the surrounding area; and

(2) that such *use* contains:

(i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or

(ii) a swimming pool of a minimum 1,500 square feet; or

(iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or

(iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

(1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

(2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or

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# MINUTES

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revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 3,398 square feet of floor area on the first floor, including a reception area, office, gymnasium and locker rooms; and

WHEREAS, the PCE has been in operation as Shadowbox Dumbo LLC since January 2017; and

WHEREAS, the PCE's hours of operation are 5:30 a.m. to 11:00 p.m., Monday through Friday, and 6:30 a.m. to 7:00 p.m., Saturday and Sunday; and

WHEREAS, the applicant represents that the PCE use is consistent with the commercial character of the surrounding area and that the PCE is fully contained within an existing commercial building; and

WHEREAS, in addition, the applicant submits that sound attenuation measures—including sheetrock partitions with an STC rating of 63, isolated-slab flooring with an STC rating of 62, perimeter isolation boards and sealed and caulked penetrations at studio ceilings and partitions—have been provided within the space to absorb noise, echoes and reverberation, if any, created by the PCE; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE includes a boxing ring for personal training sessions and a group exercise room used for instructional classes; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, by letter dated July 14, 2017, the Fire Department states that, based upon its review of the drawings and supporting documentation, it has no objection to this application; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the

proposed Type II action noted in the CEQR Checklist No. 17-BSA-081K, dated February 6, 2017; and

WHEREAS, the Board has determined that the evidence in the record supports the requisite findings for a special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of the special permit has been reduced to reflect the period of time that the PCE has operated at the site without a special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 to *legalize*, on a site located within an M1-6 zoning district, a physical culture establishment, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 18, 2017"- Three (3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring January 1, 2027;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by July 18, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 18, 2017.

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# MINUTES

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**2016-4271-BZ**

APPLICANT – Eric Palatnik, P.C., for 93 Amherst Street LLC, owner.

SUBJECT – Application October 21, 2016 – Special Permit (§73-622) for the enlargement of an existing one family home contrary to floor area, open space and lot coverage (ZR 23-141) and side yard (ZR 23-461. R3-1 zoning district.

PREMISES AFFECTED – 201 Hampton Avenue, Block 8727, Lot 30, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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**2016-4340-BZ**

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Flushing Point Holding, LLC, owner.

SUBJECT – Application November 23, 2016 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C4-2 zoning district.

PREMISES AFFECTED – 131-02 40<sup>th</sup> Road, Block 5066, Lot(s) 110-150, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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**2017-1-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2883 Third Avenue Realty Associates, owner; Blink 2883 3<sup>rd</sup> Avenue, Inc., lessee.

SUBJECT – Application January 3, 2017 – Special Permit (§73-36) to operate a physical culture establishment (*Blink*) within an existing building. C4-4 zoning district.

PREMISES AFFECTED – 570 Melrose Avenue aka 2883 Third Avenue, Block 2374, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #1BX**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez...4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to July 25, 2017, at 10 A.M., for decision, hearing closed.

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*Ryan Singer, Executive Director*

# 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.

Volume 102, No. 31

August 2, 2017

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2017-177-BZ	9A Lake Avenue, Brooklyn

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New Case Filed Up to July 25, 2017  
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**2017-229-BZ**

888 East 56th Street, located on the west side of East 56th Street between Glenwood Road and Avenue H, Block 07739, Lot(s) 60, Borough of **Brooklyn, Community Board: 18**. Variance (§72-21) to permit the construction of a School (UG 3) and House of Worship (UG 4) (Rehoboth Open Bible Church) contrary to ZR §24-11 (FAR & Lot Coverage); ZR §24-521 (Wall Height); ZR §24-34 (Front Yard); ZR §24-35 (Side Yard); ZR §24-36 (Rear Yard) and ZR §24-521 (Bulk Regulations). R3-2 zoning district. R3-2 district.  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING AUGUST 22, 2017, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 22, 2017, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

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### APPEALS CALENDAR

#### 2016-1186-A thru 2016-1207-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Airport Park LLC, owner.

SUBJECT – Application January 12, 2016 – Proposed construction of a two-story, two-family building, contrary to General City Law Section 35. R1-1 zoning district.

PREMISES AFFECTED – 145-25 to 147-21A Hook Creek Boulevard, Block 13633, Lot(s) 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, Borough of Queens.

**COMMUNITY BOARD #13Q**

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## REGULAR MEETING AUGUST 22, 2017, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 22, 2017, 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

#### 10-15-BZ

APPLICANT – Goldman Harris LLC, for Steven Elghanayan/Epic Lafayette LLC, owner; Kevin P. McGrath/Five Points Academy, lessee.

SUBJECT – Application January 15, 2015 – Special Permit (§73-36) to allow a physical culture establishment (*Five Points Academy*) in the cellar and ground floor of the premises, located within an M1-5B zoning district.

PREMISES AFFECTED – 148 Lafayette Street, Block 233, Lot 26, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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#### 157-15-BZ

APPLICANT – Law Office of Lyra J. Altman, for Naomi Houllou and Albert Houllou, owners.

SUBJECT – Application July 13, 2015 – Special Permit (73-622) for the enlargement of an existing single family contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear

yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 3925 Bedford Avenue, Block 6831, Lot 76, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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#### 173-15-BZ

APPLICANT – Sheldon Lobel, P.C., for Waterview Lofts LLC, owner; 92 Fitness Crew New York 2, LLC, lessee.

SUBJECT – Application August 3, 2015 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Orangetheory Fitness*) on the cellar level of an existing mix-use building contrary to ZR §42-10. M1-2/R6A & MX-8 zoning districts.

PREMISES AFFECTED – 157 Kent Avenue, Block 2349, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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#### 270-15-BZ

APPLICANT – Moshe M. Friedman, P.E., for 338 Devoe St LLC, owner.

SUBJECT – Application December 10, 2015 – Variance (§72-21) to permit the construction of a 3 story residential building contrary to use regulations. M1-1 zoning district.

PREMISES AFFECTED – 338 Devoe Street, Block 2924, Lot 12, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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#### 2016-1219-BZ & 2016-1220-A

APPLICANT – Sheldon Lobel, P.C., for 74<sup>th</sup> and Myrtle LLC, owner.

SUBJECT – Application February 10, 2016 – Variance (§72-21) to permit the development of a two-story plus cellar mixed-use building with ground floor commercial use an residential use on the second floor, contrary to residential floor area, front yard, side yard, parking and use regulations. Proposed construction of a two-story plus cellar building partially within the bed of a proposed street widening, pursuant to Article 3 of General City Law 35. R4-1 zoning district.

PREMISES AFFECTED – 73-45 Myrtle Avenue, aka 78-70 74<sup>th</sup> Street, Block 3823, Lot 88, Borough of Queens.

**COMMUNITY BOARD #5Q**

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#### 2017-239-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for John Kalnberg, owner.

SUBJECT – Application August 14, 2017 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of a home damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of front yard regulations pursuant to ZR 23-45. R3-1 zoning district.

PREMISES AFFECTED – 47 Doty Avenue, Block 3124, Lot 5, Borough of Staten Island.



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# CALENDAR

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## COMMUNITY BOARD #2SI

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### 2017-241-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for John Kalnberg, owner.

SUBJECT – Application August 16, 2017 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of a home damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of front yard regulations pursuant to ZR 23-45. R3-1 zoning district.

PREMISES AFFECTED – 636 Clarence Avenue, Block 5486, Lot 18. Borough of Bronx.

## COMMUNITY BOARD #10BX

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### 2017-242-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for John Kalnberg, owner.

SUBJECT – Application August 14, 2017 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of a home damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of front yard regulations pursuant to ZR 23-45. R3-1 zoning district.

PREMISES AFFECTED – 15 Stanton Road, Block 8800, Lot 85, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

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*Ryan Singer, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, JULY 25, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and  
Commissioner Ottley-Brown.

**SPECIAL ORDER CALENDAR**

**302-01-BZ**

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Creston Avenue Realty LLC, owner.

SUBJECT – Application April 19, 2017 – Amendment of a pre-1961 variance which permitted an open parking lot accessory to a commercial building. The Amendment seeks to develop an as-of-right building on the site retaining the accessory parking. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, Block 3175, Lot 26, Borough of Bronx.

**COMMUNITY BOARD # 7BX**

**ACTION OF THE BOARD** – Application granted on condition

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application to amend a variance, previously granted by the Board, to permit the development of an as-of-right building on the site; and

WHEREAS, a public hearing was held on this application on June 27, 2017, after due notice by publication in *The City Record*, with a continued hearing on July 25, 2017, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, the Bronx, recommends approval of the application; and

WHEREAS, the subject site is located on the southwest corner of Creston Avenue and East 191st Street, within an R8 zoning district, in the Bronx; and

WHEREAS, the site has approximately 172 feet of frontage along Creston Avenue, 136 feet of frontage along East 191st Street, 24,677 square feet of lot area and is occupied by a parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 7, 1948, when, under BSA Cal. No. 861-48-BZ, the Board granted a variance to permit the parking of more than five (5) motor vehicles at the site for customers and patrons of a nearby department store for a term of two (2) years, expiring December 7, 1950, on various conditions; and

WHEREAS, on December 20, 1949, under BSA Cal. No. 861-48-BZ, the Board amended the resolution to permit the department store to charge customers for parking and to

accept revised plans indicating a single entrance and exit from the premises; and

WHEREAS, on November 28, 1950, under BSA Cal. No. 861-48-BZ, the Board extended the term of the variance for another two (2) years, expiring November 28, 1952; and

WHEREAS, on May 22, 1951, under BSA Cal. No. 861-48-BZ, the Board granted a three (3) month extension of time to complete construction and obtain a certificate of occupancy, expiring August 22, 1951; and

WHEREAS, on November 25, 1952, under BSA Cal. No. 861-48-BZ, the Board extended the term of the variance for an additional five (5) years, expiring November 25, 1957, on condition that all permits be obtained and a new Certificate of Occupancy be obtained within three (3) months; and

WHEREAS, on June 8, 1954, under BSA Cal. No. 861-48-BZ, the Board denied a variance application proposing to construct a one-story garage on the site and utilize the roof for additional parking; and

WHEREAS, on the same date, under BSA Cal. No. 48-54-A, the Board denied an appeal from Department of Buildings objections related to the same proposal; and

WHEREAS, on November 13, 1963, April 25, 1972, January 10, 1978, and June 21, 1983, under BSA Cal. No. 861-48-BZ, the Board extended the term of the variance for five (5) year terms, the latest of which expired January 10, 1988; and

WHEREAS, on April 23, 2002, under the subject calendar number, the Board reestablished the expired variance, pursuant to ZR §§ 11-411 and 73-01, permitting an accessory parking facility for commercial use for a term of ten (10) years, expiring April 23, 2012, on condition that the premises be maintained free of debris and graffiti, the fences and gates be of legal and uniform height, lighting be directed down and away from residential uses and that these conditions appear on the Certificate of Occupancy; and

WHEREAS, on January 10, 2012, under the subject calendar number, the Board granted a six (6) month extension of time to obtain a Certificate of Occupancy, expiring July 10, 2012; and

WHEREAS, on December 11, 2012, under the subject calendar number, the Board further extended the term of the variance for an additional ten (10) years, expiring April 23, 2022, and granted a one (1) year extension of time to obtain a Certificate of Occupancy, expiring December 11, 2013, on condition that the site be maintained free of debris and graffiti and that this condition appear on the Certificate of Occupancy; and

WHEREAS, on October 21, 2014, under the subject calendar number, the Board granted another one (1) year extension of time to obtain a Certificate of Occupancy, expiring October 21, 2015; and

WHEREAS, Certificate of Occupancy No. 200683590F was issued for the subject site, effective August 10, 2015, indicating its use as a parking lot for 67 vehicles solely for customers and patrons of 2501 Grand Concourse; and

WHEREAS, the applicant proposes to develop the site with a 12-story mixed-use residential and community facility building and continue to provide 66 accessory parking spaces within the cellar and ground floor; and

# MINUTES

WHEREAS, the applicant represents that the proposed mixed-use building is fully compliant with all applicable zoning regulations; the Board has neither reviewed the proposed building for zoning compliance nor contemplated any waivers associated with its use or building envelope; and

WHEREAS, the applicant submits that the site is located in the Transit Zone and that the proposed building will provide “income-restricted housing units,” as defined in ZR § 12-10, for which no accessory off-street parking spaces are required pursuant to ZR § 25-251, and, further, that the proposed building will have no more than 38 units at rents affordable to households earning above 80 percent Area Median Income (“AMI”), for which parking for 40 percent of the units is required where group parking facilities are provided pursuant to ZR § 25-23 in the subject district, resulting in a maximum of 15 required spaces, all of which may be waived pursuant to ZR § 25-261; and

WHEREAS, thus, the applicant represents that the 66 accessory parking spaces will be sufficient for both residents of the proposed building, who are not anticipated to own cars, and the continued use by employees and patrons of the offices and stores now located at the building previously occupied by the large department store to which the existing parking lot was originally permitted as accessory (identified on the Certificate of Occupancy as 2501 Grand Concourse); and

WHEREAS, the proposed enclosed parking facility will be self-park, though an attendant is proposed to be present at the premises seven days a week from 7:00 a.m. to 10:00 p.m. to ensure that daily parkers are patrons of or visitors to 2501 Grand Concourse; at all other hours, the applicant submits that monthly parkers, likely employees of the offices and stores located at 2501 Grand Concourse, will have 24-hour access to the parking facility through an electronic control device; and

WHEREAS, in response to Board concerns regarding buffering the parking facility use from adjacent residential uses, the applicant revised the drawings to indicate, *inter alia*, a 6-foot tall metal screened fence along a portion of the western lot line, a 6-foot tall vegetated screen fence with native climbing vines planted in ground along the southern lot line and landscaping throughout the site; and

WHEREAS, based on the foregoing, the Board has determined that the request to amend the variance to permit the development of a mixed-use residential and community facility building with 66 accessory parking spaces provided on the cellar and first floor levels 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 April 23, 2002, as amended through October 21, 2014, so that as amended this portion of the resolution shall read: “to permit the development on the site of an as-of-right mixed-use residential and community facility building, compliant with applicable zoning regulations, with 66 accessory parking spaces provided on the cellar and first floor levels; *on condition* that all work shall substantially conform to drawings as filed with this application, marked “Received July 25, 2017”- Fourteen (14) sheets; and *on further condition*:

THAT the building occupying the site shall provide

income-restricted housing, as defined in ZR § 12-10, for which no accessory off-street parking spaces are required pursuant to ZR § 25-251, and a maximum of 38 moderate income units for which a maximum of 15 accessory off-street parking spaces are required and, thus, waived pursuant to ZR § 25-261;

THAT the parking spaces provided are accessory to use(s) located at 2501 Grand Concourse, but otherwise available to residential tenants of the proposed mixed-use building;

THAT monthly parkers shall have access to the subject parking facility 24-hours a day 7-days a week by key card or other electronic device;

THAT the premises shall be maintained free of debris and graffiti;

THAT the fences and gates shall be of legal and uniform height;

THAT the lighting shall be directed down and away from residential uses;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a new Certificate of Occupancy shall be obtained within four (4) years;

THAT all conditions from the prior resolution 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;

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.”

Adopted by the Board of Standards and Appeals, July 25, 2017.

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## 1259-79-BZ

APPLICANT – Sheldon Lobel, P.C., for 29 West 26<sup>th</sup> LLC, owner.

SUBJECT – Application June 8, 2016 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy for a Variance (§72-21) to convert the fourth and sixth floors of an existing building from manufacturing lofts to residential use which expired on May 8, 2016. M1-6 zoning district.

PREMISES AFFECTED – 29 West 26<sup>th</sup> Street, Block 828, Lot 16, Borough of Manhattan.

## COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

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## THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy, which expired May 8, 2016, in accordance with a variance, originally granted by the Board on July 8, 1980; and

WHEREAS, a public hearing was held on this application on April 4, 2017, after due notice in *The City Record*, and then to decision on July 25, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the north side of West 26th Street, between Broadway and Avenue of the Americas, in an M1-6 zoning district, in Manhattan; and

WHEREAS, the site has approximately 25 feet of frontage along West 26th Street, 99 feet of depth, 2,469 square feet of lot area and is occupied by a seven-story mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 8, 1980, where, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to allow the conversion of all floors above the first floor of the existing seven-story building from manufacturing lofts into a multiple dwelling on condition that a smoke detector with a self-contained alarm be installed in each apartment; that a rate-of-rise device, connected to an alarm that can be heard throughout the building, be installed in the public halls and spaces and on the commercial floors including the cellar; that a manual fire alarm station be installed on each floor; that the existing fire escape be retained and provide street termination to the satisfaction of the Department of Buildings; that all laws, rules and regulations applicable be complied with; and that substantial construction be completed in accordance with ZR § 72-23; and

WHEREAS, on October 6, 1981, March 8, 1983, January 24, 1984, under the subject calendar number, the Board amended the resolution to permit one (1) year extensions of time to complete construction, the last of which expired October 6, 1984; and

WHEREAS, on October 27, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedure and granted a two (2) year extension of time to complete construction and obtain a certificate of occupancy, on condition that construction be substantially complete by April 27, 2011, and a certificate of occupancy be obtained by October 27, 2011; and

WHEREAS, in the course of that application, the applicant represented that the second, third, fifth and seventh floors of the subject building had been converted to residential use, but that construction had not yet been completed due to financing issues, a change in property ownership and a stop work order issued by the Department of Buildings; and

WHEREAS, on May 8, 2012, under the subject calendar number, the Board again waived its Rules of Practice and Procedure and granted a four (4) year extension of time to complete construction and obtain a certificate of occupancy, expiring May 8, 2016; and

WHEREAS, in the prosecution of that application, the applicant represented that the fourth and sixth floors were still

in the process of being converted to residential use; and

WHEREAS, the time to complete construction and obtain a certificate of occupancy having expired, the applicant filed the subject application for an additional four (4) year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant submits that the fourth floor has been substantially converted pursuant to the original variance grant and is occupied by a residential tenant, but that the sixth floor has only been partially converted and is temporarily being utilized as an office for the building management company until work can recommence for its residential conversion; and

WHEREAS, at the hearing held on April 4, 2017, the Board noted that ZR § 42-133 was enacted in tandem with the New York City Loft Law to allow the as-of-right conversion of commercial buildings to residential use in certain zoning districts, including M1-6 zoning districts; and

WHEREAS, ZR § 42-133(a) provides as follows:  
42-133

Provisions for dwelling units in certain M1-5 or M1-6 Districts

- (a) In M1-5 and M1-6 Districts, except for M1-6D Districts, located within the rectangle formed by West 23rd Street, Fifth Avenue, West 31st Street, and Eighth Avenue, no new *dwelling units* shall be permitted. However, *dwelling units* which the Chairperson of the City Planning Commission determines were occupied on September 1, 1980, shall be a permitted *use* provided that a complete application to permit such *use* is filed by the owner of the *building* or the occupant of a *dwelling unit* in such *building* not later than June 21, 1983.

Such *dwelling units* shall comply with the requirements of Section 15-024 or 15-22, where applicable and with Section 15-23. For the purposes of Article 7C of the New York State Multiple Dwelling Law, such a determination of *residential* occupancy on September 1, 1980, shall be deemed to permit *residential use* as-of-right for such *dwelling units*.

[...]; and

WHEREAS, the subject site is also under the jurisdiction of the New York City Loft Board (“Loft Board”), which issued a Certification of Compliance Pursuant to Title 29 of the Rules of the City of New York (“RCNY”), L.B. Cert. # 380, dated July 10, 1995, certifying that the building located at the subject site complies with all of the requirements of 29 RCNY § 2-01(d)(2) relating to Interim Multiple Dwellings; and

WHEREAS, the applicant additionally provided evidence that the registration of the residential units located on the second, third, fourth, fifth and seventh floors of the subject building was last renewed with the Loft Board in 2016; and

WHEREAS, the Board observed that because the dwelling units on the second through fifth and seventh floors

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# MINUTES

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are registered with the Loft Board, the variance is no longer necessary to permit residential occupancy of those floors<sup>1</sup>; and

WHEREAS, at hearing, the Board expressed its disapproval regarding the more than three decades it has taken to substantially complete construction in accordance with the Board's grant, including the installation of fire safety measures; and

WHEREAS, by letter dated July 21, 2016, the Fire Department states that "[b]ased on the extreme age of the original application and the numerous renewals that have been filed, this Agency recommends that this renewal NOT be considered for a final vote by the Board, until the sprinkler system installation is complete and approved"; and

WHEREAS, by letter dated Jun 14, 2017, the applicant requested withdrawal of this application, without prejudice; and

WHEREAS, at the Board's request, the applicant submitted a second letter, dated July 12, 2017, providing additional details regarding the request to withdraw, indicating an intent to continue the as-of-right commercial use on the sixth floor and not pursue its residential conversion at this time; and

WHEREAS, the Board notes that, in voting to accept the request to withdraw this application, the 1980 variance granted for this site has lapsed as a matter of law, pursuant to ZR § 72-23, as of May 8, 2016; and

*Therefore, it is Resolved*, that the subject application is hereby withdrawn, without prejudice.

Adopted by the Board of Standards and Appeals, July 25, 2017.

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## **234-84-BZ**

APPLICANT – Robert E. Schuster, AIA, for Forest Realty Management, LLC., owner.

SUBJECT – Application April 28, 2015 – Extension of Term (§11-411) of a previously approved Variance which permitted the operation of an Eating and Drinking Establishment (UG 6) which expired on February 12, 2015; Waiver of the Board's Rules. C81-/R3-1 zoning district.

PREMISES AFFECTED – 1076/82 Forest Avenue, Block 1696, Lot 26, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 19, 2017, at 10 A.M., for decision, hearing closed.

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## **183-85-BZ**

APPLICANT – Eric Palatnik, P.C., for 206 20<sup>th</sup> Street LLC, owner.

SUBJECT – Application September 27, 2016 – Extension of Term of a previously approved Variance (§72-21) for the operation of a (UG 16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom building, which expires on November 18, 2016. R6B zoning district.

PREMISES AFFECTED – 206/8 20<sup>th</sup> Street, Block 640, Lot 21, Borough of Brooklyn.

### **COMMUNITY BOARD #7BK**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 19, 2017, at 10 A.M., for decision, hearing closed.

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## **19-15-BZ**

APPLICANT – Herrick, Feinstein LLP, for Andon Investment L.P., owner; Retro Fitness (dba Fitness of New York LLC), lessee.

SUBJECT – Application September 28, 2016 – Amendment of a previously approved Special Permit (§73-36) to permit a physical culture establishment (*Retro Fitness*) to be located at second-story level (plus entrance at ground-floor level) of a new two-story building. R7-1/C2-2 zoning district.

PREMISES AFFECTED – 92-77 Queens Boulevard, Block 2075, Lot 39, Borough of Queens.

### **COMMUNITY BOARD #6Q**

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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<sup>1</sup> Because the sixth floor is not currently registered with the Loft Board, residential occupancy of that floor would require the continued exercise of jurisdiction by the Board through the subject variance or, alternatively, an extension of Loft Board jurisdiction.

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## APPEALS CALENDAR

### 2017-4-A

APPLICANT – Eric Palatnik, P.C., for Lavan Muthu, owner.

SUBJECT – Application January 6, 2017 – Proposed construction of a two story, mixed use residential and commercial building located within the bed of a mapped street, contrary to General City Law Section 35. C1-3/R4 zoning district.

PREMISES AFFECTED – 339 Victory Boulevard, Block 115, Lot 63, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

### THE RESOLUTION –

WHEREAS, the decision of the Staten Island Deputy Borough Commissioner, dated December 14, 2016, acting on Department of Buildings (“DOB”) Application No. 520283336, reads in pertinent part:

GCL 35: Proposed construction within the bed of a mapped street is contrary to Article III, Section 35 of the General City Law. Therefore, refer [to] the Board of Standards and Appeals for Review; and

WHEREAS, this is an application to construct a two-story mixed-use commercial and residential building partially 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 25, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Victory Boulevard and Cebra Avenue, within an R4 (C1-3) zoning district and the Special Hillside Preservation District, on Staten Island; and

WHEREAS, the site has approximately 50 feet of frontage along Victory Boulevard, 108 feet of frontage along Cebra Avenue and is occupied by a one-story building that will be demolished to facilitate the construction of the subject proposal; and

WHEREAS, the applicant proposes to construct a two-story building with commercial space on the ground floor and four residential units on the second floor partially within the bed of a mapped, but unbuilt, portion of Victory Boulevard; and

WHEREAS, the applicant represents that the proposed building will comply with all bulk regulations applicable in the subject zoning districts and the Special Hillside Preservation District; and

WHEREAS, by letter dated June 20, 2016, the New York State Department of Environmental Conservation (“DEC”) states that Spill Case # 1510228 has been closed at

the subject site, but reserves all of its rights concerning, and such forbearance shall not extend to, any further investigation or remedial action DEC deems necessary due to (1) the off-site migration of petroleum contaminants that was unknown at the time of the closure; (2) environmental conditions related to this spill case which were unknown to DEC at the time of the closure; (3) information received, in whole or in part, after the DEC’s spill case closure, which indicates that corrective action was not sufficiently protective of human health and/or the environment; and (4) fraud in obtaining the spill closure determination; and

WHEREAS, DEC also states that, if subsurface contamination is encountered while excavating for any construction activity, appropriate remedial and vapor mitigation efforts may need to be taken to prevent vapor intrusion into any site development and to ensure human health and safety and that the spill closure does not exempt Responsible Parties from compliance with any applicable laws and regulations; and

WHEREAS, by letter dated February 3, 2017, the New York City Department of Transportation (“DOT”) states that, at this location, Victory Boulevard is mapped for 100 feet and the City has a Corporation Counsel Opinion of Dedication for approximately 65 feet of this width but no title for the remaining 35 feet to the east and west; and

WHEREAS, DOT further states that the improvement of Victory Boulevard at this location, which would involve the taking of a portion of the subject lot, is not presently included in DOT’s Capital Improvement Program, but that this fact does not preclude a change in the program in the future; and

WHEREAS, by letter dated February 10, 2017, the New York City Department of Environmental Protection (“DEP”) states that there are a 3’-3” by 2’-2” combined sewer, a 12” diameter, two 20” diameter and a 48” diameter city water main in the bed of Victory Boulevard at the subject location and two 10” diameter sanitary sewers and a 36” diameter storm future sewer in the bed of Victory Boulevard between Cebra Avenue and Woodstock Avenue, but that DEP has no objections to the subject proposal; and

WHEREAS, an E designation (E-262) has been mapped on the subject site pursuant to a Negative Declaration CEQR No. 11DCP023Y, dated September 13, 2010, prepared by the New York City Department of City Planning in accordance with Article 8 of the Environmental Conservation Law 6 N.Y.C.R.R. part 617, to preclude the potential for significant adverse hazardous materials impact; and

WHEREAS, the text of the E designation requires, for petroleum, that a soil, soil gas, and groundwater testing protocol (including a description of methods), and a site map with all sampling location represented clearly and precisely be submitted to the DEP by the fee owner(s) of the lot for review; and, for non-petroleum, that (1) a scope of work for any sampling and testing needed to determine if contamination exists and to what extent remediation may be required, including all relevant supporting documentation, be submitted to DEP for review and approval prior to implementation and (2) a Health and Safety Plan (“HASP”) be devised and approved by the DEP before the commencement of any on-site

# MINUTES

activities; and

WHEREAS, the text further requires that after sample collection and laboratory analysis have been completed on the soil and/or groundwater samples, a summary of the data and findings in the form of a written report be presented to the DEP for review and approval; if DEP determines that remediation is necessary, the fee owner must submit a proposed remediation plan to DEP for review and approval; and once approval has been obtained and the work completed, the owner of the lot must provide proof to DEP that the work has been completed satisfactorily; and

WHEREAS, the site is also subject to E designations related to air quality and noise; and

WHEREAS, with regards to air quality impacts, the E designation text requires that any new residential/commercial development at the site use natural gas as the type of fuel for space heating and hot water (HVAC) systems; and with regards to noise impacts, the E designation text requires that future residential/commercial uses provide a closed window condition with a minimum of 35 dB(A) window/wall attenuation on all facades in order to maintain an interior noise level of 45 dB(A), that an alternate means of ventilation be provided in order to maintain a closed-window condition and that that such alternate means of ventilation includes, but is not limited to, central air conditioning or air conditioning sleeves containing air conditioners; and

WHEREAS, by letter dated April 6, 2017, the Fire Department states that it has no objection regarding the subject proposal on condition that there are no intentions of any other City agencies to take action to acquire the property; and

WHEREAS, the Board notes that pursuant to GCL § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved*, that the Board modifies the decisions of the Staten Island Deputy Borough Commissioner, dated December 14, 2016, acting on Department of Buildings Application No. 520283336, by the power vested in it by Section 35 of the General City Law to grant this appeal, limited to the decisions noted above *on condition* that construction will substantially conform to the drawings filed with the application marked "Received May 19, 2017"– Two (2) sheets; and *on further condition*:

THAT the site shall comply with all applicable conditions required by the Negative Declaration, dated September 13, 2010, associated with its E designations for hazardous materials, air quality and noise (E-262);

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by July 25, 2021;

THAT DOB shall review the plans associated with the Board's approval for compliance with all relevant provisions of the Zoning Resolution;

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 Certificate of Occupancy;

THAT a Certificate of Occupancy be obtained within four (4) years, by July 25, 2021;

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, July 25, 2017.

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## 2016-4327-A

APPLICANT – Sky House Condominium, owner.  
SUBJECT – Application November 10, 2016 – Appeal challenging NYC Department of Building's determination that the Tower complies with the New York City Zoning Resolution and the New York City Housing Maintenance Code. C5-2 zoning district.

PREMISES AFFECTED – 15 East 30<sup>th</sup> Street, Block 860, Lot (s) 12, 69, 63, Borough of Manhattan.

## COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to September 19, 2017, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 104-15-BZ

APPLICANT – Rosenberg & Estis, P.C. by Frank E. Chaney, Esq., for 4452 Broadway Mazal LLC, owner.  
SUBJECT – Application May 12, 2015 – Variance (§72-21) to permit the development of a mixed-use residential building with retail contrary to underlying bulk and use regulations. R7-2 zoning district with C2-4 overlay.

PREMISES AFFECTED – 4452 Broadway aka 44-90 Fairview Avenue, Block 2170, Lot(s) 62, 400, Borough of Manhattan.

## COMMUNITY BOARD #12M

**ACTION OF THE BOARD** – Application Dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated April 17, 2015, acting on Application No. 121184128, reads in pertinent part:

1. ZR 23-145: The proposed residential FAR exceeds the maximum permitted;
2. ZR 23-22; ZR 35-40: The proposed number of dwelling units exceeds the maximum permitted;
3. ZR 25-23: The proposed number of accessory

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off-street parking spaces for the residential use is less than the required;

4. ZR 32-421: The proposed commercial use above the level of the first story ceiling is contrary to ZR 32-421;
5. ZR 23-633(b); ZR 35-24(c): The proposed height of the street wall exceeds the maximum base height;
6. ZR 23-633(c); ZR 35-24(d): The proposed building height exceeds the maximum permitted;
7. ZR 36-62: Proposed number of accessory off-street loading berths is less than required; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located within an R7-2(C2-4) zoning district, the construction of a mixed-use commercial and residential building that does not comply with zoning regulations relating to maximum floor area ratio, maximum number of dwelling units, accessory off-street parking requirements, commercial use, maximum street wall height, maximum building height and accessory off-street loading berth requirements set forth in ZR §§ 23-145, 23-22, 23-633(b), 23-633(c), 25-23, 32-421, 35-24(c), 35-24(d), 35-40 and 36-62; and

WHEREAS, this application was originally filed on May 12, 2015; and

WHEREAS, the first Notice of Comments was issued on October 5, 2015; the project was revised and a new application with responses to the Notice of Comments was submitted on August 2, 2016; and

WHEREAS, on September 29, 2016, a second Notice of Comments was issued and a new application with a third revised project was filed on November 21, 2016; and

WHEREAS, the application was calendared for hearing and was, indeed, heard for the first time on December 13, 2016; a second hearing was then scheduled for February 28, 2017; and

WHEREAS, prior to the second hearing, the counsel that filed the application informed staff that he would be withdrawing and that new counsel was being retained to prosecute this application; and

WHEREAS, no submission was made to the Board in advance of the February 28, 2017, hearing, no one appeared to represent this application at that hearing and the application was taken off-calendar; and

WHEREAS, by letter dated May 10, 2017, the owner of record was informed that the application was scheduled for public hearing on July 25, 2017, that a submission—including a response to comments made at the December public hearing—was due by July 5, 2017, and that failure to appear at the July 25, 2017, hearing could result in the dismissal of this application for failure to prosecute; and

WHEREAS, the Board was informed of the identity of the new counsel for this application by letters from the new counsel and the owner of record of the subject site dated June 16, 2017; and

WHEREAS, the Board notes that such letters are inadequate to meet the requirement, set forth in § 1-9.4 of the Board's Rules of Practice and Procedure, of an executed and submitted Affidavit of Ownership and Authorization form

confirming ownership of the subject lot and authorizing a particular person or entity to make filings on the owner's behalf; and

WHEREAS, while a notarized Affidavit of Ownership and Authorization form authorizing the original representative was completed and submitted to the Board, a notarized Affidavit of Ownership and Authorization form naming new counsel was not; and

WHEREAS, no other submissions on this application were received prior to the July 25, 2017, hearing and no one appeared at that hearing on behalf of this application; and

WHEREAS, accordingly, due to the repeated failure of the applicant and its representatives to appear at hearings and submit materials in support of this application, it must be dismissed in its entirety.

*Therefore, it is Resolved*, that the application filed under BSA Cal. No. 104-15-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, July 25, 2017.

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## **258-15-BZ**

### **CEQR #16-BSA-052K**

APPLICANT – Eric Palatnik, P.C., for Elijah Realty LLC, owner.

SUBJECT – Application November 18, 2015 – Special Permit (§73-44) to reduce the number of required accessory off street parking spaces from twenty nine (29) to fourteen (14) at the existing building. C4-2 zoning district.

PREMISES AFFECTED – 2619 East 16<sup>th</sup> Street, Block 7460, Lot 96, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Application granted on condition

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 13, 2016, acting on New Building Application No. 321239619, reads in pertinent part:

“Proposed development is contrary to ZR 36-21 and requires a special permit pursuant to ZR Section 73-44”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, in a C4-2 zoning district, a reduction in the required number of accessory parking spaces for an ambulatory diagnostic or treatment facility in Use Group 4 and for Use Group 6 offices in parking requirement category B1, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on January 10, 2017, after due notice by publication in *The City Record*, with continued a hearing on May 23, 2017, and then to decision on July 25, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner



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Ottley-Brown and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application, stating that the site is located near a major traffic hub with limited parking; and

WHEREAS, the subject site is located on the east side of East 16th Street, between Avenue Z and Sheepshead Bay Road, in a C4-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along East 16th Street, 100 feet of depth, 2,500 square feet of lot area and is occupied by a two-story residential building; and

WHEREAS, the applicant proposes to develop a five-story mixed-use commercial and community-facility building with 8,696 square feet of floor area (3.48 FAR), 4,004 square feet of which will be used for a Use Group 4 ambulatory diagnostic or treatment facility and 4,692 square feet of which will be used for Use Group 6 offices; and

WHEREAS, the applicant represents that, pursuant to ZR § 36-21, 13 spaces are required for the Use Group 4 ambulatory diagnostic or treatment facility and 16 spaces are required for the Use Group 6 offices, calculated at a rate of one per 300 square feet of floor area; however, the applicant seeks to provide 14 parking spaces, 15 fewer than required and, accordingly, seeks the relief requested herein; and

WHEREAS, the applicant submits that, upon grant of this relief, waiver of the remaining 14 parking spaces will be sought pursuant to ZR § 36-231, which allows the waiver of all accessory parking in cases where the total number of required accessory off-street parking spaces is less than 15; and

WHEREAS, the Board takes no position as to whether approval of the subject special permit application qualifies the site for a parking waiver pursuant to ZR § 36-231, which is a determination subject to review by DOB; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to

meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
PARKING SPACES REQUIRED FOR  
AMBULATORY DIAGNOSTIC  
OR TREATMENT FACILITIES LISTED IN  
USE GROUP 4 AND  
COMMERCIAL USES IN PARKING  
REQUIREMENT CATEGORY B1

Parking Spaces Required

Per Number of Square

Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar space*, except *cellar space used* for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for a Use Group 4 ambulatory diagnostic or treatment facility and Use Group 6 offices from one space per 300 square feet of floor area to one space per 600 square feet provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant submitted an affidavit indicating that the proposed building will be used for a Use Group 4 ambulatory diagnostic or treatment facility and Use Group 6 offices; and

WHEREAS, the applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the Use Group 4 ambulatory diagnostic or treatment facility or Use Group 6 offices is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Board finds the affidavit credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed ambulatory diagnostic or treatment facility and office use at the site; and

WHEREAS, the Board notes that its determination is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, because of concerns expressed by Community Board 15, Brooklyn, and as the Board customarily does with applications under ZR § 73-44, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces will impact the surrounding community; and

WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand for parking generated by the proposed uses at the site will be

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\*\*\*4 spaces during peak demand, weekdays from 8:00 a.m. to 10:00 a.m., and that such demand can be accommodated by the 22 and 18 on-street parking spaces available from 8:00 a.m. to 9:00 a.m. and 9:00 a.m. to 10:00 a.m. as well as 49 and 48 off-street parking spaces available during such time in nearby public parking lots; and

WHEREAS, the Board notes that the parking study was based on the current operation of the existing medical facility wherein the subject site operates as a radiation and management practice only in tandem with its principal practice at 2632 East 14th Street, Brooklyn, so any change in ownership or in operation would require prior approval from the Board to examine whether the parking demand has changed as a result; and

WHEREAS, the evidence in the record discredits the general assertions of Community Board 15, Brooklyn, and the Board does not find that there is limited parking in the area during periods of peak demand for the proposed Use Group 4 ambulatory diagnostic or treatment facility and Use Group 6 offices; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of parking regulations is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the parking modification will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-44 and 73-03 have been met; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) CEQR No. 16BSA052K, dated December 8, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated March 9, 2017, [KS1] the Department of City Planning states that the proposal will not substantially hinder the achievement of any Waterfront Revitalization Program policy; 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 *per*mit, in a C4-2 zoning district, a reduction in the required number of accessory parking spaces for an ambulatory diagnostic or treatment facility in Use Group 4 and for Use Group 6 offices in parking requirement category B1, contrary to ZR § 36-21, *on condition* that all work shall substantially conform to drawings filed with this application marked “Received July 7, 2017” – seventeen (17) sheets; and *on further condition*:

THAT any change in ownership or in operation shall require prior approval from the Board in order to examine whether the parking demand has changed from 4 parking spaces because the parking study considered by the Board was based on the current operation of the existing medical facility wherein the subject site operates as a radiation and management practice only in tandem with its principal practice at 2632 East 14th Street, Brooklyn;

THAT the certificate of occupancy issued for the building within which the Use Group 4 ambulatory diagnostic or treatment facility and Use Group 6 offices are located shall state that no certificate shall thereafter be issued if the Use Group 4 ambulatory diagnostic or treatment facility or Use Group 6 offices are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by July 25, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable pro-visions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 25, 2017.

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# MINUTES

**2016-4251-BZ**

**CEQR #17-BSA-018K**

APPLICANT – Jesse Masyr, Esq., Fox Rothschild LLP, for Neptune South Commercial LLC, owner.

SUBJECT – Application September 13, 2016 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for ambulatory diagnostic and treatment health care facility use (UG 4A) and office use (UG 6B). C8-2 (Special Ocean Parkway District) zoning district.

PREMISES AFFECTED – 626 Sheepshead Bay Road, Block 7279, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 6, 2016, acting on New Building Application No. 320625258, reads in pertinent part:

“ZR 36-21” “the number of [a]ccessory parking spaces provided for use group 6b office use and use group 4a ambulatory diagnostic or treatment health care facility use does not comply”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, in a C8-2 zoning district and the Special Ocean Parkway District, a reduction in the required number of accessory parking spaces for Use Group 6 office use and for a Use Group 4 ambulatory diagnostic or treatment health care facility from 138 to 69, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on May 23, 2017, after due notice by publication in *The City Record*, and then to decision on July 25, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 13, Brooklyn, recommends disapproval of this application, with a few votes in favor and the majority opposed; and

WHEREAS, the subject site is located on the south side of Sheepshead Bay Road, between West 8th Street and West 5th Street, in a C8-2 zoning district and the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 203 feet of frontage along Sheepshead Bay Road, 120 feet of depth, 27,292 square feet of lot area and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 16, 2005, when, under BSA Calendar No. 13-05-BZ, the Board granted an application to permit the operation of a physical culture establishment for a term of ten (1) years, expiring August 16, 2015, within a three-story building; and

WHEREAS, the applicant states that the special permit has expired without renewal and that the three-story building has been demolished; and

WHEREAS, the applicant proposes to develop a seven-story, with cellar, mixed-use commercial and community-facility building with 109,376 square feet of total floor area (4.01 FAR) with 36,610 square feet of floor area dedicated to Use Group 6 offices and 18,306 square feet of floor area dedicated to a Use Group 4 ambulatory diagnostic or treatment health care facility; and

WHEREAS, the applicant represents that, pursuant to ZR § 36-21, 92 parking spaces are required for the office use and 46 parking spaces are required for the ambulatory diagnostic or treatment health care facility, calculated at a rate of one space per 400 square feet of floor area; however, the applicant seeks to provide 46 parking spaces accessory to the office use and 23 parking spaces accessory to the ambulatory diagnostic or treatment health care facility, 69 fewer spaces total than required and, accordingly, seeks the relief requested herein; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

**REDUCED ACCESSORY OFF-STREET  
PARKING SPACES REQUIRED FOR  
AMBULATORY DIAGNOSTIC  
OR TREATMENT FACILITIES LISTED IN  
USE GROUP 4 AND  
COMMERCIAL USES IN PARKING  
REQUIREMENT CATEGORY B1**

Parking Spaces Required Per Number of Square Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1

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# MINUTES

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1 per 800 C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar* space, except *cellar* space used for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for Use Group 6 offices and a Use Group 4 ambulatory diagnostic or treatment facility from one space per 400 square feet of floor area to one space per 800 square feet provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant represents that the proposed building will be used for Use Group 6 offices and a Use Group 4 ambulatory diagnostic or treatment facility, and the applicant submitted a letter from the applicant's real estate broker indicating that, while negotiations are ongoing, the broker has been in contact with several prospective tenants to lease space for such uses; and

WHEREAS, the applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the Use Group 6 offices or Use Group 4 ambulatory diagnostic or treatment facility are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Board finds the applicant's representations credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed ambulatory diagnostic or treatment facility and office use at the site; and

WHEREAS, the Board notes that its determination is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, in response to the recommendation of Community Board 13, Brooklyn, and as the Board customarily does, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces will impact the surrounding community; and

WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand for parking generated by the proposed Use Group 6 offices and Use Group 4 ambulatory diagnostic or treatment facility will be 69 parking spaces, weekdays from 10:00 a.m. to 11:00 a.m., with 37 spaces accessory to the offices and 32 spaces accessory to the ambulatory diagnostic or treatment facility, and that such demand can be accommodated by 132 accessory off-street parking spaces; and

WHEREAS, at the Board's request, the applicant also submitted a lighting plan for the parking deck illustrating that aluminum screening will be provided to protect neighbors' windows from headlights and that the parking deck's light fixtures will be directed downward to prevent light spread; and

WHEREAS, accordingly, the Board finds that, under

the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of parking regulations is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the parking modification will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-44 and 73-03 have been met; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 17-BSA-018K, dated June 28, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated July 24, 2017, 2017, the Department of City Planning states that the proposal will not substantially hinder the achievement of any Waterfront Revitalization Program policy; and

WHEREAS, the Board notes that the EAS makes reference to floodgates; however, at hearing, the applicant testified that, rather than floodgates, glass flood-proofing material will be used for the first-floor retail spaces; 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to *permit*, in a C8-2 zoning district and the Special Ocean Parkway District, a reduction in the required number of accessory parking spaces for Use Group 6 office use and for a Use Group 4 ambulatory diagnostic or treatment health care facility from 138 to 69, contrary to ZR § 36-21, *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 28, 2017" – Sixteen (16) sheets; and *on further condition*:

THAT the certificate of occupancy issued for the

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building within which the Use Group 4 ambulatory diagnostic or treatment facility and Use Group 6 offices are located shall state that no certificate shall thereafter be issued if the Use Group 4 ambulatory diagnostic or treatment facility or Use Group 6 offices are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by July 25, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 25, 2017.

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## 2017-1-BZ

### CEQR #17-BSA-059X

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2883 Third Avenue Realty Associates, owner; Blink 2883 3<sup>rd</sup> Avenue, Inc., lessee.

SUBJECT – Application January 3, 2017 – Special Permit (§73-36) to operate a physical culture establishment (*Blink*) within an existing building. C4-4 zoning district.

PREMISES AFFECTED – 570 Melrose Avenue aka 2883 Third Avenue, Block 2374, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #1BX

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 5, 2016, acting on Alteration Application No. 220455834, reads in pertinent part:

“Proposed Physical Culture Establishment in C4-4 Zoning District is contrary to Section 32-10 ZR and requires a special permit from BSA (73-36)”;  
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C4-4 zoning district, the operation of a physical culture establishment (“PCE”) on the first, second and third floors of a five-story, with cellar,

commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 18, 2017, after due notice by publication in *The City Record*, and then to decision on July 25, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Bronx, provided a letter dated July 7, 2017, in support of this application; and

WHEREAS, the subject site is located on the northeast corner of Melrose Avenue and East 150th Street, in a C4-4 zoning district, in the Bronx; and

WHEREAS, the site has approximately 100 feet of frontage along Melrose Avenue, 141 feet of frontage along East 150th Street, 64 feet of frontage along Third Avenue, 9,910 square feet of lot area and is occupied by a five-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

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- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 proposed PCE will occupy a total of 16,219 square feet of floor area as follows: 460 square feet of floor area on the first floor consisting of a lobby, 7,800 square feet on the second floor, including a reception area, offices, strength-training areas, cardiovascular-fitness machines, stretching areas, a locker room and janitor room, and 7,958 square feet on the third floor with cardiovascular-training space, strength-training and heavy-lifting areas, a locker room and a janitor room; and

WHEREAS, the PCE will be operated as Blink Fitness with proposed hours of operation of 5:30 a.m. to 11:00 p.m., Monday through Saturday, and 7:00 a.m. to 9:00 p.m., Sunday; and

WHEREAS, the applicant represents that the proposed PCE will be located in a busy commercial area within an existing commercial building and that the proposed PCE will be consistent with other uses in the vicinity and other commercial uses in the building; and

WHEREAS, with regard to sound attenuation, the applicant submits that the PCE will have sound attenuation measures—including rubber flooring and demising walls with batt insulation—designed to ensure that sound levels experienced in other areas of the building will not exceed interior noise levels of 45 dBA, including sound emanating from any sound system installed; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or

the future use or development of the surrounding area; and

WHEREAS, the applicant represents that the proposed PCE will contain facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobic exercise; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; 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 applicant represents that the PCE will be fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—will be installed in the entire PCE space; and

WHEREAS, by letter dated July 14, 2017, the Fire Department states that, based upon its review of the drawings and supporting documentation, it has no objection to this application; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-059X, dated January 3, 2017; and

WHEREAS, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, on a site located within a C4-4 zoning district, a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received July 21, 2017”- Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring July 25, 2027;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

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THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by July 25, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 25, 2017.

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## 91-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for 3428 Bedford LLC by Jeffrey Mehl, owner.

SUBJECT – Application May 2, 2014 – 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 required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 3420 Bedford Avenue, southwest corner of Bedford Avenue and Avenue M, Block 7660, Lot (tentative) 45, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for continued hearing.

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## 178-14-BZ

APPLICANT – Sheldon Lobel, P.C., for NLO Holding Corp., owner.

SUBJECT – Application July 24, 2014 – Variance (§72-21) seek a waiver of Section 22-10 ZR to permit a Use Group 6 retail use on the ground floor with accessory cellar storage a proposed four-story, two unit building located with an R6A zoning district.

PREMISES AFFECTED – 263 McGuinness Boulevard aka 261 McGuinness Boulevard, Block 2559, Lot 32, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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## 224-14-BZ/225-14-A

APPLICANT – Eric Palatnik, P.C., for 1534 Victory Boulevard LLC, owner.

SUBJECT – Application September 15, 2014 – Variance (§72-21) to for ambulatory diagnostic or healthcare treatment facility (medical office) (UG 4) located in an R1-2 zoning district. Also a companion GCL 35 as portion of the roadway is within a mapped street. R1-2 zoning district.

PREMISES AFFECTED – 1534 Victory Boulevard, Block 695, Lot 81, Borough of Staten Island.

## COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to August 8, 2017, at 10 A.M., for continued hearing.

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## 263-14-BZ

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application October 24, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141(b); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 1601 Oriental Boulevard, Block 8757, Lot 23, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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## 22-15-BZ

APPLICANT – Simons & Wright LLC, for 219 26<sup>th</sup> Street, LLC, owner.

SUBJECT – Application February 5, 2015 – Variance (72-21) to proposed to construct a residential building on a small lot at premises, located in an M1-1D zoning district, contrary to (Section 42-00) not permitted as of right.

PREMISES AFFECTED – 219 26<sup>th</sup> Street, Block 655, Lot 55, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for deferred decision.

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## 216-15-BZ

APPLICANT – Eric Palatnik, P.C., for Gasteria Oil Corp., owner.

SUBJECT – Application September 2, 2015 – Special Permit (§73-211): to authorize the construction of an automotive service station and accessory convenience store on an irregularly shaped lot, located within an C2-4 zoning district.

PREMISES AFFECTED – 205 West Fordham Road, West 6 Frame Road bordering Sedgwick Avenue. Block 3236,

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Lot 0220. Borough of the Bronx.

## COMMUNITY BOARD #7BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 19, 2017, at 10 A.M., for decision, hearing closed.

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## 2016-4147-BZ

APPLICANT – Sheldon Lobel, P.C., for Pietro Alesci, owner.

SUBJECT – Application March 17, 2016 – Variance (§72-21) to permit the development of a three-story, three-family residential building (UG 2) contrary to ZR §42-10. M1-1D zoning district.

PREMISES AFFECTED – 57-12 58<sup>th</sup> Place, Block 2672, Lot 96, Borough of Queens.

## COMMUNITY BOARD #5Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 19, 2017, at 10 A.M., for decision, hearing closed.

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## 2016-4176-BZ

APPLICANT – Akerman, LLP, for Islamic Center of Jackson Heights, Inc., owner.

SUBJECT – Application April 20, 2017 – Variance (§72-21) to permit the construction of a new three-story house of worship (UG 4A) building contrary to ZR §24-34 (front yard) and ZR §24-35 (side yard) requirements. R4 zoning district.

PREMISES AFFECTED – 78-04 31<sup>st</sup> Avenue, Block 1149, Lot 1, Borough of Queens.

## COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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## 2016-4277-BZ

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Consolidated Edison Company of New York, Inc., owner.

SUBJECT – Application March 28, 2017 – Special Permit (§73-16) to permit the addition of a battery storage facility to an existing electric utility substation that was granted pursuant to BSA Calendar Number: 178-63-BZ. R4 zoning district.

PREMISES AFFECTED – 79-04 151<sup>st</sup> Avenue, Block 11426, Lot 2, Borough of Queens.

## COMMUNITY BOARD #10Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 19, 2017, at 10 A.M., for decision, hearing closed.

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## REGULAR MEETING

TUESDAY AFTERNOON, JULY 25, 2017

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

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## ZONING CALENDAR

### 20-15-BZ

APPLICANT – Alexander Levkovich, for Steven Israel, owner; Mishkan Yerushalayim, lessee.

SUBJECT – Application February 5, 2015 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship community facility at the premises contrary to floor area ratio, open space, lot coverage, wall height, front yard, side yards, rear yard, sky exposure plane, and parking regulations. R4 (OP) zoning district.

PREMISES AFFECTED – 461 Avenue X, Block 7180, Lot 75, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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### 2016-4179-BZ

APPLICANT – Eric Palatnik, P.C., for Moses Steinberg, owner.

SUBJECT – Application April 27, 2016 – Special Permit (§73-19) to permit the legalization of a School (*Congregation Machna Shelva* (UG 3). Companion Variance (§72-21) (BSA Calendar Number: 246-15-BZ) to permit the creation of a mezzanine on the first floor M1-1 zoning district.

PREMISES AFFECTED – 1462 62<sup>nd</sup> Street, Block 5734, Lot 45, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

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### 246-15-BZ

APPLICANT – Eric Palatnik, P.C., for Moses Steinberg, owner.

SUBJECT – Application April 27, 2016 – Variance (72-21) seek a variance for the legalization of the existing Use Group 3 Yeshiva at the third floor, the creation of a mezzanine on the first floor, and the use of the entire four-story and cellar structure, located within an M1-1 zoning district. (companion case 2016-4179-BZ)



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# MINUTES

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PREMISES AFFECTED – 1462 62<sup>nd</sup> Street, Block 5734,  
Lot 35, Borough of Brooklyn.

**COMMUNITY BOARD #11BK**

**ACTION OF THE BOARD** – Off Calendar.  
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**2016-4215-BZ**

APPLICANT – Eric Palatnik, P.C., for Aleksandr S. Cherny, owner.

SUBJECT – Application June 8, 2016 – Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, open space and lot coverage and providing less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 262 Exeter Street, Block 8742,  
Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to October 17,  
2017, at 10 A.M., for continued hearing.  
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**2016-4259-BZ**

APPLICANT – Eric Palatnik, P.C., for Ed Khoury and Irene Kokossion, owners.

SUBJECT – Application September 23, 2016 – Special Permit (73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yard requirements (ZR 23-461) and less than the minimum rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 8033 Shore Road, Block 5975,  
Lot 181, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

**ACTION OF THE BOARD** – Laid over to October 17,  
2017, at 10 A.M., for continued hearing.  
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**2016-4337-BZ**

APPLICANT – Eric Palatnik, P.C., for Dr. Joshua Schiller and Ms. Vivian Lee, owners.

SUBJECT – Application November 22, 2016 – Variance (§72-21) to permit the enlargement of an existing single family home contrary to side yards (ZR 23-461a and rear yards (ZR 23-543). R5 zoning district.

PREMISES AFFECTED – 127 Vanderbilt Street, Block 5264,  
Lot 51, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

**ACTION OF THE BOARD** – Laid over to September 19,  
2017, at 10 A.M., for continued hearing.  
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*Ryan Singer, Executive Director*

# MINUTES

## \*CORRECTION

**This resolution adopted on May 25, 2017, under Calendar No. 2017-176-BZ and printed in Volume 102, Bulletin No. 22, is hereby corrected to read as follows:**

**2017-176-BZ**

**CEQR #17-BSA-128K**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 32 Stanton Road. Block 8800, Lot 52. Borough of Brooklyn.

**COMMUNITY BOARD # 15BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Stanton Road, 1,375 square feet of lot area and is occupied by a one-story single-family detached home, which is setback between 0.8 and 1.4 feet from the northern lot line, 14.1 feet from the eastern lot line, between 3.2 and 3.7 feet from the southern lot line, 0.2 feet from the western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-390-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code, unless the Fire Department has notified DOB that it is exempt; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a

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# MINUTES

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“front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR §

64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received May 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 0.8 feet from the northern lot line, setback at least 14.1 feet from the eastern lot line, setback at least 3.2 feet from the southern lot line and setback at least 0.2 feet from the western lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that it is exempt;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32

# MINUTES

feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

**\*The resolution has been amended.  
Corrected in Bulletin No. 31, Vol. 102, dated August 2, 2017.**

## \*CORRECTION

**This resolution adopted on May 25, 2017, under Calendar No. 2017-177-BZ and printed in Volume 102, Bulletin No. 22, is hereby corrected to read as follows:**

### 2017-177-BZ

#### CEQR #17-BSA-128K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 9A Lake Avenue. Block 8796, Lot 137. Borough of Brooklyn.

#### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez. . . . .4

Negative: . . . . .0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Stanton Road, between Gunnison Court and Losee

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Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Stanton Road, 1,375 square feet of lot area and is occupied by a one-story single-family detached home, which encroaches its western lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-426-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code, unless the Fire Department has notified DOB that it is exempt; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence approximately 3.5 feet to the east of the existing footprint so that the entirety of the dwelling is located within the subject lot, resulting in a two-story single-family detached dwelling setback 10.8 feet from the eastern lot line, 1.6 feet from the southern lot line, 2.5 feet from the western lot line and 2.9 feet from the northern lot line; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same

section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments and enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor

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# MINUTES

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impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA128K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and on further condition:

THAT the bulk parameters of the building shall be as follows: setback at least 10.8 feet from the eastern lot line, 1.6 feet from the southern lot line, 2.5 feet from the western lot line and 2.9 feet from the northern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be

signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

**\*The resolution has been amended.**

**Corrected in Bulletin No. 31, Vol. 102, dated August 2, 2017.**

# 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.

Volume 102, Nos. 32-33

August 16, 2017

### DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

VACANT

VACANT

*Commissioners*

Ryan Singer, *Executive Director*

Loreal Monroe, *Counsel*

**OFFICE -** 250 Broadway, 29<sup>th</sup> Floor, New York, N.Y. 10007  
**HEARINGS HELD -** 22 Reade Street, Spector Hall, New York, N.Y. 10007  
**BSA WEBPAGE @** <http://www.nyc.gov/html/bsa/home.html>

**TELEPHONE - (212) 386-0009**  
**FAX - (646) 500-6271**

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374-71-BZ                  205-11 Northern Boulevard, Queens  
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2017-184-BZ              27 Stanton Road, Brooklyn



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# DOCKETS

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New Case Filed Up to August 8, 2017  
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**2017-230-BZ**

138-17 Hillside Avenue, located on Hillside Avenue between 138th Street and Queens Boulevard, Block 09025, Lot(s) 54, Borough of **Queens, Community Board: 8**. Special Permit (§73-211) to allow an automotive service station with an accessory convenience store (UG 16B); drive-thru carwash and detailing center. C4-3A zoning district. C4-3A district.  
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**2017-234-A**

266 Wild Avenue, located on the east side of Wild Avenue, 226.06 south of the intersection with Beresford Avenue., Block 02645, Lot(s) 1, Borough of **Staten Island, Community Board: 2**. Proposed construction of a self-storage facility not fronting a legally mapped street contrary to General City Law 36. M1-1 zoning district. M1-1 district.  
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**2017-231-BZ**

765 Pennsylvania Avenue, Northeast corner of Pennsylvania Avenue and Linden Boulevard, Block 04323, Lot(s) 40, Borough of **Brooklyn, Community Board: 5**. Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. 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.**

**2017-232-A**

1632 Richmond Terrace, 105.77' West of the corner formed by the intersection of southwesterly side of Richmond Terrace and Tompkins Court, Block 00187, Lot(s) 42, Borough of **Staten Island, Community Board: 5**. Proposed retail public self-storage building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. M1-1 zoning district M1-1 district.  
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**2017-223-BZ**

340 East 9th Street, located on the west side of East 9th Street between Avenue C and Cortelyou Road, Block 05377, Lot(s) 23, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to permit the construction of a two-family dwelling contrary to ZR §23-45 (Minimum Required Side Yards) and ZR § 25-22 (Required Parking). R5 zoning district. R5 district.  
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**2017-233-BZ**

446-448 Park Avenue, located 41 feet west of the intersection formed by Park and Franklin Avenues, Block 01898, Lot(s) 37 & 38, Borough of **Brooklyn, Community Board: 3**. Variance (§72-21) to allow for the development of six-story plus cellar (UG 2) residential building contrary to ZR §42-10. M1-1 zoning district. M1-1 district.  
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# CALENDAR

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## REGULAR MEETING SEPTEMBER 12, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 12, 2017, 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

### 528-64-BZ

APPLICANT – NYC Board of Standards and Appeals  
SUBJECT – Application April 25, 2017 – Compliance Hearing of a previously approved Variance (§72-21) which permitted the erection of a two story enlargement of an auto showroom (UG 16B) (East Hills Chevrolet) R1-2 zoning district.

PREMISES AFFECTED – 240-02 Northern Boulevard, Block 8167, Lot 1, Borough of Queens.

**COMMUNITY BOARD #11Q**

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### 107-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 817 Lexington LLC entities c/o Managing Guy LLC, owner; Equinox 63<sup>rd</sup> Street, Inc., lessee.

SUBJECT – Application January 27, 2017 – Extension of Term of a previously approved Special Permit (§ 73-36) to allow a physical culture establishment use (Equinox) in the cellar, sub cellar, first floor and second floor of a 22 story mixed use building which expires on February 27, 2017. C1-8X/R8B zoning district. Landmark Building (Barbizon Hotel For Women).

PREMISES AFFECTED – 140 East 63<sup>rd</sup> Street, Block 1397, Lot 7505, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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### 223-07-BZ

APPLICANT – Bryan Cave LLP, for Bliss World LLC, owner.

SUBJECT – Application February 17, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Bliss World*) on the third floor in an existing commercial building which expires on June 15, 2017. C5-3 Special Midtown District.

PREMISES AFFECTED – 12 West 57<sup>th</sup> Street, Block 1272, Lot 47, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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## APPEALS CALENDAR

### 2017-52-A

APPLICANT – Slater & Beckerman P.C., for 1109 Metropolitan Avenue LLC, owner.

SUBJECT – Application February 22, 2017 – Interpretative Appeal challenging the Department of Buildings determination that a proposed caretaker's apartment for a proposed sign painting shop does not satisfy the ZR 12-10 definition of an "accessory use". M3-1 zoning district.

PREMISES AFFECTED – 1109 Metropolitan Avenue, Block 2927, Lot 25, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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## REGULAR MEETING SEPTEMBER 12, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 12, 2017, 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

### 205-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 100-02 Rockaway Blvd 26 LLC, owner; Warrior Fitness Queens Inc., lessee.

SUBJECT – Application August 27, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (*Warrior Fitness*) within a portion of an existing commercial building. M1-1 zoning district.

PREMISES AFFECTED – 100-02 Rockaway Boulevard, Block 9539, Lot 1, Borough of Queens.

**COMMUNITY BOARD #10Q**

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### 275-15-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly S. Friedman, Esq., for Marymount School of New York, owner.

SUBJECT – Application December 22, 2015 – Variance (§72-21) proposed construction of a 12-story community facility building for the Upper Middle School and Upper School divisions of the Marymount School of New York contrary to underlying bulk regulations. R7-2 zoning district.

PREMISES AFFECTED – 115 East 97<sup>th</sup> Street aka 116 East 98<sup>th</sup> Street, Block 1625, Lot 7, Borough of Manhattan.

**COMMUNITY BOARD #11M**

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# CALENDAR

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**2017-38-BZ**

APPLICANT – Eric Palatnik, P.C., for Avrohom Ackerman, owner.

SUBJECT – Application February 7, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-142); side yard (ZR §23-461(a)) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1155 East 28<sup>th</sup> Street, Block 7628, Lot 23, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**2017-49-BZ**

APPLICANT – Akerman, LLP, for Fabrics Save-a-Thon Manhattan, Inc., owner; The Cliffs at Harlem, LLC, lessee.

SUBJECT – Application February 17, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*The Cliffs*) on the second floor of an existing building contrary to ZR §32-10. C4-4D/C6-3 (Special 125th Purpose District).

PREMISES AFFECTED – 243 West 124<sup>th</sup> Street aka 256-258 West 125<sup>th</sup> Street, Block 1930, Lot 53, Borough of Manhattan.

**COMMUNITY BOARD #10M**

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**2017-53-BZ**

APPLICANT – Francis R. Angelino, Esq., for Unizo Real Estate NY, owner; Mile High Run Club LLC, lessee.

SUBJECT – Application February 23, 2017 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Mile High*) located in the cellar and first floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 24 West 25<sup>th</sup> Street, Block 826, Lot 57, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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**2017-188-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Charles Ishay and David Ishay, owners.

SUBJECT – Application May 22, 2017– Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area (§23-142); side yard requirements (§§23-461) and less than the required rear yard (§23-47). R5 (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 1727 Ocean Parkway, Block 6663, Lot(s) 82 & 83, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Ryan Singer, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, AUGUST 7, 2017 10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

### SPECIAL ORDER CALENDAR

#### 70-97-BZ

APPLICANT – Law Office of Fredrick A. Becker for 575 Lex Property Owner LLC, owner; TSI East 51<sup>st</sup> Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 10, 2016 – Extension of Term of a Special Permit (§73-36) to permitting the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on November 1, 2016. C6-6 and C6-4.5 (MID) zoning district.

PREMISES AFFECTED – 575 Lexington Avenue, Block 1306, Lot 23, Borough of Manhattan.

#### COMMUNITY BOARD #6M

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit for a physical culture establishment (“PCE”) previously granted by the Board, which expired on November 1, 2016; and

WHEREAS, a public hearing was held on this application on August 8, 2017, after due notice by publication in *The City Record*, and then to decision on August 8, 2017; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Lexington Avenue and East 51<sup>st</sup> Street, partially in a C6-6 zoning district and partially in a C6-4.5 zoning district, in Manhattan; and

WHEREAS, the site has approximately 151 feet of frontage along Lexington Avenue, 225 feet of frontage along East 51<sup>st</sup> Street, 50 feet of frontage along East 52<sup>nd</sup> Street, 32,637 square feet of lot area and is occupied by an existing 34-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 16, 1997, when, under the subject calendar number, the Board granted an application under ZR § 73-36 to permit the legalization of a PCE on a portion of the second floor of the subject building for a term of ten (10) years, expiring November 1, 2006, on condition that there be no change in ownership or operating control of

the PCE without prior application to and approval from the Board, that fire prevention measures be installed and maintained in accordance with the Board-approved plans, that the above conditions appear on the certificate of occupancy and that a new certificate of occupancy be obtained within one (1) year, by December 16, 1998; and

WHEREAS, on December 5, 2006, under the subject calendar number, the Board granted an amendment to legalize an increase in floor area occupied by the PCE and an extension of term for ten (10) years, expiring November 1, 2016, on condition that there be no change in ownership or operating control of the PCE without prior approval from the Board and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term of the special permit having expired, the applicant now seeks an extension of term for ten (10) additional years; and

WHEREAS, the facility remains in operation as New York Sports Club with the following hours of operation: Monday through Thursday, 5:45 a.m. to 11:00 p.m., Friday, 5:45 a.m. to 9:00 p.m., Saturday, 9:00 a.m. to 6:00 p.m., and Sunday, 9:00 a.m. to 4:00 p.m.; and

WHEREAS, the applicant submits that the PCE continues to occupy 24,980 square feet of floor area in the building: 280 square feet of floor area on the first floor and 24,700 square feet of floor area on the second floor, as previously approved by the Board; and

WHEREAS, the applicant represents that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, by letter dated April 27, 2017, the Fire Department states that the PCE includes an approved fire alarm and sprinkler system, that egress locations and egress travel distances are acceptable but that the PCE’s exit doors should open towards the direction of egress; and

WHEREAS, at the Board’s request, the applicant submitted evidence that the exit doors had been repaired to open towards the direction of egress; and

WHEREAS, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution pursuant to Section 73-36 of the Zoning Resolution, said resolution having been adopted on December 16, 1997, as amended through December 5, 2006, expiring November 1, 2016, only as to the term of the special permit, so that as amended this portion of the resolution shall read: “granted for a term of ten (10) years from the expiration of the last grant to expire November 1, 2026; *on condition* that the use and operation of the PCE shall substantially conform to Board-approved plans; and *on further condition*:

THAT there shall be no change in ownership or operating control of the PCE without prior approval from the Board;

THAT this grant shall be limited to a term of ten (10)

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years, expiring November 1, 2026;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT other than as herein amended the resolution above cited shall be complied with in all respects; and

THAT a new certificate of occupancy shall be obtained within one (1) year from the date of this amended resolution, by August 8, 2018.”

Adopted by the Board of Standards and Appeals, August 8, 2017.

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## 41-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 17<sup>th</sup> and 10<sup>th</sup> Associates LLC, owner; Equinox 17<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application February 28, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (*Equinox*) on the cellar, ground, and mezzanine levels of a 24-story mix-use building which expires on May 8, 2017. C6-3 Special West Chelsea District.

PREMISES AFFECTED – 450 West 17<sup>th</sup> Street aka 100 10<sup>th</sup> Avenue, Block 1531, Lot 1, Borough of Manhattan.

## COMMUNITY BOARD # 4M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit for the operation of a physical culture establishment (“PCE”) previously granted by the Board, which expired May 8, 2017; and

WHEREAS, a public hearing was held on this application on August 8, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 4, Manhattan, recommends denial of this application for failure to provide documentation that the PCE offers special discounts to residents occupying affordable apartments in the subject building<sup>1</sup>; and

WHEREAS, the subject site is located on the east side of Tenth Avenue, between West 16<sup>th</sup> Street and West 17<sup>th</sup> Street, in a C6-3 zoning district and the Special West

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1 The Board notes that, while ZR § 73-36 authorizes the placement of appropriate conditions—such as the “location of signs and limitations on the manner and/or hours of operation” (emphasis in original)—on special permits so as to safeguard community character, the Board does not regulate PCE memberships.

Chelsea District, in Manhattan; and

WHEREAS, the site has approximately 161 feet of frontage along Tenth Avenue, 300 feet of frontage along West 16<sup>th</sup> Street, 200 feet of frontage along West 17<sup>th</sup> Street, 52,875 square feet of lot area and is occupied by a 24-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 8, 2007, when, under the subject calendar number, the Board granted a special permit for the operation of a PCE on portions of the cellar, first floor and mezzanine levels of the subject building for a term of ten (10) years, expiring May 8, 2017, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that the hours of operation be limited to Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m., that all massages be performed by New York State licensed massage therapists and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term of the special permit having expired, the applicant now seeks an extension of term; and

WHEREAS, the facility remains in operation as Equinox with the following hours of operation: Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant submits that the PCE occupies 32,868 square feet of floor space in the building: 21,676 square feet of floor space in the cellar, 8,332 square feet of floor area on the first floor and 2,860 square feet of floor area on the first-floor mezzanine, as previously approved by the Board; and

WHEREAS, the applicant represents that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, at hearing, the Fire Department represented that it has no objection to this application; and

WHEREAS, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution pursuant to Section 73-36 of the Zoning Resolution, said resolution having been adopted on May 8, 2007, expiring May 8, 2017, only as to the term of the special permit, so that as amended this portion of the resolution shall read: “granted for a term of ten (10) years from the expiration of the last grant to expire May 8, 2027; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 28, 2017” – Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 8, 2027;

THAT there shall be no change in ownership or

# MINUTES

operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to: Monday through Thursday, 5:30 a.m. to 11:00 p.m.; Friday, 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the certificate of occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by the Department of Buildings;

THAT fire safety measures shall be maintained as shown on the Board-approved plans;

THAT all conditions from prior resolutions not specifically waived by the Board shall remain in effect;

THAT other than as herein amended the resolution above cited shall be complied with in all respects; and

THAT a new certificate of occupancy shall be obtained within one (1) year, by August 8, 2018.”

Adopted by the Board of Standards and Appeals, August 8, 2017.

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## 7-57-BZ

APPLICANT – Edward Lauria, for Ruth Peres, owner.

SUBJECT – Application December 17, 2015 – Extension of Term (§11-411) of a previously granted variance for a gasoline service station and maintenance which expired September 20, 2015; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 2317 Ralph Avenue aka 2317-27 Ralph Avenue, Block 8364, Lot 34, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for adjourned hearing.

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## 374-71-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 205-11 Northern Boulevard LLC, owner.

SUBJECT – Application May 7, 2014 – Extension of Term of a previously granted Variance (72-21) for the continued operation of an automobile showroom with open display of new and used cars (UG16) with accessory customer and employee parking in a previously unused vacant portion of the premises which expired on July 18, 2011. C2-2 (R3-2) zoning district.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 06269, Lot 20, Borough of Queens.

### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for adjourned hearing.

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## 235-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2009 Mermaid, LLC, owner.

SUBJECT – Application May 11, 2016 – Extension of Term of a previously approved Special Permit (§73-27) permitting the operation of funeral establishment (UG 7) which expired on May 12, 2014; Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 2009 Mermaid Avenue, Block 7018, Lot 42, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

**ACTION OF THE BOARD** – Laid over to October 17, at 10 A.M., for adjourned hearing.

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## 303-05-BZ

APPLICANT – Eric Palatnik, P.C., for 4000 East 102<sup>nd</sup> Street, Corp., owner.

SUBJECT – Application June 24, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the legalization of the second floor of an existing two story commercial structure for use as a physical culture establishment (*American Youth Dance Theatre*) which expires on August 8, 2016; Amendment seeking to legalize the facility's expansion on the first floor and to legalize a change in operator. R8B zoning district.

PREMISES AFFECTED – 428 East 75<sup>th</sup> Street, Block 1469, Lot 36, Borough of Brooklyn.

### COMMUNITY BOARD #8BK

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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## 26-06-BZ

APPLICANT – Ellen Hay, Slater & Beckerman, P.C., for Acadia West Shore Expressway LLC, owner; Fitness International, LLC, lessee.

SUBJECT – Application November 9, 2016 – Extension of Term of a previously approved Special Permit (§73-36) to operate a physical culture establishment (*LA Fitness*) which expired on July 25, 2016; Amendment to request a change in the hours of operation and minor interior changes; Waiver of the Rules of Practice and Procedure. M1-1/R3A zoning district.

PREMISES AFFECTED – 145 East Service Road, Block 2638, Lot 50, Borough of Staten Island.

### COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Otley-Brown .....3  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for decision, hearing closed.

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## 21-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aquila Realty Company, Inc., owner; Hutch Restaurant Associates LP dba Burger Brother, lessee.

SUBJECT – Application October 13, 2015 – Extension of Term & Amendment (73-243) request an extension of the term of a previously granted special permit that legalized an eating and drinking establishment with a drive-through at the subject premises and an Amendment to approved hours of operation. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roebing Avenue aka 1590 Hutchinson River Parkway, Southeasterly corner of Roebing Avenue and Hutchinson River Parkway, Block 5386, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to October 3, 2017, at 10 A.M., for continued hearing.

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## 46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application November 5, 2015– Extension of Time to Complete Construction of an offsite parking lot to accommodate the required parking, which expires, November 15, 2015, located within a C4-2 zoning district.

PREMISES AFFECTED – 1401 Sheepshead Bay Road, Block 7459, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 232-15-A

APPLICANT – Sheldon Lobel, P.C., for Thor 840 West End Avenue LLC, owner.

SUBJECT – Application October 1, 2015 – Proposed vertical enlargement of an existing six story building to allow for a new penthouse floor and roof above the sixth floor which requires a waiver of the Multiple Dwelling Law and Building Code. R8 zoning district.

PREMISES AFFECTED – 840 West End Avenue aka 259 West 101 Street, Block 1873, Lot 01, Borough of Manhattan.

### COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Otley-Brown .....3  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for decision, hearing closed.

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## 2016-4253-A

APPLICANT – Eric Palatnik, P.C., for Zev Johns, LLC, owner.

SUBJECT – Application September 14, 2016 – Appeal seeking a determination that the owner has acquired common law vested rights for a development commenced under the prior R7-1 district regulations. R3 Zoning district.

PREMISES AFFECTED – 565 St. John’s Place, Block 1175, Lot 87, Borough of Brooklyn  
**COMMUNITY BOARD #8BK**  
**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for adjourned hearing.

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## 2016-4263-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for R.A. Properties, LLC, owner.

SUBJECT – Application October 3, 2016 – Proposed development of a two-story building with warehouse use on the first floor (UG 16B) and office use on the second floor (UG 6) not fronting on a mapped street contrary to General City Law 36. M3-1(SRD)

PREMISES AFFECTED – 235 Industrial Loop, Block 7206, Lot 314, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for adjourned hearing.

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## 2016-4268-A

APPLICANT – Tarter Krinsky & Drogin LLP, for Shurgard Storage Centers, Inc., owners.

SUBJECT – Application October 11, 2016 – Appeal from Department of Buildings determination that a sign is not entitled to con-conforming use status as advertising sign at the existing size and height.

PREMISES AFFECTED – 30 Prince Street aka 265-269 Gold Street, Block 122, Lot 10, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 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

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**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 27, 2016, acting on Alteration Application No. 320997409, reads in pertinent part:

Proposed floor area ratio exceeds the maximum 0.5 permitted, contrary to Z.R. 23-141 (b) ... Proposed lot coverage exceeds the maximum 35% allowed, contrary to Z.R. 23-141(b) ... Proposed two side yards must be at least a minimum 5 feet and total 13 feet side yard required, contrary to Z.R. 23-461 ... Proposed open space is required minimum 65%, contrary to Z.R. 23-141(b) ... Show height of perimeter wall [21 ft], height of maximum ridge plane [35 ft], and sloping planes to ridge lines on building elevations and sections per Z.R. 23-631(b)(1) through (5)[KS1]; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the enlargement of an existing single-family detached residence that does not comply with the zoning requirements for floor area, open space, lot coverage, side yards and perimeter wall height, contrary to ZR §§ 23-141(b), 23-461 and 23-361(b); and

WHEREAS, a public hearing was held on this application on November 17, 2015, after due notice by publication in *The City Record*, with continued hearings on February 2, 2016, March 22, 2016, May 3, 2016, May 16, 2017, and June 6, 2017, and then to decision on August 8, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, residents of the neighborhood provided testimony in opposition, citing the presence of an easement along the subject site; however, the Board notes that an agency is not required to consider a private agreement in the context of a government approval because a zoning ordinance “is a legislative enactment and the easement or covenant a matter of private agreements,” *Friends of Shawangunks, Inc. v. Knowlton*, 64 N.Y.2d 387, 392 (1985), and the Board takes no position as to the legality of the existing encroachment in the side yard, though Department of Buildings should ensure the encroachment’s compliance with applicable laws, including the Zoning Resolution; and

WHEREAS, the subject site is located on the south side of Shore Boulevard, between Oxford Street and Norfolk Street, in an R3-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of

frontage along Shore Boulevard, 90 feet of depth, 2,261 square feet of lot area and is occupied by a one-story single-family detached residence; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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



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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 23-631, 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; and

WHEREAS, the Board notes that in addition to the foregoing, its determination herein is also subject to and guided by, among other things, 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 detached residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to increase the floor area of the residence from 900 square feet (0.398 FAR) to 2,222 square feet (0.982 FAR), decrease open space from 1,361 square feet to 1,287 square feet, increase lot coverage from 40 percent to 43 percent and maintain the existing non-complying side yards of 2'-3/8" and 3'-0"; and

WHEREAS, the applicant originally proposed to increase the floor area to 2,229 square feet (0.986 FAR), decrease open space to 1,206 square feet, increase lot coverage to 47 percent, reduce side yards to 0'-2" and 3'-0", increase perimeter wall height from 9'-0" to 23'-3", increase perimeter wall height to 37'-7"; however, the applicant modified the proposed enlargement—reducing the scope of some waivers and eliminating others altogether—in response to the Board's concerns about its massing in the context of the existing neighborhood; and

WHEREAS, at the subject site, the applicant states that the maximum floor area permitted is 1,130 square feet (0.5 FAR), open space must be a minimum of 1,469 square feet, lot coverage may not exceed 35 percent and side yards with minimum depths of 5'-0" and 8'-0" are required; and

WHEREAS, the applicant represents that the enlarged building is consistent with the essential character of the neighborhood; and

WHEREAS, in support of this assertion, the applicant surveyed properties within the immediate area surrounding the subject site occupied by single- or two-family residences, finding that 16 lots range from 0.90 FAR to more than 1.0 FAR and that lot coverage in the area for 27 lots ranges from 44 percent to 65 percent; and

WHEREAS, as to the height, the applicant represents that the proposed enlargement complies with all applicable

flood regulations, including but not limited to Appendix G of the Building Code, but that, after being reduced at the Board's request, the height of the proposed building would be consistent with the total height of nearby buildings constructed prior to current flood regulations; and

WHEREAS, the applicant also submitted, among other evidence, a photographic streetscape study illustrating that the proposed enlargement is in context with surrounding properties; and

WHEREAS, based upon its review of the record and its inspections of the site and surrounding area, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood nor impair the future use or development of the surrounding area; 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 bulk modifications is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, accordingly, the Board has determined that the evidence in record supports the findings required to be made under ZR §§ 73-622 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 and 73-03, to *permit*, in an R3-1 zoning district, the enlargement of an existing single-family detached residence that does not comply with the zoning requirements for floor area, open space, lot coverage, side yards and perimeter wall height, contrary to ZR §§ 23-141(b), 23-461 and 23-361(b); *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 July 25, 2017"-Fifteen (15) sheets; and *on further condition*:

THAT the maximum floor area of the residence shall be 2,222 square feet (0.982 FAR), a minimum of 1,287 square feet of open space shall be provided, lot coverage shall not exceed 43 percent and side yards shall have depths of at least 2'-3/8" and 3'-0", as illustrated on the Board-approved plans;

THAT removal of existing structure in excess of that shown on the Board-approved plans shall void the special permit;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 8, 2017.

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**224-14-BZ/225-14-A**

APPLICANT – Eric Palatnik, P.C., for 1534 Victory Boulevard LLC, owner.

SUBJECT – Application September 15, 2014 – Variance (§72-21) to for ambulatory diagnostic or healthcare treatment facility (medical office) (UG 4) located in an R1-2 zoning district. Also a companion GCL 35 as portion of the roadway is within a mapped street. R1-2 zoning district.

PREMISES AFFECTED – 1534 Victory Boulevard, Block 695, Lot 81, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for continued hearing.

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**25-15-BZ**

APPLICANT – Slater & Beckerman, P.C., for The Roman Catholic Church of St. John the Baptist, owner; 71-85 Lewis Avenue LLC, lessee.

SUBJECT – Application February 17, 2015 – Special Permit (73-46) to allow a waiver of all required accessory off-street parking spaces required for dwelling units created by a conversion a five-story community facility, located within an R6B zoning district.

PREMISES AFFECTED – 71 Lewis Avenue, Block 1592, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

**ACTION OF THE BOARD** – Laid over to February 27, 2018, at 10 A.M., for adjourned hearing.

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**172-15-BZ**

APPLICANT – Eric Palatnik, P.C., for 146-45 22<sup>nd</sup> Avenue LLC, owner.

SUBJECT – Application July 31, 2015 – Variance (§72-21) to permit the development of a 1,796 square foot two-story with cellar two (2) family dwelling contrary to underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 146-45 22<sup>nd</sup> Avenue, Block 4637, Lot 47, Borough of Queens.

**COMMUNITY BOARD #7Q**

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for continued hearing.

**2016-3-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seneca Clove Corp., owner.

SUBJECT – Application January 4, 2016 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store (UG 16B). C2-1/R2 zoning district.

PREMISES AFFECTED – 1212 Victory Boulevard, Block 651, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for adjourned hearing.

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**2016-4262-BZ**

APPLICANT – Pryor Cashman LLP, for ZCAM, LLC, owner; Lyons Den Power Yoga, owner.

SUBJECT – Application October 3, 2016 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Lyons Den Power Yoga*) on the second and third floors of an existing building. C6-2A (Tribeca East Historic District) zoning district.

PREMISES AFFECTED – 279 Church Street, Block 175, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #1M**

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for adjourned hearing.

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**REGULAR MEETING  
TUESDAY AFTERNOON, AUGUST 7, 2017  
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

**ZONING CALENDAR**

**2017-10-BZ**

APPLICANT – Akerman, LLP, for Rockaway Seagirt Housing Development Fund Corp. c/o The Arker Companies, LLC, owners.

SUBJECT – Application January 12, 2017 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for ambulatory diagnostic and treatment health care facility use (UG 4A) parking category (PRC-B1) to be located within a mixed-use building. C2-2/R6 zoning district.

PREMISES AFFECTED – 34-11 Beach Channel Drive, Block 15950, Lot(s) 14, 24, Borough of Queens.

**COMMUNITY BOARD #14Q**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

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Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 22, 2016, acting on New Building Application No. 421094283, reads in pertinent part:

“1-Reduction of parking spaces from 53 to 33, this does not meet the minimum parking spaces as pursuant to ZR 36-21. Refer to BSA for approval pursuant to ZR 73-44”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, on a site located in an R6 (C2-2) zoning district, a reduction in the required number of accessory parking spaces for a Use Group (“UG”) 4 ambulatory diagnostic or treatment facility, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on August 8, 2017, after due notice by publication in *The City Record*, and then to decision on the same day; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Queens, recommends disapproval of this application citing general concerns about parking availability in the area and the possibility of increased parking demand created by patients visiting the proposed ambulatory diagnostic or treatment facility; and

WHEREAS, Council Member Donovan Richards submitted testimony in support of this application; and

WHEREAS, the subject site is located on the southeast corner of Beach Channel Drive and Far Rockaway Boulevard, in an R6 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 21 feet of frontage along Far Rockaway Boulevard, 202 feet of frontage along Beach Channel Drive, 121 feet of frontage along Beach 34th Street, 36,355 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to construct a seven-story mixed-use community-facility and residential building with 144,973 square feet of floor area, 10,911 square feet of which will be used as a UG 4 ambulatory diagnostic or treatment facility on the first floor; and

WHEREAS, the applicant represents that, pursuant to ZR §§ 36-21 and 25-252, 51 total parking spaces are required, calculated at a rate of one space per 300 square feet of floor area for the UG 4 ambulatory diagnostic or treatment facility and at a rate of ten percent of dwelling units; however, the applicant seeks to provide 33 parking spaces, 18 fewer spaces than required; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use

Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
PARKING SPACES REQUIRED FOR  
AMBULATORY DIAGNOSTIC  
OR TREATMENT FACILITIES LISTED IN  
USE GROUP 4 AND  
COMMERCIAL USES IN PARKING  
REQUIREMENT CATEGORY B1

Parking Spaces Required

Per Number of Square

Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar* space, except *cellar* space used for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for a UG 4 ambulatory diagnostic or treatment facility at the subject site from one space per 300 square feet of floor area to one space per 600 square feet of floor area provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant submitted an affidavit stating that the building will be occupied by a UG 4 ambulatory diagnostic or treatment facility; and

WHEREAS, the applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the UG 4 ambulatory diagnostic or treatment facility is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Board finds the affidavit credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed ambulatory diagnostic or treatment facility use at the site; and

WHEREAS, the Board notes that its determination is

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also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, in response to the concerns of Community Board 14, Queens, and as the Board customarily does, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces will impact the surrounding community; and

WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand for parking generated by the proposed UG 4 use at the site will be 28 spaces during the peak hours of demand, weekdays and Saturdays before 7:00 a.m. and weekdays from 8:00 a.m. to 9:00 a.m., and that such demand can be accommodated by the proposed 33 on-site parking spaces and available during peak demand; and

WHEREAS, the parking study also presents an on-street parking survey concluding that, during the periods of peak demand, there are 42 parking spaces available within a one-quarter mile radius—a walking distance of approximately five minutes—for a utilization rate of 49 percent within the parking study area; and

WHEREAS, the evidence in the record discredits the general assertions of Community Board 14, Queens, and the Board does not find that there is limited parking in the area during periods of peak demand for the proposed Use Group 4 ambulatory diagnostic or treatment facility; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of parking regulations is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the parking modification will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-44 and 73-03 have been met; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA064Q, dated January 12, 2017; and

WHEREAS[KS2], the Department of Housing Preservation and Development (“HPD”) has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 15HPD067Q, dated June 18, 2015; and

WHEREAS, these EAS documents that the proposed mixed-use residential and community-facility building at the site would not have significant adverse impacts on Land Use, Zoning and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources;

Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and[KS3]

WHEREAS, the HPD EAS dated June 18, 2015, specifically examined the proposed action for potential impacts on natural resources, hazardous materials and noise and determined that there would not be any impacts based on specific conditions being complied with; and

WHEREAS, the applicant has agreed to the following conditions with HPD regarding natural resource measures associated with development within the floodplain, remedial measures associated with identified with contamination from historic uses and window-wall attenuation measures associated with ambient noise:

1. As a condition of federal financial assistance, the proposed project shall be covered by flood insurance;
2. Construction shall be completed in accordance with the Remedial Action Work Plan approved by the New York State Department of Environmental Conservation by letter dated June 5, 2015, and with the June 2015 Declaration Statement–Decision Document appended to the EAS; and
3. The project sponsor shall provide at least 28 dBA of window-wall attenuation on all facades of the proposed building with an alternate means of ventilation provided in order to ensure a maximum interior noise environment of 45 dBA under closed-window conditions; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, HPD issued a Negative Declaration June 19, 2015, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617; and

WHEREAS, the Board concurs with HPD 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, [KS4]and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to *permit*, on a site located in an R6 (C2-2) zoning district, a reduction in the required number of accessory parking spaces for a Use Group 4 ambulatory diagnostic or treatment facility, contrary to ZR § 36-21; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 30, 2017” – Fifteen (15) sheets; and *on further condition*:

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THAT the certificate of occupancy issued for the building within which the Use Group 4 ambulatory diagnostic or treatment facility is located shall state that no certificate shall thereafter be issued if the Use Group 4 ambulatory diagnostic or treatment facility or Use Group 6 offices are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by August 8, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable pro-visions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 8, 2017.

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## 87-15-BZ

APPLICANT – Law Office of Jay Goldstein, for Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application April 17, 2015 – Variance (§72-21) to permit the development of a new community facility (UG 3) contrary to underlying bulk requirements. R5 zoning district.

PREMISES AFFECTED – 182 Minna Street, Block 5302, Lot 74, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to February 27, 2018, at 10 A.M., for continued hearing.

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## 2016-4270-BZ

APPLICANT – Sheldon Lobel, P.C., for 540 Fifth Avenue Corp., owner.

SUBJECT – Application October 12, 2016 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*iLoveKickboxing*) in the cellar and first floor of an existing building. C4-3A zoning district.

PREMISES AFFECTED – 540 5<sup>th</sup> Avenue, Block 1041, Lot 41, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Laid over to October 17, 2018, at 10 A.M., for continued hearing.

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## 2016-4334-BZ

APPLICANT – Sheldon Lobel, P.C., for 431 Carroll Street LLC, owner.

SUBJECT – Application August 8, 2017 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1). M1-2 zoning district.

PREMISES AFFECTED – 341 Nevins Street, Block 447, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Laid over to October 17, 2018, at 10 A.M., for continued hearing.

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## 2017-11-BZ

APPLICANT – Sheldon Lobel, P.C., for MHA, LLC, owner.

SUBJECT – Application January 13, 2017 – Special Permit (§73-36) to operate a physical culture establishment (ILOVEKICKBOXING) within a portion of the ground floor of an existing one-story commercial building. C2-4/R7A zoning district.

PREMISES AFFECTED – 3261 Westchester Avenue, Block 4248, Lot 56, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to October 3, 2018, at 10 A.M., for continued hearing.

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## 2017-24-BZ

APPLICANT – Walter T. Gorman, P.E.P.C., for Power Test Realty Company Limited Partnership, owner; Capitol Petroleum Group, lessee.

SUBJECT – Application January 25, 2017 – Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Mobile) with accessory uses which expired on March 19, 2004; Waiver of the Rules. R3A zoning district.

PREMISES AFFECTED – 1400 Bay Street aka 5 Fingerboard Road, Block 2864, Lot 57, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to October 17, 2018, at 10 A.M., for continued hearing.

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*Ryan Singer, Executive Director*

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## \*CORRECTION

**This resolution adopted on January 24, 2017, under Calendar No. 101-15-BZ and printed in Volume 102, Bulletin Nos. 4-5, is hereby corrected to read as follows:**

### 101-15-BZ

#### CEQR #15-BSA-203Q

APPLICANT – Law Office of Jay Goldstein, for Nesiv Hatorah Inc., owner.

SUBJECT – Application May 11, 2015 – Variance (§72-21) to permit construction of a two-story use group 4 synagogue contrary to underlying bulk requirements. R2X zoning district.

PREMISES AFFECTED – 830 Hicksville Road, Block 15583, Lot 11, Borough of Queens.

#### COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Montanez and Commissioner Chanda.....4

Negative: .....0

Absent: Commissioner Ottley-Brown.....1

#### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 1, 2015, acting on Department of Buildings (“DOB”) Application No. 421039325 reads in pertinent part:

Proposed a New Building House of Worships, of which the building is located in R2X District of Maximum permitted FAR is 0.5 and proposed... is contrary to ZR 24-111(a); and

WHEREAS, the decision dated January 12, 2016, acting on the same application number reads in pertinent part:

Proposed lot coverage . . . contrary to ZR 24-11;

Proposed front yards are contrary to ZR 24-34;

Proposed side yards are contrary to ZR 24-35(a);

Proposed rear yards/rear yard equivalent are contrary to ZR 24-382(b);

Proposed wall height/sky exposure contrary to ZR 24-521;

Proposed parking contrary to ZR 25-31; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an R2X zoning district, the construction of a Use Group 4 house of worship that does not comply with the applicable floor area, lot coverage, front yard, side yard, rear yard, wall height, sky exposure plane and parking regulations of ZR §§ 24-11, 24-111(a), 24-34, 24-35(a), 24-382(b), 24-521 and 25-31; and

WHEREAS, this application is filed on behalf of K’hal Nesiv Hatorah (the “Congregation”), a non-profit religious organization; and

WHEREAS, a public hearing was held on this application on July 12, 2016, after due notice by publication in *The City Record*, with continued hearings on September 13, 2016, December 6, 2016, December 13, 2016, and then

to decision on January 24, 2017; and

WHEREAS, Vice-Chair Hinkson, Commissioner Ottley-Brown, Commissioner Montanez and Commissioner Chanda performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, Donovan Richards, Council Member for the 31st District, Queens, submitted a letter in support of this application; and

WHEREAS, the Board received and reviewed additional letters in support of the application and an objection on the basis that the proposed development will cause more car and pedestrian traffic in the surrounding area; and

WHEREAS, the subject site is located on the north side of Hicksville Road, between Beach 9 Street and Elvira Avenue, in an R2X zoning district, in Queens; and

WHEREAS, the site has approximately 85 feet of frontage along Hicksville Road, 74 feet of frontage along Frisco Avenue, 11,368 square feet of lot area and is currently vacant; and

WHEREAS, the applicant represents that the site was historically developed with a one-family residence, but such residence was demolished, along with its foundation, because it was insufficient to serve the needs of the Congregation; and

WHEREAS, the Congregation proposes to construct a two-story, plus cellar, Use Group 4 synagogue on the site with 10,697 square feet of floor area, a floor area ratio (“FAR”) of 0.94, 59 percent lot coverage, a 7’-1” front yard, side yards measuring 7’-0” and 3’-5”, rear yards measuring 26’-9” and 7’-2” and a base wall height of 25’-8” that breaches the sky exposure plane, and provide two parking spaces; and

WHEREAS, the cellar level of the proposed synagogue will consist of a social hall with a capacity of 235 persons, intended for religious celebratory use only, a prep kitchen with both refrigerated and dry storage, bathroom facilities and storage space; the first floor will contain the main prayer area with a capacity for 180 congregants, additional bathroom facilities, a study area and rabbi’s office; and the second floor will include a women’s prayer area with a capacity of 179 congregants open to the main prayer area below, an administrative office, a playroom and women’s bathroom facilities; and

WHEREAS, the applicant states that the social hall will not be utilized for any commercial catering and agreed to such limitation on its use being made a condition of this approval; and

WHEREAS, at the subject site, the maximum FAR permitted is 0.5 (5,684 square feet of floor area) pursuant to ZR § 24-111(a); the maximum lot coverage permitted is 55 percent pursuant to ZR § 24-11; two front yards of at least 15 feet are required pursuant to ZR § 24-34; two side yards measuring at least 8 feet are required pursuant to ZR § 24-35(a); a rear yard equivalent of either an open area with a minimum depth of 60 feet midway between the two street

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lines, two open areas with a minimum depth of 30 feet along the full length of a street line or an open area along the full length of each side lot line with a minimum width of 30 feet is required pursuant to ZR § 24-382(b); and 24 parking spaces are required pursuant to ZR § 25-31; and

WHEREAS, because the proposed synagogue does not comply with the applicable bulk regulations for the use in the subject zoning district, the applicant seeks the requested variance; and

WHEREAS, the Congregation states that the waivers sought are essential to its ability to meet its programmatic needs, including accommodating its current membership of 116 households, 114 of which live within a three-quarter mile radius of the subject site; and

WHEREAS, the Congregation currently rents space from a girls school for religious services on weekends and Jewish holidays, when the school is not in session, and rents from neighboring facilities for its daily classes and lecture offerings; and

WHEREAS, the applicant asserts that its programming, and the growth of its membership have been inhibited by the spatial constraints of the facilities it rents; and

WHEREAS, the applicant contends that the subject proposal will provide seating adequate to accommodate its existing congregation as well as allow for modest future growth, space necessary to hold various classes and lectures simultaneously, play space for children during religious services, a library (kollel) with additional space for smaller lectures, necessary administrative offices, including an office for the Rabbi, and a social hall to be used by the Congregation on special occasions; and

WHEREAS, the Congregation represents that the irregular shape of the lot creates practical difficulties or unnecessary hardship in strictly complying with the bulk provisions of the Zoning Resolution; and

WHEREAS, specifically, the applicant states that the irregular shape of the western lot line—which runs from the northern lot line in a slightly westerly direction for approximately 63 feet before running in a slightly easterly direction for approximately 76 feet to the southern lot line, resulting in frontage along Frisco Avenue that is 11 feet narrower than the frontage along Hicksville Road—prevents the construction of a symmetrical building with sufficient space to meet the Congregation's programmatic needs; and

WHEREAS, a synagogue constructed at the premises as-of-right would provide sanctuary space on the first floor to accommodate 131 congregants, a sanctuary space on the second floor for a maximum of 82 congregants and provide a social hall with a capacity of 162 persons, which the applicant states is insufficient for the growing congregation; and

WHEREAS, the Board acknowledges that the Congregation, a religious institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in *Cornell University*

*v. Bagnardi*, 68 NY2d 583 (1986), an educational or religious institution's application is to be granted unless it can be shown to have an adverse effect on 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 such application; and

WHEREAS, based on the above, the Board finds that the programmatic needs of the Congregation create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

WHEREAS, because the Congregation is a non-profit organization and the variance is needed to further its non-profit mission, the finding set forth in ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the Congregation represents that, pursuant to ZR § 72-21(c), the variance, if granted, will not alter the character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, the applicant first notes that the proposed use is permitted as-of-right in the subject zoning district and that substantial efforts have been made to design the proposed building to appear consistent with surrounding residential and community facility buildings; and

WHEREAS, the Congregation initially proposed a building with a base wall height of 27'-2", including the location of the first floor 3 feet above the flood plain elevation, and total proposed height of 38'-7"; and

WHEREAS, the applicant explained that the building was proposed to be lifted from grade in order to both emphasize the special function of the proposed synagogue as a religious institution and help prevent flooding at the first floor; and

WHEREAS, while the subject site is not located in a flood zone, the applicant represents that it is located across the street from a flood zone and, thus, prone to being flooded; and

WHEREAS, nevertheless, in response to Board concerns that the originally proposed building was too tall and the overall design of the roof appeared too massive, particularly as perceived from Frisco Avenue, the applicant reduced the height of the first floor from 3'-0" to 1'-6" above grade, reduced the height of the proposed parapet along Frisco Avenue by 2'-0" to match the heights of adjacent residences and revised the roof design from a solid mansard to one with dormers along the sides fronting Hicksville Road and Frisco Avenue, intended to block the rooftop bulkheads from view; and

WHEREAS, additionally at the Board's request, the applicant modified the plans to provide wrought iron fencing along the entire length of both side yards, gates at the side yards to prevent the utilization of the side yards for congregating or play and trees along the side lot lines to buffer the proposed use from surrounding residences; and

WHEREAS, with regards to parking, the applicant

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states that the requested reduction in parking spaces to 2 is reasonable for the subject use because congregants are prohibited from driving on religious days and holidays, thus the greatest need for parking will be weekday mornings and evenings, where lesser numbers of congregants will travel to the synagogue for assorted classes, lectures and small study groups; and the applicant states that, even at those times, approximately half of congregants will walk to the site because they live within a three-quarter mile radius of the premises; and

WHEREAS, based on the anticipated programming schedule at the building, the applicant concluded that 33 parking spaces would be required during peak weekday hours and prepared parking studies of the surrounding area during both morning and evening hours demonstrating that sufficient on-street parking spaces were, indeed, available; and

WHEREAS, in response to the Board's concerns regarding the use of on-street parking by other community facilities located in the immediate area, the applicant further agreed to arrange for access to 17 parking spaces accessory to a school located across the street from the subject site on Beach 9th Street on weekdays between 5:30 a.m. and 8:30 a.m. and provided a letter confirming such access from that school's administrator; and

WHEREAS, the applicant additionally notes that the provision of 2 parking spaces is greater than the number of parking spaces that would be required if the Congregation applied to the City Planning Commission for the parking waiver available for locally oriented houses of worship pursuant to ZR § 25-35, which the Congregation asserts it would qualify for and, under which, few enough parking spaces would be required such that all required parking could be waived pursuant to ZR § 25-33; and

WHEREAS, the Board, thus, finds that the proposal will not alter the essential character of the surrounding neighborhood, nor impair the use or development of adjacent properties, and not be detrimental to the public welfare; and

WHEREAS, the Congregation states that, per ZR § 72-21(d), the hardship was not self-created; and

WHEREAS, the Board finds that the hardship herein was not created by the Congregation; and

WHEREAS, the Congregation represents that, consistent with ZR § 72-21(e), the proposal represents the minimum variance needed to accommodate its programmatic needs; and

WHEREAS, the Board finds that this proposal is the minimum necessary to allow the synagogue to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Environmental

Assessment Statement (EAS) Short Form CEQR No. 15BSA203Q, dated November 18, 2016; 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; Open Space; Shadows; Historical and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; and Construction; and

WHEREAS, by correspondence dated December 6, 2016, the New York City Landmarks Preservation Commission confirms that the subject site is of no architectural or archaeological significance; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21, and grants a variance to permit, on a site located in an R2X zoning district, the construction of a Use Group 4 house of worship that does not comply with the applicable FAR, lot coverage, front yard, side yard, rear yard, wall height, sky exposure plane and parking regulations of ZR §§ 24-11, 24-111(a), 24-34, 24-35(a), 24-382(b), 24-521 and 25-31, on condition that all work will substantially conform to drawings filed with this application marked "Received January 24, 2017"-Twelve (12) sheets; and on further condition:

THAT the following shall be the bulk parameters of the building: a maximum FAR of 0.94 (10,697 square feet of floor area), a maximum of 59 percent lot coverage, a minimum 7'-1" front yard, side yards measuring at least 7'-0" and 3'-5", rear yards measuring a minimum of 26'-9" and 7'-2", a maximum base wall height of 25'-8" that breaches the sky exposure plane, and the provision of at least two parking spaces, as indicated on the BSA-approved plans;

THAT the gates to the side yards shall remain locked at all times and provide access for maintenance only;

THAT landscaping and fencing shall be provided as indicated on the Board-approved plans and maintained, repaired and replaced as needed;

THAT no occupancy of the roof is permitted;

THAT no portion of the building, including but not limited to the cellar level social hall, may be utilized for commercial catering;

THAT the above conditions shall be listed on the Certificate of Occupancy;



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THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a Certificate of Occupancy shall be obtained within four (4) years, by January 24, 2021;

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 shall be considered approved only for the portion 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, January 24, 2017.

**\*The resolution has been amended.  
Corrected in Bulletin Nos. 32-33, Vol. 102, dated August 16, 2017.**

## \*CORRECTION

**This resolution adopted on May 25, 2017, under Calendar No. 2017-182-BZ and printed in Volume 102, Bulletin No. 22, is hereby corrected to read as follows:**

### 2017-182-BZ

#### CEQR #17-BSA-129K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 29 Stanton Road. Block 8800, Lot 59. Borough of Brooklyn.

#### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez. . . . .4

Negative: . . . . .0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Stanton Road, between Gunnison Court and Losee

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Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Stanton Road, 1,320 square feet of lot area and is occupied by a one-story single-family detached home, which is 1'-3" from the northern lot line, 13'-5" from the western lot line, 0'-7" from the eastern lot line, 2'-1" from the southern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-402-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; unless the Fire Department has notified the Department of Buildings ("DOB") that it is exempt; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards,

along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable bulk regulations of the Zoning Resolution, except floor area ratio regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area

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in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 1'-3" from the northern lot line, setback at least 13'-5" from the western lot line, setback at least 0'-7" from the eastern lot line and setback at least 2'-1" from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; unless the Fire Department has notified the Department of Buildings ("DOB") that it is exempt;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

**\*The resolution has been amended.**

**Corrected in Bulletin Nos. 32-33, Vol. 102, dated August 16, 2017.**

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## \*CORRECTION

**This resolution adopted on May 25, 2017, under Calendar No. 2017-183-BZ and printed in Volume 102, Bulletin No. 22, is hereby corrected to read as follows:**

### 2017-183-BZ

#### CEQR #17-BSA-129K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 28 Stanton Road. Block 8800, Lot 181. Borough of Brooklyn.

#### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side

of Stanton Road, between Gunnison Court and Losee Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Stanton Road, 1,320 square feet of lot area and is occupied by a one-story single-family detached home, which is 2’-7” from the northern lot line, 13’-11” from the western lot line, 7 feet from the eastern lot line, 1 foot from the southern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-467-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; unless the Fire Department has notified the Department of Buildings (“DOB”) that it is exempt; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same

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section and, therefore, proposes open areas, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except floor area ratio regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor

impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Six (6) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 2'-7" from the northern lot line, setback at least 13'-11" from the western lot line, setback at least 7 feet from the eastern lot line and setback at least 1 foot from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; unless the Fire Department has notified the Department of Buildings ("DOB") that it is exempt;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it

# MINUTES

Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

**\*The resolution has been amended.  
Corrected in Bulletin Nos. 32-33, Vol. 102, dated August 16, 2017.**

## \*CORRECTION

**This resolution adopted on May 25, 2017, under Calendar No. 2017-184-BZ and printed in Volume 102, Bulletin No. 22, is hereby corrected to read as follows:**

### **2017-184-BZ**

#### **CEQR #17-BSA-129K**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (“HRO”)

SUBJECT – Application May 19, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 27 Stanton Road. Block 8800, Lot 183. Borough of Brooklyn.

#### **COMMUNITY BOARD # 15BK**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Montanez. ....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; and

WHEREAS, a public hearing was held on this application on May 25, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build it Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt homes impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Stanton Road, between Gunnison Court and Losee

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Terrace, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Stanton Road, 1,375 square feet of lot area and is occupied by a one-story single-family detached home, which is 2'-8" from the northern lot line, 13'-8" from the western lot line, 1'-1" from the eastern lot line, 7 feet from the southern lot line and is non-compliant with the applicable yard regulations; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-469-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a one-family dwelling that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, *inter alia*, upon the elevated dwelling having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; unless the Fire Department has notified the Department of Buildings ("DOB") that it is exempt; the dwelling being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the dwelling where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest window-sill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the elevation of the existing residence in the same footprint, resulting in a two-story single-family detached dwelling with the same lot line setbacks; and

WHEREAS, at the subject site, the minimum lot area required for a single-family detached residence is 2,375 square feet and the minimum lot width required is 25 feet, pursuant to ZR § 25-32; and

WHEREAS, yard requirements for the subject site are set forth as follows: minimum front yard depth requirements are set forth in ZR §§ 23-45 and 64-A351; side yard requirements are set forth in ZR § 23-461(a), and 64-A352; and rear yard requirements are set forth in ZR § 23-47 and 64-A353; and

WHEREAS, open area and lot coverage requirements for the subject site are set forth in ZR §§ 23-142 and 64-A311; and

WHEREAS, the requirement of an open area of at least 8 feet between residences on adjacent zoning lots set forth in ZR § 23-461(c) is waived at the site pursuant to ZR § 64-A352(c); and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private path having an average width of 4 feet, allowing from ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open areas, in lieu of yards,

along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the bulk regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable bulk regulations of the Zoning Resolution, except floor area ratio regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to elevate the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard requirements and that waivers of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the dwelling is located, nor impair the future use or development of the surrounding area

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in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the surrounding neighborhood is a mixed density waterfront community that the majority of homes within a 200 foot radius of the subject site are one- and two- story detached bungalows, a significant number of which are also participating in the Build it Back program by being elevated or reconstructed; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration and elevation satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA129K, dated May 19, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to permit, on a site within an R4-1 zoning district, the elevation of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 23-461(a), 23-47, 23-142, 64-A351, 64-A352, 64-A353 and 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received May 19, 2017"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: setback at least 2'-8" from the northern lot line, setback at least 13'-8" from the western lot line, setback at least 1'-1" from the eastern lot line and setback at least 7 feet from the southern lot line, as illustrated on the BSA-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; unless the Fire Department has notified the Department of Buildings ("DOB") that it is exempt;

THAT the dwelling shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the dwelling where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by May 25, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 25, 2017.

**\*The resolution has been amended.**

**Corrected in Bulletin Nos. 32-33, Vol. 102, dated August 16, 2017.**



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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 102, No. 34

August 23, 2017

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### DIRECTORY

MARGERIE PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

VACANT

VACANT

*Commissioners*

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New Case Filed Up to August 15, 2017  
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**2017-235-BZ**

111-02 Sutphin Boulevard, located at the intersection formed by Sutphin Boulevard and 111th Street, Block 11965, Lot(s) 188, Borough of **Queens, Community Board: 12**. Special Permit (§73-30) to allow a non-accessory radio tower (T-Mobile) on the rooftop of an existing building. C2-3/R5D zoning district. C2-3/R5D district.  
-----

**2017-236-BZ**

1632 Channel Road, located on Channel Road between East 16th and 18th Roads, Block 15482, Lot(s) 28, Borough of **Queens, Community Board: 14**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. C3A district.  
-----

**2017-237-BZ**

134-37 35th Avenue, Between Farrington and Prince Streets, Block 04949, Lot(s) 31, Borough of **Queens, Community Board: 7**. Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C2-2/R6 zoning district. R6-C2-2 district.  
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**2017-238-BZ**

134-03 35th Avenue, North Side of 35th Avenue between Prince Street and Farrington Street, Block 04949, Lot(s) 46, Borough of **Queens, Community Board: 7**. Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C2-2/R6 zoning district. 7 district.  
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**2017-239-BZ**

47 Doty Avenue, NE Side of Doty Avenue, Distant 186.66 Ft to the right of way of Father Capodanno Blvd., Block 03124, Lot(s) 0005, Borough of **Staten Island, Community Board: 2**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R3-1 district.  
-----

**2017-240-BZ**

310 Lenox Avenue, The site is located at the southeast corner of Lenox Avenue and West 126th street, Block 01723, Lot(s) 69, Borough of **Manhattan, Community Board: 10**. Special Permit (§73-244) to permit the legalization of the conversion of the cellar level of an existing eating and drinking establishment without restrictions and no limitation on entertainment and dancing (UG 12A) (Red Rooster Harlem Restaurant located on the cellar level . C4-4A (Special 125th Street District). C4-4A district.  
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# CALENDAR

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**REGULAR MEETING  
SEPTEMBER 19, 2017, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 19, 2017, 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**

**2017-45-BZ**

APPLICANT – Deirdre A. Carson, Esq., Greenberg Traurig, LLP, for 3896 Tenth Avenue Associates, owner; Inwood Academy For Leadership Charter School, lessee.

SUBJECT – Application February 15, 2017 – Special Permit (§73-19) to allow for the operation of a school (Use Group 3) (*Inwood Academy*) contrary to ZR §32-12. C8-3 zoning district.

PREMISES AFFECTED – 3896 Tenth Avenue, Block 2223, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #12M**

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**2017-244-BZ**

APPLICANT – Eric Palatnik, P.C., for Co-Op City Baptist Church, owner.

SUBJECT – Application August 17, 2017 – Variance (§72-21) to reinstate a variance granted under Cal. No. 7-04-BZ – to permit construction of Use Group 4 house of worship contrary to the underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 2208 Boller Avenue, Block 5135, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #10BX**

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*Ryan Singer, Executive Director*

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## REGULAR MEETING TUESDAY MORNING, AUGUST 15, 2017 10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

### SPECIAL ORDER CALENDAR

#### 174-94-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for David Rosero, owner.

SUBJECT – Application May 30, 2014 – Extension of the term of the variance, permitting an automotive sales establishment, which expired on May 6, 2012: Waiver of the Rules. R6 zoning district.

PREMISES AFFECTED – 99-07 Roosevelt Avenue, Block 1765, Lot 44, Borough of Queens.

#### COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a variance, previously granted by the Board, which expired on May 6, 2012; and

WHEREAS, a public hearing was held on this application on September 27, 2016, after due notice by publication in *The City Record*, with a continued hearing on June 6, 2017, and then to decision on August 15, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Commissioner Montanez and former Vice-Chair Hinkson performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Queens, recommends approval of this application on condition that the maximum number of cars to be stored shall not exceed the approved plans of 11 cars, that the sidewalks bordering the site shall not at any time be used for parking, sale or display of vehicles and that fencing shall be kept in good repair and appearance; and

WHEREAS, the subject site is located on the northwest corner of Roosevelt Avenue and 99th Street, in an R6B (C1-4) zoning district, in Queens; and

WHEREAS, the site has approximately 96 feet of frontage along Roosevelt Avenue, 15 feet of frontage along 99th Street, 93 feet of frontage along 39th Avenue, 2,433 square feet of lot area and is occupied by an office trailer and advertising sign; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 6, 1997, when, under the subject calendar number, the Board granted a variance to permit an automobile retail sales establishment in Use Group 16 on

condition that the variance be limited to a term of five (5) years, expiring May 6, 2002, that screening be provided in accordance with ZR § 36-56, that fencing be provided and maintained in accordance with the Board-approved plans and ingress and egress at the site be limited to a single gate at a location adjacent to the existing curb-cut on Roosevelt Avenue, that signage be limited in accordance with the Board-approved plans, that the above conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained within one (1) year, by May 6, 1998; and

WHEREAS, on January 7, 2003, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring May 6, 2012; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term for an additional ten (10) years; and

WHEREAS, in addition, the applicant requests a waiver of the Board’s Rules of Practice and Procedure to permit the filing of this application; and

WHEREAS, at hearing, the Board questioned maintenance of the subject site, the lawfulness of signage, the presence of barbed wire, the state of the sidewalk and the provision of fencing, landscaping and screening; and

WHEREAS, in response, the applicant provided additional information about signage and submits that the fence has been repaired with barbed wire removed, that new landscaping has been planted, that restrooms will be accessible for employees at a nearby off-site location, that the sidewalk has been repaired; and

WHEREAS, the Board notes that no determination has been made herein with regard to the lawfulness of advertising signs at the subject site, which signage should be reviewed by the Department of Buildings to ensure compliance with applicable laws and regulations; and

WHEREAS, accordingly, based upon its review of the record, the Board finds that the requested waiver and extension of term are appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated May 6, 1997, as amended through January 7, 2003, so that as amended this portion of the resolution shall read: “to *wave* the Board’s Rules of Practice and Procedure and *grant* an extension of term of the variance for ten (10) years, expiring May 6, 2022; *on condition* that all work and site conditions shall comply with the drawings filed with this application marked ‘Received July 26, 2017’- Three (3) sheets; and *on further condition*:

THAT sanitary facilities shall be provided off-site for employees, which facilities shall be in close proximity to the site and shall be accessible at all times while the business is operating;

THAT fencing, paving and landscaping shall be maintained and be repaired or replaced as necessary;

THAT no storage of automobile parts shall be permitted on the site;

THAT the maximum number of automobiles permitted

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to be offered for sale on the site shall be 11;

THAT that above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by August 15, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, August 15, 2017.

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## 201-97-BZ

APPLICANT – Eric Palatnik, P.C., for Monroe Queens-Rockaway, LLC, owner.

SUBJECT – Application August 6, 2015 – Amendment of a previously approved Variance (§72-21) which permitted the erection and use of a one-story building as a non-conforming Use Group 6 drug store with accessory parking. The Amendment seeks to eliminate the term of the variance since the use is now permitted in the district. C2-3/R3-2 zoning district.

PREMISES AFFECTED – 119-02 Rockaway Boulevard, corner of Rockaway Boulevard and Lefferts Boulevard, Block 11712, Lot 28, Borough of Queens.

### COMMUNITY BOARD #10Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 30, 2015, acting on Alteration Application No. 421181250, reads in pertinent part:

“The instant application is contrary to BSA Calendar Number 201-97-BZ as December 2, 2013 rezoning creates non compliances with respect to:” “ZR 33-291 – Minimum side yard,” “ZR 37-921 – Street Trees,” “ZR 36-21 – Parking” and “ZR 36-62 – Loading”; and

WHEREAS, this is an application to amend a previously granted variance, which is set to expire on June 23, 2023, to eliminate the term of the variance; and

WHEREAS, a public hearing was held on this application on March 22, 2016, after due notice by

publication in *The City Record*, with continued hearings on November 1, 2016, and May 23, 2017, and then to decision on August 15, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 10, Queens, recommends approval of this application on condition that more street trees be planted, that planting be enhanced with cleaning and restoring of on-site planting and that fencing be repaired; and

WHEREAS, the subject site is located on the southeast corner of Rockaway Boulevard and Lefferts Boulevard, in an R3-2 (C2-3) zoning district, in Queens; and

WHEREAS, the site has approximately 100 feet of frontage along Rockaway Boulevard, 219 feet of frontage along Lefferts Boulevard, 22,036 square feet of lot area and is occupied by one-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 23, 1998, when, under the subject calendar number, the Board granted a variance to permit the construction and use of a one-story building as a non-conforming drug store (Use Group 6) with accessory parking for a term of twenty (20) years, expiring May 27, 2018, on condition that the premises remain free of debris and graffiti at all times, that a sign be posted prohibiting left hand turns to be made from the parking lot onto Rockaway Boulevard, that the applicant prepare and submit a soil or groundwater sampling plan for the project site to the Bureau of Air, Noise and Hazardous Materials of the Department of Environmental Protection (“DEP”) for review and approval, that the applicant also be required to complete any remedial actions that are determined by DEP to be appropriate based on the testing, that no sampling begin until DEP has approved the proposed sampling protocol in writing, that no site grading, excavation, demolition or building construction begin until all DEP-approved sampling and any necessary remediation have been completed, that 21 parking spaces for patron parking be provided at the site and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on October 23, 1998, under the subject calendar number, the Board reopened and amended its resolution to modify the term of the variance from twenty (20) years to twenty-five (25) years, expiring June 23, 2023; and

WHEREAS, the applicant now seeks to eliminate the term of the variance; and

WHEREAS, the applicant represents that a Use Group 6 drug store now constitutes a permitted use under ZR § 32-15 and that commercial, residential and mixed uses predominate in the areas around the subject site; and

WHEREAS, in response to the concerns of Community Board 10 and questions from the Board about site maintenance, fencing, street trees, landscaping, the drug store’s operations, the concrete-block trash enclosure, the applicant provided evidence that the fencing and bumpers had been repaired, that the parking lot had been washed and

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restriped, that dense landscaping had been planted, including additional street trees, that signage prohibiting left-hand turns from the parking lot onto Rockaway Boulevard had been installed and that the trash enclosure had been repaired, washed and painted; and

WHEREAS, based on the foregoing, the Board has determined that the requested amendment to the variance is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution adopted June 23, 1998, amended through October 20, 1998, to eliminate the term of the variance and specifically the June 23, 2023, expiration; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 31, 2016"- Seven (7) sheets; and *on further condition*:

THAT landscaping, fencing, paving, striping, signage and exterior materials of the building and the fence enclosure shall be maintained at all times and replaced as necessary to maintain the site in a clean, orderly and aesthetically pleasing condition;

THAT the site shall remain free of debris and graffiti at all times;

THAT a sign shall be posted prohibiting left-hand turns to be made from the parking lot onto Rockaway Boulevard;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by August 15, 2021;

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 objections cited and filed by the Department of Buildings; and

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 15, 2017.

## 558-51-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America Inc., owner.

SUBJECT – Application August 14, 2015 – Extension of Term (§11-411) to seek the term of a previously granted variance for a gasoline service station and maintenance which expired December 21, 2016. C2-2/R5D zoning district.

PREMISES AFFECTED – 68-22 Northern Boulevard, Block 1186, Lot 19, Borough of Queens.

## COMMUNITY BOARD #19Q

## THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 19, 2017, at 10 A.M., for decision, hearing closed.

## 822-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application January 8, 2016 – Extension of Time to Complete Construction of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 9, 2015. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1774 Victory Boulevard, Block 709, Lot 28, Borough of Staten Island.

## COMMUNITY BOARD #1SI

## THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 19, 2017, at 10 A.M., for decision, hearing closed.

## 549-67-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Irene B. Mancus & Joseph H. Mancuso Testamentary Trust, owner.

SUBJECT – Application October 16, 2015 – Extension of Term & Waiver (11-413) seek an extension of term of a previously variance granted pursuant to (72-21) permitting in an R3-2 zoning district an existing coal and oil establishment structural alterations to existing silos to provide storage rooms amend to legalize masonry extension for use as truck garage and removal silos. R3-2 zoning district.

PREMISES AFFECTED – 7-9 Elm Tree Lane, Block 5651, Lot 250, Borough of Bronx.

## COMMUNITY BOARD #12BX

## THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for decision, hearing closed.

## 336-05-BZ

APPLICANT – Klein Slowik PLLC, for WB Realty Partners LLC, owner; CPM Enterprises LLC, lessee.

SUBJECT – Application October 12, 2016 – Extension of Term of a previously approved Special permit (§73-36) permitting the operation of a Physical Culture Establishment (drive 495) in the subject building, occupying the third and a portion of the second floor which expired on September 12,

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2016. M1-5B (SoHo-Cast Iron Historic District).  
PREMISES AFFECTED – 495 Broadway aka 66-68 Mercer Street, Block 484, Lot 24, Borough of Manhattan.

**COMMUNITY BOARD #2M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 19, 2017, at 10 A.M., for decision, hearing closed.

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**164-07-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Rouse SI Shopping Center, LLC, owner; 280 Marsh LLC dba Massage Envy Staten Island, lessee.

SUBJECT – Application August 15, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Massage Envy*) which will expire on October 2, 2017. C4-1 zoning district.

PREMISES AFFECTED – 280 Marsh Avenue (The Crossings @ Staten Island Mall), Block 2400, Lot 300, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for decision, hearing closed.

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**159-08-BZ**

APPLICANT – Eric Palatnik, P.C., for 68-70 Spring Partners, LLC, owners.

SUBJECT – Application February 7, 2017 – Extension of time to complete construction of a previously approved Variance (§72-21) to permit the construction of a seven-story and penthouse residential building, with twelve (12) dwelling units and ground floor retail use, contrary to ZR42-10 and 42-10(D)(2)(b) set to expire on October 28, 2017. M1-5B zoning district.

PREMISES AFFECTED – 68-70 Spring Street, Block 482, Lot 19, Borough of Manhattan.

**COMMUNITY BOARD #2M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for decision, hearing closed.

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## APPEALS CALENDAR

**2016-4330-A & 2016-4331-A**

APPLICANT – Eric Palatnik, P.C., for 1671 Hylan Blvd. LLC, owner.

SUBJECT – Application November 14, 2016 – To permit the proposed development of a one family home, contrary to Article 3 Section 36 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 16 & 19 Tuttle Street, Block 1481, Lot(s) 96 and 300, Borough of Staten Island

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

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**2017-30-A**

APPLICANT – Eric Palatnik, P.C., for 1671 Hylan Boulevard LLC, owner.

SUBJECT – Application January 27, 2017 – To permit the proposed development of a one family home, contrary to Article 3 Section 36 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 16 Garage Tuttle Street, Block 1481, Lot 96, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

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**2017-226-A**

APPLICANT – Eric Palatnik, P.C., for 1671 Hylan Boulevard, LLC, owner.

SUBJECT – Application July 11, 2017 – Proposed construction of a one-family home not fronting a legally mapped street contrary to General City Law 36. R3X zoning district.

PREMISES AFFECTED – 18 Tuttle Street, Block 1481, Lot 92, Borough of Staten Island.

**COMMUNITY BOARD # 1SI**

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 226-14-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Sharey Tefilah, owner.

SUBJECT – Application September 18, 2014 – Variance (§72-21 to permit the proposed three (3) story use group 4 Synagogue, school and Rabbi's office. R4 zoning district.

PREMISES AFFECTED – 147-02 76<sup>th</sup> Road, Block 6686, Lot 1, Borough of Queens.

#### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for continued hearing.

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### 330-14-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jack Guindi, owner.

SUBJECT – Application December 30, 2014 – Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461); perimeter wall height (ZR 23-263) and less than the required minimum rear yard (ZR23-47); R3-2 zoning district.

PREMISES AFFECTED – 1746 East 21<sup>st</sup> Street, Block 6783, Lot 18, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for decision, hearing closed.

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### 105-15-BZ

APPLICANT – Eric Palatnik, P.C., for Aleksandr Finkelshtein, Contract Vendee.

SUBJECT – Application May 12, 2015 – Variance (§72-21) to permit the development of a four (4) story building consisting of Use Group 6 commercial offices on the first and second floor and community facility uses on the third and fourth floors. R4 zoning district.

PREMISES AFFECTED – 2102-2124 Avenue Z, Block 7441, Lot 371, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for continued hearing.

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### 178-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Margarita Bravo, owner.

SUBJECT – Application August 6, 2015 – Variance (§72-21) to permit the legalization of a two-family dwelling that exceeds permitted FAR and does not provide required front, side and rear yards. R3-1 zoning district.

PREMISES AFFECTED – 99-47 Davenport Court, Block 14243, Lot 1110, Borough of Queens.

#### COMMUNITY BOARD #10Q

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for continued hearing.

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### 2016-4136-BZ & 2016-4137-BZ

APPLICANT – Sheldon Lobel, P.C., for Astoria Warehouse Enterprises, Inc., owner.

SUBJECT – Application March 15, 2016 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. M1-1 zoning district.

PREMISES AFFECTED – 19-59 & 19-61 49<sup>th</sup> Street, Block 755, Lot(s) 5 and 6; 19-55 & 19-57 49<sup>th</sup> Street, Block 755, Lot(s) 7 & 8, Borough of Queens.

#### COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for decision, hearing closed.

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### 2016-4165-BZ

APPLICANT – Glen V. Cutrona, for Shore to Shore Foster, LLC, owner.

SUBJECT – Application April 6, 2016 – Variance (§72-21) to permit the construction of an eating and drinking establishment (UG 6) (*Tim Horton's*) with an accessory drive thru contrary to ZR §22-10. R3X (SRD) zoning district.

PREMISES AFFECTED – 5801 Amboy Road, Block 6896, Lot 53, Borough of Staten Island.

#### COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for decision, hearing closed.

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### 2016-4181-BZ

APPLICANT – Law Office of Lyra J. Altman, for Alber Bukai and Subhi Bukai, owners.

SUBJECT – Application May 2, 2016 – Special Permit (§73-622) for the enlargement and conversion of an existing two family dwelling to a single family dwelling, contrary to side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R5 zoning district.

PREMISES AFFECTED – 1981 East 14<sup>th</sup> Street, Block 7293, Lot 54, Borough of Brooklyn.

#### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

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**2016-4224-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Elie Fein, owner.

SUBJECT – Application July 1, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1869 East 21<sup>st</sup> Street, Block 6804, Lot 63, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to August 22, 2017, at 10 A.M., for decision, hearing closed.

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**2016-4464-BZ**

APPLICANT – Law Office of Jay Goldstein, for Noah S. Smith, owner.

SUBJECT – Application December 8, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space ratio (ZR 23-141); side yard (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1350 East 28<sup>th</sup> Street, Block 7663, Lot 60, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

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**REGULAR MEETING**

**TUESDAY AFTERNOON, AUGUST 15, 2017**

**1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

**ZONING CALENDAR**

**2017-14-BZ**

**CEQR #17-BSA-068M**

APPLICANT – Davidoff Hutcher & Citron LLP, for FIT Student Housing Corporation, owner.

SUBJECT – Application January 17, 2017 – Variance (§72-21) to permit a one-story above-ground extension for a community facility (UG 3) (Fashion Institute of Technology (FIT) which exceeds the maximum permitted community facility floor area and is contrary to ZR §33-10. C6-2 zoning district.

PREMISES AFFECTED – 230 West 27<sup>th</sup> Street aka FIT Co-

Ed Dorm, Block 776, Lot 55, Borough of Manhattan.

**COMMUNITY BOARD #5M**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 15, 2016, acting on Department of Buildings (“DOB”) Application No. ZRD1 46881 reads in pertinent part:

“ZR 33-10, ZR 72-21: Proposed community facility floor area exceeds maximum permitted community facility floor area contrary to Zoning Resolution section 33-10 . . .”; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located within a C6-2 zoning district, the enlargement of a 15-story community facility building that does not comply with the zoning regulations for floor area, contrary to ZR § 33-10, specifically ZR § 33-123; and

WHEREAS, this application is filed on behalf of the Fashion Institute of Technology (“FIT”), a college of the State University of New York specializing in design, fashion, art, communications and business education; and

WHEREAS, a public hearing was held on this application on August 15, 2017, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Vice-Chair Shanda performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 5, Manhattan, recommends approval of the subject application; and

WHEREAS, the subject site is located on the south side of West 27th Street, between Sixth Avenue and Seventh Avenue, in a C6-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 133 feet of frontage along West 27th Street, a depth of 99 feet, 13,064 square feet of lot area and is occupied by a 15-story community facility building with 95,653 square feet of floor area and a floor area ratio (“FAR”) of 7.3 utilized as an FIT residence hall (the “Building”); and

WHEREAS, FIT proposes to enlarge the existing building at the rear of the first floor with 1,170 square feet of floor area, resulting in a building with a total of 96,823 square feet of floor area and 7.4 FAR; and

WHEREAS, at the subject site, a maximum of 84,914 square feet of community facility floor area and 6.5 FAR are permitted, pursuant to ZR § 33-123; and

WHEREAS, accordingly, FIT seeks the subject relief; and

WHEREAS, the applicant states that the Building was constructed in 1974 pursuant to then-applicable plaza regulations, which permitted a maximum of 97,288 square feet of floor area at the site on account of the plaza located in front of the Building (the “Plaza”); and

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WHEREAS, the applicant notes that due to subsequent amendments to the Zoning Resolution, both the Plaza and the Building are legal non-compliances; and

WHEREAS, FIT states that the waiver sought is necessary in order to meet its programmatic needs, specifically, to accommodate the relocation of its existing bookstore from its current location in the cellar of a building located at 340 Eighth Avenue, Manhattan, and the utilization of that cellar space for Studio X, a studio and laboratory space that will replicate technology and equipment currently available only to students within specific majors in an open studio setting accessible by and available to use by all FIT students, regardless of major or course of study; and

WHEREAS, the applicant states that Studio X will provide much-needed additional studio space to foster creative collaboration and house equipment upgrades, resources and technologies as they become available; accordingly, because of the large footprint required to accommodate Studio X, as well as the studio's need for certain infrastructural support including adequate ventilation and cooling systems, the current location of the FIT bookstore was identified as the only suitable site that would not necessitate conversion of several of FIT's currently over-programmed classroom spaces; and

WHEREAS, FIT submits that the bookstore will also benefit from its relocation to the subject building, where it will be directly accessible from the street rather than require that patrons and daily deliveries make their way through another academic building and below grade to the bookstore's current location on Eighth Avenue, where it additionally lacks display windows, a common feature of college bookstores to promote institutional pride and school spirit; and

WHEREAS, the existing unoccupied space to which the proposed enlargement will be appended—approximately 4,595 square feet of floor area—is too small to fully accommodate relocation of the bookstore and requires the additional 1,170 square feet of floor area proposed herein at the first floor in order to accommodate the necessary variety of textbooks as well as the specialty art supplies and fashion products required by FIT's curriculum; and

WHEREAS, FIT represents that the rear yard of the Building, in which the enlargement is proposed, is currently accessible to Building residents and their guests and occasionally utilized for residential life events; the enlargement will be located in only a portion of the rear yard and new landscaping, outdoor furniture and pavement will be provided in the remainder of the space for the continuation of these uses; and

WHEREAS, the Board acknowledges that FIT, as an educational institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), an educational or religious institution's application is to be granted unless it

can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such application; and

WHEREAS, based on the above, the Board finds that FIT's programmatic needs create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

WHEREAS, because FIT is a non-profit institution and the variance is needed to further its not-for-profit mission, the finding set forth in ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, FIT represents that, pursuant to ZR § 72-21(c), the variance, if granted, will not alter the character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, specifically, FIT asserts that the proposed enlargement will not be visible from the street; that it is a permitted obstruction in a rear yard pursuant to ZR § 33-23(b)(3) because it is less than 23 feet above curb level; that the use is permitted as-of-right in the subject zoning district and consistent with the commercial character of ground floor uses on the subject block; that the Building is in such close proximity with the existing bookstore that relocation will not increase the amount of traffic on the subject street; and that the height of the enlargement, at 14 feet, will be lower than the height of the windows of buildings facing the subject rear yard, thus, the enlargement will affect neither the views nor accessibility of light and air to those buildings; and

WHEREAS, in light of the foregoing, the Board finds that the proposal will not alter the essential character of the surrounding neighborhood, nor impair the use or development of adjacent properties, and not be detrimental to the public welfare; and

WHEREAS, FIT states that the practical difficulties herein complained of are inherent to its unique programming needs and were not caused by the owner of the site or a predecessor in title; and

WHEREAS, the Board finds that the hardship herein was not created by FIT; and

WHEREAS, FIT represents that, consistent with ZR § 72-21(e), the proposal is modest, resulting in a 0.1 increase of the FAR of the Building, and represents the minimum variance needed to accommodate its programmatic needs; and

WHEREAS, the Board finds that this proposal is the minimum necessary to allow FIT to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the

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proposed Type II action noted in the CEQR Checklist No. 17-BSA-068M, dated January 17, 2017; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site located within a C6-2 zoning district, the enlargement of a community facility that does not comply with the community facility floor area regulations, contrary to ZR § 33-10, specifically ZR § 33-123; *on condition* that all work will substantially conform to drawings filed with this application marked “Received June 14, 2017”- Seven (7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum 96,823 square feet of floor area (7.4 FAR), as indicated on the BSA-approved plans;

THAT the exterior material of the enlargement shall be a finished material such as, but not limited to, finished block or brick;

THAT the above conditions shall be listed on the Certificate of Occupancy;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a Certificate of Occupancy shall be obtained within four (4) years, by August 15, 2021;

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 shall be considered approved only for the portion 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, August 15, 2017.

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## 2017-37-BZ

### CEQR #17-BSA-082M

APPLICANT – Law Office of Jay Goldstein, for Greenhorn Development, LLC, owner; Rumble Fitness LLC, lessee.

SUBJECT – Application February 7, 2017 – Special Permit (§73-36) to permit the legalization of the operation of a Physical Cultural Establishment (Rumble Fitness) located in a portion of the first floor and cellar of an existing building contrary to ZR §32-10. C6-3X zoning district.

PREMISES AFFECTED – 142 West 23<sup>rd</sup> Street, Block 798, Lot 66, Borough of Manhattan.

### COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and

Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 15, 2017, acting on Alteration Application No. 122972417, reads in pertinent part:

“Proposed Physical Culture Establishment in C6-3X zoning district is not permitted pursuant to ZR 32-10 and is referred to the Board of Standards and Appeals for special permit under ZR 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize the operation of a physical culture establishment (“PCE”) on portions of the cellar and first floor of a 13-story mixed-use commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 15, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of West 23rd Street, between Seventh Avenue and Sixth Avenue, in a C6-3X zoning district, in Manhattan; and

WHEREAS, the site has approximately 75 feet of frontage along West 23rd Street, 99 feet of depth, 7,406 square feet of lot area and is occupied by a 13-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i)

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through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies a total of 5,900 square feet of floor space as follows: 4,100 square feet of floor space in the cellar, including a gymnasium area, locker rooms, storage and an office, and 1,800 square feet of floor area on the first floor, used for reception, a private studio and locker area; and

WHEREAS, the PCE has been in operation since January 2017 as Rumble Fitness LLC with the following hours of operation: Monday through Friday, 4:45 a.m. to 10:00 p.m., and Saturday and Sunday, 6:30 a.m. to 8:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the mixed residential and commercial area, which includes commercial office buildings,

community facilities, retail stores, restaurants and residences, and that the location of the PCE within the first floor and cellar of the existing building minimizes its visibility from the street; and

WHEREAS, in addition, the applicant submits that sound attenuation measures—including isolation of the studio with sheetrock and BATT insulation, flooring with isolated mat subfloor with neoprene isolators, fiberglass batting and perimeter isolation boards, penetrations at ceilings and partitions sealed with mineral fiber insulation and caulk, partitions with an STC rating of 60 and flooring with an STC rating of 64—have been installed to absorb noise, echoes and reverberation, if any, created by the PCE; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant represents that the PCE contains an exercise room and personal training room that will be used for instructional classes for physical improvement; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exist, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, by letter dated April 19, 2017, the Fire Department states that, based upon its review of the drawings and supporting documentation, it has no objection to this application; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-082M, dated February 7, 2017; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

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WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *legalize*, in a C6-3X zoning district, the operation of a physical culture establishment on portions of the cellar and first floor of a 13-story mixed-use commercial and residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 7, 2017” – Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring January 31, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by August 15, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 15, 2017.

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## 2017-40-BZ

### CEQR #17-BSA-085M

APPLICANT – Law Office of Jay Goldstein, for TGA II, LLC, owner; Flywheel Sports, lessee.

SUBJECT – Application February 8, 2017 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Flywheel*) in a portion of the first floor and first floor mezzanine of an existing building contrary to ZR §32-10. C5-2 & C6-4A zoning district.

PREMISES AFFECTED – 420 Park Avenue South (420-422 Park Ave S, 50 East 29<sup>th</sup>), Block 858, Lot 45, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 10, 2017, acting on New Building Application No. 110030190, reads in pertinent part:

“ZR 32-10” “Physical Culture Use is not permitted, as of right”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site partially in a C5-2 zoning district and partially in a C6-4 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second floors of a 19-story commercial and hotel building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 15, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 5, Manhattan, waives its recommendation for this application; and

WHEREAS, the subject site is located on the southwest corner of Park Avenue South and East 29th Street, partially in a C5-2 zoning district and partially in a C6-4 zoning district, in Manhattan; and

WHEREAS, the site has approximately 103 feet of frontage along Park Avenue South, 142 feet of frontage along East 29th Street, 20,642 square feet of lot area and is occupied by a 19-story, with cellar, commercial and hotel building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:

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- (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
- (ii) a swimming pool of a minimum 1,500 square feet; or
- (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
- (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies a total of 3,667 square feet of floor area as follows: 3,234 square feet of floor area on the first floor, including reception, retail, toilets, storage, a shower and a spinning studio, and 433 square feet of floor area on the second floor, used for toilets, storage and showers; and

WHEREAS, the PCE has been in operation as Flywheel Sports since September 2016 with the following hours of operation: Monday through Friday, 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, 7:30 a.m. to 5:30 p.m.; and

WHEREAS, the applicant states that the PCE is consistent with the surrounding area, which contains commercial offices buildings, community facilities, retail stores, restaurants and residential uses, and that the PCE is fully contained within the building with limited visibility from the street; and

WHEREAS, with regard to sound attenuation, the applicant submits that all partitions in the studio are isolated from adjacent structures with sheetrock and sound-attenuated batt insulation, that all flooring sits on isolated mat subfloor with neoprene isolators, fiberglass batting and perimeter isolation boards at the edges, that all penetrations at the studio ceiling and partitions are sealed with mineral fiber insulation and caulked, that partitions have STC ratings of 60 and that flooring has an STC rating of 64; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant represents that the PCE provides spin classes for increasing participants' stamina and physical fitness; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, the Board has made no determination as to the lawfulness of signage at the subject site, and signs must comply with the applicable zoning regulations as reviewed and approved by the Department of Buildings; 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

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WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-085M, dated February 8, 2017; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *legalize*, on a site partially in a C5-2 zoning district and partially in a C6-4 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first and second floors of a 19-story commercial and hotel building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 9, 2017” – Three (3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring September 30, 2026;

THAT the fire alarm system and sprinkler system within the physical culture establishment shall be inspected and signed off by the Fire Department prior to the issuance of a certificate of occupancy;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by August 15, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 15, 2017.

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## 2017-50-BZ

### CEQR #17-BSA-085M

APPLICANT – Jay Goldstein, Esq., for 819 Realty Group LLC, owner; Beast Fitness Evolved, lessee.

SUBJECT – Application February 21, 2017 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Beast Fitness Evolved*) in a portion of the cellar first floor of an existing building contrary to ZR §32-10. C4-3A zoning district.

PREMISES AFFECTED – 458 5<sup>th</sup> Avenue, Block 1010, Lot 40, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3  
Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 25, 2017, acting on Alteration Application No. 320916657, reads in pertinent part:

“The proposed additional Cultural Establishment in C4-3A Zoning District is not permitted pursuant to ZR 32-10 and is referred to Board of Standards and Appeals (BSA) for a special permit under ZR 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C4-3A zoning district, the operation of a physical culture establishment (“PCE”) on portions of the cellar and first floor of a four-story mixed-use commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 15, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of 5th Avenue and 10th Street, in a C4-3A zoning district, in Brooklyn; and



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WHEREAS, the site has approximately 50 feet of frontage along 5th Avenue, 96 feet of frontage along 10th Street, 4,788 square feet of lot area and is occupied by a four-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are

made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 proposed PCE will occupy 3,442 square feet of floor space as follows: 1,676 square feet of floor space in the cellar, including an exercise room, bathrooms with a shower and a business area, and 1,766 square feet of floor area on the first floor, including reception, retail, a bathroom and a training area; and

WHEREAS, the PCE will be operated as Beast Fitness with proposed hours of operation of Monday through Friday, 5:00 a.m. to 9:00 p.m., and Saturday and Sunday, 9:00 a.m. to 4:00 p.m.; and

WHEREAS, the applicant represents that the PCE is limited in size and wholly contained within the building, reducing its visibility from the street, and that the surrounding area contains a vibrant mixed of commercial, residential and community-facility uses; and

WHEREAS, with regards to sound attenuation, the applicant represents that all typical partitions at the studio will be isolated from adjacent structure, that all ceiling are gypsum board with glue will be supported by vibration isolation hangers, that penetrations at studio ceilings and partitions will be sealed with mineral fiber insulation and caulked, that partitions will have STC ratings of 63 and that ceilings will have an STC rating of 62; and

WHEREAS, at hearing, in response to questions from the Board, the applicant represented that the sound attenuation measures to be installed will ensure that sound levels in adjacent areas will not exceed 45 dBA, including sound emanating from any sound system installed; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant represents that the PCE will provide facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and

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operator of the establishment and the principals thereof, and issued a report which the Board has deemed to be satisfactory; and

WHEREAS, by letter dated June 26, 2017, the Fire Department states that an interior fire alarm system must be installed and inspected before the Fire Department can support this application; and

WHEREAS, in response, the applicant revised the drawings to reflect installation of an interior fire alarm system; and

WHEREAS, the applicant represents that the PCE will be fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—will be installed in the entire PCE space; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-085M, dated February 8, 2017; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, in a C4-3A zoning district, the operation of a physical culture establishment on portions of the cellar and first floor of a three-story mixed-use commercial and residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 9, 2017” –One (1) sheet and “August 15, 2017”-Four (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring September 30, 2026;

THAT acoustic isolation measures shall be enhanced if vibrations become a disturbance to neighbors or if noise levels exceed 45 dBA;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways

shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed and maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by August 15, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 15, 2017.

## 2017-236-BZ

### CEQR #18-BSA-012Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (HRO) for Gregory Henkel, owner.

SUBJECT – August 10, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 1632 Channel Road and 16-33 Church Road, Block 15482, Lot 28. Borough of Queens.

### COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Otley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an C3A zoning district, the reconstruction of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for waterfront yards, contrary to ZR § 62-332; and

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WHEREAS, a public hearing was held on this application on August 15, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuilt residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Channel Road, between East 18 Road and East 16 Road, in an C3A zoning district, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage along Channel Road, 180 feet of depth, 4,545 square feet of lot area and is occupied by a one-story, with cellar, one-family detached residence; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 2016, when, under BSA Calendar Number 2016-1431-A, the Board granted an application to build within the bed of a mapped street, contrary to General City Law § 35, on condition that no building or other structure may be constructed over an existing DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; that if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply; that if a proposed building or other structure is within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure may be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; that if a proposed building or other structure is not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired solely because of the addition of a new landing, lift, ramp, staircase and/or porch required to accommodate elevation of the proposed building or other structure, that portion of the proposed building or other structure that is within the exact footprint of the pre-Hurricane Sandy

building or other structure may remain within 5 feet of a DEP-managed existing water or sewer main but such new landing, lift, ramp, staircase and/or porch may not be within 5 feet of a DEP-managed existing water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor, unless DEP has notified DOB that such limitation does not apply; and that, if the curb-to-curb width of the street is less than 34 feet or the building is setback more than 40 feet from the curb line: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that the building is exempt; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the building, where the foundation is not completely closed, shall have an exterior assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32'-0"; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction of a one-family detached residence with a 6.8-foot waterfront yard; and

WHEREAS, at the subject site, waterfront yards must be 30 feet in depth under ZR § 62-332; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in

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# MINUTES

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which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with side-yard and waterfront-yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the waterfront-yard requirement and that waiver of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; the applicant further states that the majority of residences within the surrounding neighborhood are single-family residences; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA012Q, dated August 10, 2017.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure; *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review; and makes the required findings under ZR § 64-92 to *permit*, in an R3-2 zoning district, the reconstruction of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for waterfront yards, contrary to ZR § 62-332; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received August 10, 2017"- eight (8) sheets; and *on further condition*:

THAT there shall be a waterfront yard at least 6.8 feet in depth, as illustrated on the Board-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code, unless the Fire Department has notified DOB that it is exempt;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by August 15, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 15, 2017.

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## **116-14-BZ**

APPLICANT – Gerard J. Caliendo, RA, AIA, for Ben Ohebshalom Med LLC, owner; Crank NYC II Inc., Anthony Maniscalco, lessee.

SUBJECT – Application May 30, 2014 – Special Permit (§73-36) to allow the legalization of an Physical Cultural Establishment (*Crank NYC II*) on the first floor level of an existing five story mixed commercial & residential building in a C1-9 zoning district.

PREMISES AFFECTED – 188 East 93<sup>rd</sup> Street, Block 1521, Lot 40, Borough of Manhattan.

## **COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for continued hearing.

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*Ryan Singer, Executive Director*

# 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.

Volume 102, No. 35

August 30, 2017

### DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

VACANT

VACANT

*Commissioners*

Ryan Singer, *Executive Director*

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Tuesday, August 22, 2017**

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157-15-BZ	3925 Bedford Avenue, Brooklyn
173-15-BZ	157 Kent Avenue, Brooklyn
270-15-BZ	338 Devoe Street, Brooklyn
2016-1219-BZ & 2016-1220-A	73-45 Myrtle Avenue, aka 78-70 74 <sup>th</sup> Street, Queens

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# DOCKETS

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New Case Filed Up to August 22, 2017  
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**2017-241-BZ**

636 Clarence Avenue, located on the north side of Clarence Avenue, 350 ft. of the southwest corner of Randall Avenue, Block 05486, Lot(s) 18, Borough of **Bronx, Community Board: 10**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. C3A zoning district. C3A district.  
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**2017-242-BZ**

15 Stanton Road, located at the intersection formed by Stanton Road and Gunnison Court., Block 08800, Lot(s) 85, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. C3A zoning district. R4-1 district.  
-----

**2017-243-BZ**

29-16 Francis Lewis Boulevard, Southeast Corner of Francis Lewis Boulevard and 172nd Street, Block 04938, Lot(s) 1, Borough of **Queens, Community Board: 7**. Re-instatement (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on December 26, 2015; Amendment to permit the addition of a convenience store within the existing building and permit the operation of a U-Haul rental establishment; Waiver of the Rules. R2A zoning district. R2A district.  
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**2017-244-BZ**

2208 Boller Avenue, Bounded by Boller Avenue, Erskine Place and Hunter Avenue, Block 05135, Lot(s) 1, Borough of **Bronx, Community Board: 10**. Variance (§72-21) to permit the construction of a House of Worship and Community Center (UG 4) (Co-Op City Baptist Church) contrary to open space ratio, floor area ratio, height and setback, and encroaches onto the front and side yards, is contrary to Z.R. §24-11, §24-34, §24-35 and §24-521. R3A zoning district. R3A district.  
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**2017-245-BZ**

32-02 Francis Lewis Boulevard, Premises is located at the intersection of Francis Lewis Boulevard to the south, 32nd Avenue to the east, and Utopia Parkway to the north., Block 04940, Lot(s) 1, Borough of **Queens, Community Board: 11**. Re-instatement (§11-411) of a previously approved variance which permitted an extension of a commercial parking, accessory to a bank within a residential district which expired on November 10, 1999; Waiver of the Rules. R2A zoning district. R2A district.  
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**2017-246-BZ**

61 Crosby Street, East side of Crosby Street, south of Spring Street and North of Broome Street, Block 00482, Lot(s) 13, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to permit commercial retail (UG 6) on the level of the ground floor contrary to ZR §42-14. M1-5B (SoHo Cast Iron Historic District). M1-5B district.  
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**2017-247-BZ**

1367 East 24th Street, east side of East 24th Street between Avenues M and N., Block 07660, Lot(s) 17, 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 23-14); and less than the required rear yard (ZR 23-47). R3-1 zoning district. R2 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 SEPTEMBER 26, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, September 26, 2017, 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

### 260-06-BZ

APPLICANT – J. Owen Zurhellen, II, for Charlton Cooperative Corp., owner; Tri Ippon LLC, lessee.

SUBJECT – Application March 17, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitted the operation of a Physical Cultural Establishment (*Oishi Judo Club*) on the first floor in a six-story (plus basement) building which expires on April 10, 2017. M1-6 zoning (Special Hudson Square) District

PREMISES AFFECTED – 112 Charlton Street/547 Greenwich Street, Block 597, Lot 45, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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### 294-06-BZ

APPLICANT – Goldman Harris LLC, for John & Steven, Inc., owner; Club Fitness NY, lessee.

SUBJECT – Application May 10, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitted the operation of a Physical Culture Establishment (*Club Fitness*) in the cellar, second and third floors of a three-story building which expired on April 10, 2017. C4-2A & C4-3 zoning district.

PREMISES AFFECTED – 31-11 Broadway, Block 613, Lot(s) 1 & 3, Borough of Queens.

**COMMUNITY BOARD #1Q**

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## APPEALS CALENDAR

### 2016-4296-A thru 2016-4298-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Galaxy Construction Services, Corp., owners.

SUBJECT – Application November 3, 2016 – Proposed enlargement of an existing one-family home which is within the unbuilt portion of the mapped street contrary to General City Law 35. C3A zoning district.

PREMISES AFFECTED – 3236, 3238 Schley Avenue and 580 Clarence Avenue, Block 5490, Lot(s) 7, 110, 111, Borough of Bronx.

**COMMUNITY BOARD #10BX**

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### 2017-143-A & 2017-144-A

APPLICANT – NYC Department of Buildings, for Marlene Mitchell Kaselis, owner.

SUBJECT – Application May 10, 2017 – Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy.

PREMISES AFFECTED – 25-32 & 25-30 44<sup>th</sup> Street, Block 702, Lot(s) 57, 56, Borough of Queens.

**COMMUNITY BOARD #1Q**

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## REGULAR MEETING SEPTEMBER 26, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, September 26, 2017, 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

### 2016-4169-BZ

APPLICANT – Sheldon Lobel, P.C., for 230 Boerum LLC, owner.

SUBJECT – Application April 15, 2016 – Variance (§72-21) to permit the construction of a residential building contrary to ZR §§42-00 & 42-10. M1-1 zoning district.

PREMISES AFFECTED – 230 Boerum Street, Block 3082, Lot 19, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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### 2016-4276-BZ

APPLICANT – Normandy Development and Construction LLC, for 333 Johnson Property Holdings, LLC, owner.

SUBJECT – Application October 31, 2016 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for Use Group 6B office use. M3-1 zoning district.

PREMISES AFFECTED – 333 Johnson Avenue, Block 3056, Lot(s) 200, 230 & 32, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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### 2017-102-BZ

APPLICANT – Sheldon Lobel, P.C., for Abraham Chehebar, owner.

SUBJECT – Application April 5, 2017 – Special Permit (§73-622) to permit the enlargement of a single-family residence, contrary to floor area requirements (ZR §23-41); perimeter wall height (ZR §23-631); proposed front yard setback (ZR §23-45); and side yards (ZR §23-461). R2X (Special Ocean Parkway District).

PREMISES AFFECTED – 2015 East 5<sup>th</sup> Street, Block 7108, Lot 116, Borough of Brooklyn.



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# CALENDAR

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## COMMUNITY BOARD #15BK

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### 2017-190-BZ

APPLICANT – Fox Rothschild LLP, for Catherine Sheridan Housing Development Fund Company, Inc., owner.

SUBJECT – Application May 25, 2017 – Variance (§72-21) to permit the development of a 7-story building containing 92 affordable independent residences for seniors and a ground floor senior center contrary to ZR §§23-155 & 24-11 (maximum permitted FAR); ZR §24-33 (permitted obstruction in the required rear yards) and ZR §23-622 (maximum height and setbacks). R6B zoning district.

PREMISES AFFECTED – 23-11 31<sup>st</sup> Road, Block 569, Lot 17, Borough of Queens.

## COMMUNITY BOARD #1Q

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*Ryan Singer, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, AUGUST 22, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

**SPECIAL ORDER CALENDAR**

**716-82-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP for Cigarette Realty Co., LLC, owner.

SUBJECT – Application November 9, 2015 – Extension of term of variance (72-21) which permitted retail stores, offices and accessory parking at the rear of the building which expired on June 13, 2013; Extension of Time to Obtain a Certificate of Occupancy which expired on June 13, 2003; Waiver of the Rules. C2-2/R6 & R4 zoning district.

PREMISES AFFECTED – 209-30 Northern Boulevard, Block 7309, Lot 15, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of term of a variance, previously granted by the Board under ZR § 72-21, which expired June 13, 2013, and an extension of time to obtain a certificate of occupancy, which expired June 13, 2013; and

WHEREAS, a public hearing was held on this application on August 23, 2016, after due notice by publication in *The City Record*, with continued hearings on October 18, 2016, and July 18, 2017, and then to decision on August 22, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, Queens, recommends approval of this application on condition that the parking lot have accessible parking spaces located closer to the building entrance, that directional arrows be drawn to direct drivers around the parking lot, that exit signs be placed on the building to direct traffic, that a “right turn only” sign be posted at the exit and that deliveries and dumpster collection cease after 10:00 p.m.; and

WHEREAS, New York State Senator Tony Avella submitted testimony regarding this application, citing frequent late-night and early-morning noise from store

deliveries and store pickups as well as debris on the sidewalk around the site, and recommended, should this application be granted, that all deliveries, including garbage pickup, be mandated to occur no later than 9:00 p.m. and no earlier than 8:00 a.m. and that the sidewalk in front of the site be kept clean and free of debris at all times; and

WHEREAS, the subject site is located on the south side of Northern Boulevard, between Oceania Street and 211 Street, partially in an R4 zoning district and partially in an R6B (C2-1) zoning district, in Queens; and

WHEREAS, the site has approximately 300 feet of frontage along Northern Boulevard, 225 feet of frontage along 45th Road, 200 feet of depth, 52,500 square feet of lot area and is occupied by a one-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 30, 1920, when, under BSA Calendar Number 166-20-BZ, the Board granted a variance to permit the construction of a garage for more than five motor vehicles on condition that the rear and side walls be unpierced throughout their entire length and height, except for a fire exit not to exceed 3’-8” in width and that any skylights in the roof not be placed within 20 feet of the rear line of the building; and

WHEREAS, on December 16, 1952, under BSA Calendar Number 692-52-BZ, the Board granted a variance for a term of fifteen (15) years, expiring December 16, 1967, to permit the building to be occupied by a car agency as a service and display building on condition that the site be leveled substantially to the grade of Northern Boulevard, that the rear portion may be occupied for the cars of the agency, that such rear portion be leveled and paved with concrete or asphalt, that there be erected on the interior and street building lines with one opening thereto to 45th Road, that such opening shall be fitted with gates normally kept closed and with curb cut opposite, that the site may be used in conjunction with the present buildings and uses on former Lots 11 and 13 adjoining the site to the west, that the proposed canopy on the front of the building not extend more than 10 inches beyond the building line, that signs comply with the applicable requirements of the Zoning Resolution therefore and no sign shall advertise the sale of gasoline or for automobile repairing on this or adjoining lots, that minor repairing may be permitted within the building, as is usual for a service station of this type, that such building may be occupied as a storage garage in conjunction with uses herein permitted for more than five motor vehicles for a similar term, that such portable fire-fighting appliances be maintained as the Fire Department directs and that a certificate of occupancy be obtained; and

WHEREAS, on January 23, 1968, under BSA Calendar Number 692-52-BZ, the Board granted an extension of term of the variance for ten (10) years, expiring December 16, 1977, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on November 5, 1969, under BSA Calendar Number 477-69-BZ, the Board granted an application under ZR § 11-412 to permit the extension of a

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motor vehicle repair shop into an adjoining auto showroom and auto supply store; and

WHEREAS, on June 13, 1978, under BSA Calendar Numbers 692-52-BZ and 477-69-BZ, the Board granted an extension of term of the variance for ten (10) years, expiring June 13, 1988, on condition that a certificate of occupancy be issued to cover both addresses 209-34 and 209-50 Northern Boulevard, to indicate BSA Calendar Numbers 692-52-BZ and 477-69-BZ and lot numbers 15 and 18, on condition that high intensity lights on the used car lot be tilted away from residential structures, that all outside speakers for the use of playing music be removed, that the fence at the rear of 209-30 Northern Boulevard be repaired and dense shrubbery be planted, that a speed bump strip be installed at the 45th Road gate and a stop sign be placed to avoid speeding with a Service Manager to instruct employees against speeding, that testing of cars be eliminated south of Northern Boulevard, that parking on the Northern Boulevard sidewalk be eliminated and that a new certificate of occupancy be obtained by June 13, 1979; and

WHEREAS, on September 22, 1981, under BSA Calendar Number 692-52-BZ and separately under BSA Calendar Number 477-69-BZ, the Board held a compliance hearing and did not rescind its resolution upon the owner's demonstrating compliance with the Board's conditions, including that the lights had been re-positioned, that the fences had been repaired, that shrubbery had been planted, that "no parking on sidewalk area" signs had been placed with one employee assigned on an ongoing basis to monitor compliance, that employees had been instructed that no road testing of cars be conducted on all streets behind the facility, which instruction shall be continually monitored and enforced and that the Northern Boulevard entrance had been posted with a full stop sign and a speed bump; and

WHEREAS, on May 10, 1983, under the subject calendar number, the Board granted an application under ZR §§ 11-412 and 72-21 to permit the enlargement in lot area and reestablishment of an expired variance of an existing automobile sales and service establishment and the maintenance of existing uses, including open and enclosed accessory parking, open and enclosed automobile sales and auto repairs and accessory signs, on condition that the variance replace and supersede BSA Calendar Number 166-20-BZ, which expired October 23, 1982, that there be no parking of cars on any sidewalk, that there be new, densely planted shrubbery on the 45th Road lot lines of Lots 13 and 9 and all shrubbery and street trees be maintained and replaced when necessary, that the 45th Road entrance to Lot 15 be closed and locked and used only for fire vehicles, that all exterior lights on the site be adjusted to shine down and away from all residential uses, that repairs be limited to minor repairs and no body and fender or paint spraying, that no repairs take place in open areas, that the conditions prohibiting the testing of cars and parking of cars on sidewalks be continuously monitored, that all warning signs be placed within three (3) months, by August 10, 1983, that the above conditions appear on the certificate of occupancy and that the Department of Buildings shall issue no permits

until 31 days after the date of certification of the resolution; and

WHEREAS, on October 3, 1989, under BSA Calendar Number 477-69-BZ, the Board amended its resolution to continue the amended variance for a term of four (4) years from June 13, 1989, to June 13, 1993, to merge BSA Calendar Numbers 692-52-BZ into BSA Calendar Number 477-69-BZ, to legalize the existing mezzanine area, to permit the gate at the rear area to be kept locked except for emergency vehicles, to change the interior layout and to change the design of a portion of the front façade of the building on condition that all signage comply with C2 zoning district regulations and that a new certificate of occupancy be obtained by October 3, 1990; and

WHEREAS, on February 26, 1991, under the subject calendar number, the Board amended the variance for a term expiring June 13, 2003, to change the use from auto repair and showroom to permitted retail stores or offices in Use Group 6, to permit accessory parking at the rear of the building and to permit Calendar Number 477-69-BZ into Calendar Number 716-82-BZ, on condition that a new certificate of occupancy be obtained within eighteen (18) months from October 3, 1990, by April 3, 1992, that all gates be locked after business hours, that the landscaping be maintained and replaced when necessary and that the lighting be directed down and away from the residential dwellings; and

WHEREAS, on February 26, 1991, under BSA Calendar Number 477-69-BZ, the Board rescinded its resolution as moot; and

WHEREAS, on May 20, 2003, under the subject calendar number, the Board granted an extension of term of the variance for ten (10) years, expiring June 13, 2013, on condition that the site be maintained free of debris and graffiti, that any graffiti located on the site be removed within 48 hours and that the above conditions and all conditions from prior resolutions appear on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term of the variance for an additional ten (10) years and an extension of time to obtain a certificate of occupancy; and

WHEREAS, in addition, the applicant request a waiver of the Board's Rules and Practice and Procedure to permit the filing of this application; and

WHEREAS, at hearing, the Board questioned maintenance of the site, the presence of barbed wire, striping of the parking lot, directional signage, the presence of a storage container and relocation of the exterior fence; and

WHEREAS, in response, the applicant amended the drawings to reflect additional landscaping and accessibility compliance and submitted evidence that fencing had been repaired, that directional arrows had been painted within the parking lot, that the masonry wall had been painted, that the storage container had been removed, that barbed wire had been removed from fencing and that new evergreen shrubs and ground cover had been planted; and

WHEREAS, as to deliveries, the applicant represents

# MINUTES

that pickups and deliveries will be limited to the hours of 8:00 a.m. to 8:00 p.m. with instructions to drivers that trucks not idle in the parking lot; and

WHEREAS, accordingly, the Board finds that the requested waiver, extension of term and extension of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated on May 10, 1983, as amended through on May 20, 2003, so that as amended this portion of the resolution shall read: “to *waive* the Board’s Rules of Practice and Procedure and *grant* an extension of term for ten (10) years, expiring June 13, 2023; *on condition* that all work and site conditions shall conform to the drawings filed with this application marked, ‘Received August 2, 2017’-Two (2) sheets; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring June 13, 2023;

THAT pickups and deliveries shall be limited to 8 a.m. to 8 p.m.;

THAT snow and ice shall be removed promptly;

THAT landscaping, shrubbery and street trees shall be maintained and replaced as necessary, as illustrated on the Board-approved plans;

THAT there shall be no parking of cars on any sidewalk;

THAT the condition prohibiting the parking of cars on sidewalks shall be continuously monitored;

THAT the 45th Road entrance to Lot 15 be closed and locked and used only for fire vehicles;

THAT all exterior lights on the site shall shine down and away from all residential uses;

THAT all gates shall be locked after business hours;

THAT the site shall be maintained free of debris and graffiti;

THAT any graffiti located on the site shall be removed within 48 hours;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by August 22, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, August 22, 2017.

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## 182-85-BZ

APPLICANT – Eric Palatnik, P.C., for 209-11 20<sup>th</sup> Street, LLC, owner.

SUBJECT – Application September 27, 2016 – Extension of Term of a previously approved Variance (§72-21) for a one story building for the storage of commercial vehicles for a (UG16) contractor's establishment which expired on September 9, 2016. R6B zoning district.

PREMISES AFFECTED – 209-11 20<sup>th</sup> Street, Block 637, Lot 64, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 23, 2017, regarding Certificate of Occupancy No. 302214583F, reads in pertinent part:

“Per ZR 22-00, UG 16D” “Beverage Store Warehouse” “is not a use permitted as-of-right,” “nor is there a variance that authorizes this use”; and

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board under ZR § 72-21, which expired September 9, 2016, and an amendment to permit, in an R6B zoning district, a beverage storage warehouse in Use Group 16, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on July 18, 2017, after due notice by publication in *The City Record*, and then to decision on August 22, 2017; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of 20th Street, between 4th Avenue and 5th Avenue, in an R6B zoning district, in Brooklyn; and

WHEREAS, the site has approximately 50 feet of frontage along 20th Street, 100 feet of depth, 5,000 square feet of lot area and is occupied by a one-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 9, 1986, when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story building on an existing foundation for the storage of commercial vehicles for a contractor’s establishment in Use Group 16 for a term of ten (10) years, expiring September 9, 1996, on condition that the hours of operation be limited to 7:00 a.m. to 7:00 p.m., Monday through Friday, and 8:00 a.m. to 1:00 p.m., Saturday, that all signs comply with C1 zoning district

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regulations, that all trucks be parked within the building, that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic, that since the owner was already availing himself of this use on the lot, all construction be completed within one (1) year of the date of the resolution, by September 9, 1987, that the above conditions appear on the certificate of occupancy and that the Department of Buildings issue no permits for a period of 31 days from the date of the resolution; and

WHEREAS, on July 15, 1997, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring September 9, 2006, on condition that the site be maintained clean and free of graffiti and that a new certificate of occupancy be obtained within one (1) year, by July 15, 1998; and

WHEREAS, on October 28, 2008,<sup>1</sup> under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring September 9, 2016, on condition that the term be listed on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks a further extension of term for an additional ten (10) years and an amendment to permit conversion of the existing commercial building from a contractor's establishment to a beverage storage warehouse, both in Use Group 16; and

WHEREAS, at hearing, the Board questioned the presence of graffiti, the building's fire-protection systems, storage on the sidewalk and signs' compliance with C1 zoning district regulations; and

WHEREAS, in response, the applicant provided evidence that graffiti had been removed, explained that sprinkler and fire alarm systems would not be necessary for the proposed beverage storage warehouse and represented that signage complies; and

WHEREAS, the Board finds that a ten (10) year extension of term and an amendment to the variance are appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated September 9, 1986, as amended through October 28, 2008, so that as amended this portion of the resolution shall read: "to *permit*, in an R6B zoning district, a beverage storage warehouse in Use Group 16, contrary to ZR § 22-10, and to *extend* the term for ten (10) years; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked, 'Received July 21, 2017'-Four (4) sheets; and *on further condition*:

THAT this variance shall be limited to a term of ten (10) years, expiring September 9, 2026;

THAT no materials shall be stored on the sidewalk;

THAT the site shall be maintained clean and free of graffiti;

THAT graffiti shall be removed immediately;

THAT the façade shall be painted as necessary to retain its appearance;

THAT the hours of operation shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Friday, and 7:00 a.m. to 5:00 p.m., Saturday;

THAT all signs shall comply with C1 zoning district regulations;

THAT all trucks shall be parked within the building;

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by August 22, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, August 22, 2017.

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## 1-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 117 Seventh Avenue South Properties, LLP, owner TSI Sheridan, LLC dba New York Sports Club, lessee.

SUBJECT – Application February 25, 2016 – Extension of Term for a previously granted special permit (§73-36) for a physical culture establishment (*New York Sports Club*) which expired on June 13, 2015; Waiver of the Rules. C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, Block 610, Lot 16, Borough of Manhattan.

## COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and an extension of term of a special permit, previously granted by the Board pursuant to ZR §§ 73-36 and 73-03, which expired June 13, 2015; and

WHEREAS, a public hearing was held on this

<sup>1</sup> The resolution dated October 28, 2008, makes reference to 206–208 20th Street, Brooklyn, Block 640, Lots 21 and 22, under the subject calendar number; however, this resolution refers to the subject site.

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application on May 16, 2017, after due notice by publication in *The City Record*, with a continued hearing on July 18, 2017, and then to decision on August 22, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Seventh Avenue South and West 10th Street, in a C4-5 zoning district, in Manhattan; and

WHEREAS, the site has approximately 135 feet of frontage along Seventh Avenue South, 17 feet of frontage along West 10th Street, 5,741 square feet of lot area and is occupied by three-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 13, 1995, when, under the subject calendar number the Board granted a special permit to legalize the operation of a physical culture establishment (“PCE”) in the cellar, second and third floors of the subject building on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that the special permit shall be limited to a term of ten (10) years, expiring June 13, 2005, and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on March 14, 2006, under the subject calendar number, the Board granted an extension of term of the special permit for ten (10) years, expiring June 13, 2015; and

WHEREAS, the term of the special permit having expired, the applicant now seeks a further extension of term for ten (10) years; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing for an extension of term less than two (2) years after the expiration of the term; and

WHEREAS, the applicant has demonstrated that the use has been continuous since the expiration of term and that substantial prejudice would result without such a waiver; and

WHEREAS, the facility remains in operation as New York Sports Club with the following hours of operation: Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday, 5:00 a.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant notes that the PCE continues to occupy 16,538 square feet of floor space in the building, 3,987 square feet of floor space in the cellar, 233 square feet of floor area on the first floor, 5,250 square feet of floor area on the second floor, 5,250 square feet of floor area on the third floor and 1,818 square feet of floor area on the third-floor mezzanine, as previously approved by the Board; and

WHEREAS, the Board notes that its determination is

subject to and guided by ZR § 73-03; and

WHEREAS, by letter dated May 9, 2017, the Fire Department states that there are outstanding violations regarding failure to provide a required Certificate of Fitness holder for the fire alarm system and failure to maintain fire-rated self-closing doors; and

WHEREAS, in response to questions from the Board, the applicant explained that the PCE was no longer operating during construction and submitted evidence that the fire-rated door swing had been corrected; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03 subsections (d) and (g) are inapplicable to the subject application; and

WHEREAS, § 73-36 mandates a term not to exceed ten (10) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to extend ten (10) years; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and *reopens* and *amends* the resolution, dated June 13, 1995, as amended through March 14, 2006, so that as amended this portion of the resolution reads: “to grant an extension of term of the special permit for a term of ten (10) years, expiring June 13, 2025; *on condition* that the use and operation of the physical culture establishment shall substantially conform to drawings filed with this application, marked ‘Received December 8, 2016’ - Seven (7) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring June 13, 2025;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by August 22, 2021;

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 objections cited and filed by the

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Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, August 22, 2017.

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## 26-06-BZ

APPLICANT – Ellen Hay, Slater & Beckerman, P.C., for Acadia West Shore Expressway LLC, owner; Fitness International, LLC, lessee.

SUBJECT – Application November 9, 2016 – Extension of Term of a previously approved Special Permit (§73-36) to operate a physical culture establishment (*LA Fitness*) which expired on July 25, 2016; Amendment to request a change in the hours of operation and minor interior changes; Waiver of the Rules of Practice and Procedure. M1-1/R3A zoning district.

PREMISES AFFECTED – 145 East Service Road, Block 2638, Lot 50, Borough of Staten Island.

## COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 18, 2016, acting on Alteration Application No. 520297615, reads in pertinent part:

“[S]pecial permit granted by B.S.A. (26-06-BZ) expired JULY 25TH 2016. Therefore, provide updated board of standards and appeals approval for physical culture establishment”; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of term of a special permit, previously granted by the Board pursuant to ZR §§ 73-36 and 73-03, which expire July 25, 2016, and an amendment to change the hours of operation and to allow minor interior changes; and

WHEREAS, a public hearing was held on this application on August 8, 2017, after due notice by publication in *The City Record*, and then to decision on August 22, 2017; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site (Lot 50) is located on the northeast corner of East Service Road and Wild Avenue, in an M1-1 zoning district, on Staten Island; and

WHEREAS, the site is part of a larger shopping center

that occupies Lots 50, 60 and 63 with two commercial buildings and 542 parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 25, 2006, when, under the subject calendar number, the Board granted a special permit to allow the operation of a physical culture establishment (“PCE”) within an existing one-story commercial building in a shopping center for a term of ten (10) years, expiring July 25, 2016, on condition that there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board, that the hours of operation be limited to Monday through Friday, 5:00 a.m. to 12:00 a.m., and Saturday and Sunday, 6:00 a.m. to 8:00 p.m. and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term of the special permit having expired, the applicant now seeks an extension of term for ten (10) years and an amendment to change the PCE’s hours of operation and modifications to the interior layout of the PCE; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing for an extension of term less than two (2) years after the expiration of the term; and

WHEREAS, the applicant has demonstrated that the use has been continuous since the expiration of term and that substantial prejudice would result without such a waiver; and

WHEREAS, the facility remains in operation as LA Fitness, and the applicant proposes to change the hours of operation as follows: Monday through Thursday, 4:00 a.m. to 12:00 a.m., Friday, 4:00 a.m. to 10:00 p.m., and Saturday and Sunday, 6:00 a.m. to 7:00 p.m.; and

WHEREAS, the PCE continues to occupy 51,609 square feet of floor area on the first floor of the one-story commercial building; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, the Fire Department represents that it has no objection to this application; and

WHEREAS, at hearing, the Board noted that the owner should maintain the site clean and free of debris and that failure to do so could subject the owner to enforcement action; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03 subsections (d) and (g) are inapplicable to the subject application; and

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WHEREAS, § 73-36 mandates a term not to exceed ten (10) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to extend ten (10) years; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension and amendment are appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeal does hereby *waive* its Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated July 25, 2006, so that as amended this portion of the resolution reads: “to *grant* an extension of term of the special permit for ten (10) years, expiring July 25, 2026; *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received April 19, 2017’ - Three (3) sheets; and *on further condition*:

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation of the physical culture establishment shall be limited to Monday through Thursday, 4:00 a.m. to 12:00 a.m., Friday, 4:00 a.m. to 10:00 p.m., and Saturday and Sunday, 6:00 a.m. to 7:00 p.m.;

THAT the above conditions appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by August 22, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, August 22, 2017.

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## 159-08-BZ

### CEQR #08-BSA-091M

APPLICANT – Eric Palatnik, P.C., for 68-70 Spring Partners, LLC, owners.

SUBJECT – Application February 7, 2017 – Extension of time to complete construction of a previously approved Variance (§72-21) to permit the construction of a seven-story and penthouse residential building, with twelve (12) dwelling units and ground floor retail use, contrary to ZR42-10 and 42-10(D)(2)(b) set to expire on October 28, 2017. M1-5B zoning district.

PREMISES AFFECTED – 68-70 Spring Street, Block 482, Lot 19, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction; and

WHEREAS, a public hearing was held on this application on June 20, 2017, after due notice by publication in *The City Record*, with a continued hearing on August 15, 2017 and then to decision on August 22, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the south side of Spring Street, between Crosby Street and Lafayette Street, in an M1-5B zoning district, in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along Spring Street, 94 feet of depth, 4,766 square feet of lot area and is occupied by a one-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 10, 2009, when, under the subject calendar number, the Board granted a variance to permit a seven-story, with penthouse, residential building with 12 dwelling units and ground-floor retail use on condition that the bulk parameters of the proposed building be a 12-unit residential building with ground floor retail use, a floor area of 23,830 square feet (5.0 FAR), a street wall height of 94’-0”, a total building height of 106’-0” and a rear yard of between 7’-4” and 8’-11” at the first floor with between approximately 31’-10” and 32’-2” above the first floor, that prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the site which permits soil disturbance for the project, the applicant or successor shall obtain from the Department of Environmental Protection (“DEP”), as applicable, either a Notice of No Objection, Notice to Proceed or Notice of Satisfaction and shall comply with all DEP requirements to obtain such Notices and that no temporary or permanent certificate of



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occupancy shall be issued by the Department of Buildings (“DOB”) or accepted by the applicant or successor until the DEP shall have issued a Notice of No Objection or Notice of Satisfaction; and

WHEREAS, on October 28, 2014, under the subject calendar number, the Board granted an extension of time to complete construction for a term of three (3) years, expiring October 28, 2017, on condition that substantial construction be completed by October 28, 2017; and

WHEREAS, the time to complete construction nearing expiration, the applicant now seeks an additional four (4) years to complete construction; and

WHEREAS, the applicant represents that it has experienced a number of administrative delays in obtaining funding and necessary permits but anticipates completing construction and obtaining a certificate of occupancy within the extension period requested; and

WHEREAS, additionally, the applicant submitted evidence of financing, construction documents submitted to DOB, hiring of the architect, hiring of an engineer, a geotechnical report investigating borings, test pits and structural stability, Metropolitan Transit Authority approval and relocation of the fire hydrant and street light; and

WHEREAS, in conjunction with the original application in 2009, 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. 08BSA091M, dated May 22, 2008, finding that the proposed action would not have a significant adverse impact on the environment; and

WHEREAS, the applicant provided a Technical Memorandum, dated July 11, 2017, updating the 2008 EAS regarding hazardous materials; and

WHEREAS, by letter dated August 4, 2017, the Department of Environmental Protection (“DEP”) Bureau of Sustainability states that it has reviewed the 2017 Technical Memorandum and determined that a Phase II Environmental Site Assessment is necessary to characterize the surface and subsurface soils of the subject site and requires a Phase II Work Plan and an Investigative Health and Safety Plan for submittal to DEP prior to the start of any fieldwork; and

WHEREAS, the applicant represents that placing an (E) designation on the subject site is necessary to secure financing and to fulfill applicable hazmat requirements; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated February 10, 2009, as amended October 28, 2014, only as to the time to complete construction so that as amended this portion of the resolution reads: “to grant an extension of time to complete construction for an additional four (4) years, expiring October 28, 2021; *on condition* that the use and operation of the site shall substantially conform to the Board-approved plans; and *on further condition*:

THAT the following shall be the parameters of the proposed building: a 12-unit residential building with ground floor retail use, a floor area of 23,830 square feet (5.0 FAR), a street wall height of 94’-0”, a total building height of 106’-0” and a rear yard of between 7’-4” and 8’-11” at the first floor with between approximately 31’-10” and 32’-2” above the first floor;

THAT an (E) designation (E-445) shall be placed on the site to ensure proper hazardous material remediation;

THAT the above conditions shall appear on the certificate of occupancy;

THAT prior to DOB’s issuance of any building permit, the New York City Office of Environmental Remediation (“OER”) must issue a Notice to Proceed or a Notice of No Objection pursuant to the site’s (E) designation; [KS1]

THAT prior to DOB’s issuance of a certificate of occupancy, OER must issue a Certificate of Completion or a Notice of Satisfaction;

THAT construction shall be completed and a certificate of occupancy shall be obtained within four (4) years, by October 28, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, August 22, 2017.

## 1255-80-BZ

APPLICANT – Gerald J. Caliendo, RA. AIA, for Brett Morgan LLP, owner.

SUBJECT – Application November 23, 2014 – Extension of Term; Amendment and Waiver 72-01: request an extension of term for a previously expired variance that expired on 6/2/2011 and Amendment to change from the use (UG 17) to (UG6) and also require Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 35-33 31<sup>st</sup> Street, Block 00604, Lot 1, Borough of Queens.

## COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for continued hearing.

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## 169-98-BZ

APPLICANT – Robert J. Stahl for Herbert D. Freeman, Albany Crescent Holding, LLC, owner.

SUBJECT – Application April 10, 2015 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on July 20, 2009; Amendment (§11-413) to permit a change of use to Automotive Repair Facility (UG 16B); Waiver of the Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 3141 Bailey Avenue, Block 3267, Lot 38, Borough of Bronx.

### COMMUNITY BOARD #8BX

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for continued hearing.

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## 344-03-BZ

APPLICANT – Howard Goldman, for City of New York, owner; Nick’s Lobster House, lessee.

SUBJECT – Application August 12, 2015 – Application for an extension of term of the legalization of the reconstruction and extension of an existing building operating as an eating and drinking establishment in a C3 district, contrary to ZR 32-00. C3 zoning district.

PREMISES AFFECTED – 2777 Flatbush Avenue, Block 8591, Lot 980, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for continued hearing.

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## 187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation & Yeshiva Maschzikei Hadas, owner.

SUBJECT – Application April 22, 2016 – Amendment to a variance (§72-21) to allow a five-story school (*Congregation & Yeshiva Maschzikei Hadas*). The application seeks to increase the zoning lot contrary to the previous Board approval. M1-2/R6B zoning district.

PREMISES AFFECTED – 1247 38<sup>th</sup> Street, Block 5295, Lot(s) 52 & 109, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 264-15-A thru 268-15-A

APPLICANT – Diffendale & Kubec, for Leonello Savo, owner.

SUBJECT – Application December 7, 2015 – Proposed construction of two family detached residence not fronting on a legally mapped street, contrary to General City Law 36. R3X (SSRD) zoning district

PREMISES AFFECTED – 5, 11, 17, 23 Herbert Street and 14 Holtein Avenue, Block 6681, Lot(s) 30, 31, 40, 41, 34, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Applications withdrawn without prejudice.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Adopted by the Board of Standards and Appeals, August 22, 2017.

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### 108-15-A thru 110-15-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Glebe Partners LLC, owners.

SUBJECT – Application May 13, 2015 – Appeal seeking determination that property owner has acquired common law vested right to complete construction of three, three-family residential buildings commenced under prior zoning district regulations. R6A zoning district.

PREMISES AFFECTED – 2317, 2319, 2321 Glebe Avenue, Block 3971, Lot(s) 167, 166, 165, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for adjourned hearing.

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### 2016-2-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Vincent Theurer, owner.

SUBJECT – Application January 4, 2016 – Appeal seeking determination that the Department of Buildings improperly denied an application for a permit for construction of cabana based on erroneous determination that the cabana should be considered a dwelling unit and not an accessory structure, requiring compliance with minimum required distance between buildings (ZR 23-711(f)) and minimum distance between lot lines and building walls (ZR 23-881) in the lower density growth management area. R1-1(NA-1).

PREMISES AFFECTED – 74 Buttonwood Road, Block 877, Lot 32, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for adjourned hearing.

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## 2016-1186-A thru 2016-1207-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Airport Park LLC, owner.

SUBJECT – Application January 12, 2016 – Proposed construction of a two-story, two-family building, contrary to General City Law Section 35. R1-1 zoning district.

PREMISES AFFECTED – 145-25 to 147-21A Hook Creek Boulevard, Block 13633, Lot(s) 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, Borough of Queens.

### COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

## ZONING CALENDAR

### 273-15-BZ

#### CEQR #16-BSA-057Q

APPLICANT – Michio Sanga, for Seucharran Sewdat, owner.

SUBJECT – Application December 15, 2015 – Variance (§72-21) to permit the construction of a 2-story two-family residence contrary to ZR §23-461c (open area between buildings containing residences). R3A zoning district.

PREMISES AFFECTED – 110-43 160<sup>th</sup> Street, Block 12164, Lot 4, Borough of Queens.

### COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 9, 2015, acting on Department of Buildings (“DOB”) Application No. 421201577 reads in pertinent part:

Proposed open area between buildings containing residences is contrary to ZR 23-461(c); and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R3A zoning district, the construction of a two-story plus cellar two-family detached residence that does not comply with the minimum requirements for open area between buildings containing residences, contrary to ZR § 23-461(c); and

WHEREAS, a public hearing was held on this application on February 14, 2017, after due notice by publication in *The City Record*, with continued hearings on May 16, 2017 and June 6, 2017, and then to decision on August 22, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 12, Queens,

recommends disapproval of this application, noting that the developer of the property will not reside at the subject site; and

WHEREAS, Councilmember Ruben Wills submitted a letter to the Board, dated December 5, 2016, stating that he is not in support of the application on the bases that (1) the proposed residence will be railroad-style and, thus, “nonconforming to the surrounding homes in the area”; (2) the developer will not reside at the site; and (3) if built, the developer may rent or sell the property for personal gain; and

WHEREAS, at hearing, the Board noted that railroad style apartments are not prohibited in the subject zoning district and questioned whether the railroad apartments proposed here are, in fact, uncommon in the surrounding area; and

WHEREAS, in addition, the Board noted that the record lacked substantial evidence to support the Community Board and Councilmember’s assertions that the subject proposal is a speculative development; and

WHEREAS, the subject site on the east side of 160th Street, between 110th Avenue and 111th Avenue, within an R3A zoning district, in Queens; and

WHEREAS, the site has approximately 24 feet of frontage along 160th Street, a depth of 150 feet, 3,600 square feet of floor area and is currently vacant; and

WHEREAS, the applicant states that the site was previously occupied by a two-story detached residence demolished between late-2009 and early 2010, when the current site was located in an R3-2 zoning district; and

WHEREAS, at hearing, the Board inquired as to whether the applicant could reconstruct the previously existing residence in the same footprint as-of-right, pursuant to ZR § 54-41; and

WHEREAS, in response, the applicant submitted a ZRD1 to DOB, dated June 21, 2017, seeking a determination as to whether the previously existing residence could be reconstructed at the premises with all of its attendant non-compliances; and

WHEREAS, by a determination dated July 8, 2017, DOB denied the request, stating that DOB interprets ZR § 54-41 with a time limitation of two years on the right to reconstruct a non-complying building and because, per DOB records, the existing building on the premises was demolished and signed-off on February 11, 2010, “the fully demolished building may be reconstructed only in accordance with the applicable district bulk regulations”; and

WHEREAS, in light of the DOB denial, the applicant continued to prosecute the subject variance application; and

WHEREAS, the applicant proposes to develop the site with a two-family plus cellar two-family detached residence with side yards measuring 8’-0” and 2’-10” resulting in a total of a 9’-7” open area between the proposed residence and the neighboring residential building to the south and a total of 4’-6” open area between the proposed residence and the neighboring residential building to the north; and

WHEREAS, at the subject site, an open area with a

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minimum total width of eight feet and parallel to the side lot line is required between buildings containing residences on adjacent zoning lots pursuant to ZR § 23-461(c)(1); and

WHEREAS, the applicant asserts that the proposed building is otherwise compliant with the bulk regulations applicable in the subject zoning district; and

WHEREAS, the applicant states, pursuant to ZR § 72-21(a), the vacancy and history of ownership of the subject site separate and apart from all adjacent lots are unique physical conditions that create practical difficulty and unnecessary hardship in developing the site in compliance with the underlying district regulations; and

WHEREAS, in support of this assertion, the applicant submitted a uniqueness study of all lots located within 400 feet of the subject site in an R3A zoning district (the “Study Area”) demonstrating that 12 of the 141 lots (9 percent), including the subject site, within the Study Area are not occupied by buildings or other structures, four of those 12 lots (33 percent) are owned in common with an immediately adjacent lot and another four (33 percent) are owned in common with a community facility and utilized as its parking lot, making the subject site one of four in the Study Area (3 percent) that are vacant and not held in common ownership with an adjacent lot; and

WHEREAS, in addition, all of the other three vacant lots owned independently from adjacent lots are corner lots, while the subject lot is an interior lot; and

WHEREAS, the applicant also submitted deeds demonstrating that the subject site has been owned separate and apart from adjacent lots since at least 1967; and

WHEREAS, the applicant additionally submits that the width of the lot is comparable to surrounding lots in the area—many lots on the subject block range in width from 20 to 25 feet—but represents that many of these lots were developed prior to December 15, 1961, and are non-compliant with ZR § 23-461(a) in that they provide less than eight feet of open area between buildings containing residences on adjacent zoning lots; and

WHEREAS, in support of this contention, the applicant submitted a study of the 18 open areas located between the residential buildings located on the same side of 160th Street as the subject site demonstrating that only five (28 percent) are at least eight feet wide and the remaining 13 open areas (72 percent) range in width from 7’-11” to 2’-9”;

and

WHEREAS, the applicant further states that strict conformance with ZR § 23-461(c)(1) would result in a residence with a maximum exterior width of 11’-3” and maximum interior width of approximately 10’-5”, precluding the provision of interior corridors and resulting in a home that the applicant argues is not habitable; additionally, because the existing residence located to the north of the subject site is only 1’-8” from the site’s northern lot line and the existing residence located to the south of the subject site is only 1’-7” from the site’s southern lot line, a complying residence would need to provide a northern side yard measuring 6’-4” wide and a southern side yard measuring 6’-5” wide, neither of which would be wide

enough to allow for a driveway or access to a garage at the rear of the lot and, would instead, require the locating of a parking space within the proposed residence, limiting the already limited amount of habitable space; and

WHEREAS, in light of the foregoing, the Board finds that the vacancy of the lot and its history of ownership separate and apart from adjacent zoning lots create unnecessary hardship and practical difficulty in developing the site in strict compliance with the underlying bulk provisions of the Zoning Resolution; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home, in satisfaction of ZR § 72-21(b); and

WHEREAS, the applicant states that the subject proposal will not alter the essential character of the neighborhood because many of the existing buildings in the Study Area provide less than the minimum eight feet required between residential buildings, as demonstrated by the aforementioned open area study of the eastern side of the subject block, and the proposed residence is otherwise compliant with applicable zoning regulations; and

WHEREAS, accordingly, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare in satisfaction with ZR § 72-21(c); and

WHEREAS, the applicant submits, and the Board finds, that, per ZR § 72-21(d), the hardship was not created by the owner or a predecessor in title; and

WHEREAS, the applicant state that the subject proposal, which requests only a waiver of the minimum open area between residential buildings on adjacent zoning lots and is otherwise compliant with applicable zoning regulations, is the minimum relief required in satisfaction of ZR § 72-21(e); and

WHEREAS, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; 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 a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 16-BSA-057Q, dated December 15, 2015; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to permit, in an R3A zoning district, development of a two-story plus cellar two-family detached residence that does not comply with the minimum requirements for open area between buildings containing residences, contrary to ZR § 23-461(c); *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 24, 2016 – Five (5) sheets; and

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on further condition:

THAT the following shall be the bulk parameters of the site: open areas of at least 4’-6” and 9’-7” between the subject building and the residences located on adjacent zoning lots, as reflected on the BSA-approved plans;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2017.

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## 2016-4165-BZ

### CEQR #16-BSA-104R

APPLICANT – Glen V. Cutrona, for Shore to Shore Foster, LLC, owner.

SUBJECT – Application April 6, 2016 – Variance (§72-21) to permit the construction of an eating and drinking establishment (UG 6) (*Tim Horton's*) with an accessory drive thru contrary to ZR §22-10. R3X (SRD) zoning district.

PREMISES AFFECTED – 5801 Amboy Road, Block 6896, Lot 53, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated April 5, 2016, acting on Department of Buildings (“DOB”) Application No. 520268987 reads in pertinent part:

ZR 22-10: Proposed use (eating and drinking establishment – Use Group 6) located in an R3X zone within the Special South Richmond Development District (SRD) is contrary to Section 22-10 of the NYC Zoning Resolution...; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an R3X zoning district, a Use Group (“UG”) 6 eating and drinking establishment with an accessory drive through contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this

application on November 1, 2016, after due notice by publication in *The City Record*, with continued hearings on January 31, 2017, April 25, 2017, June 20, 2017, and August, and then to decision on August 22, 2017; and

WHEREAS, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends approval on condition that the Amboy Road egress remain an “Exit Only” at all times; that the retail store and drive through hours be limited to 5:00 a.m. to midnight and that baking on the premises not be restricted and permitted when the establishment is closed; and

WHEREAS, Board staff was also in receipt of a phone call from New York City Councilmember Joseph C. Borelli, details of which were entered into the record for Board review and consideration, in support of this application, noting that he was satisfied that the applicant modified the proposal over the course of hearing; and

WHEREAS, the Board is also in receipt of seven letters in opposition to the subject application, citing concerns that the proposed use will increase traffic and noise at an already congested intersection, that cars in the queue at the site will adversely affect traffic on the surrounding streets, that the use is not adequately buffered from surrounding residential uses with landscaping and that there is an express bus stop located at the site; and

WHEREAS, the subject site is located on the northwest corner of Amboy Road and Foster Road, within an R3X zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 150 feet of frontage along Amboy Road, 110 feet of frontage along Foster Road, 16,322 square feet of lot area and is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 17, 1941, when, under BSA Cal. No. 268-41-BZ, the Board granted a variance to permit the reconstruction and extension of an existing gasoline service station; and

WHEREAS, on June 23, 1942, under BSA Cal. No. 268-41-BZ, the Board amended the resolution to extend the time to obtain permits and complete work by one (1) year, expiring June 23, 1943, and adding to the previous resolution conditions relating to the future widening of Amboy Road and materials utilized at the site; and

WHEREAS, on July 20, 1943, and September 12, 1944, under BSA Cal. No. 268-41-BZ, the Board amended the resolution to further extend the time to obtain permits and complete work by one (1) year periods, the latest extension of time expiring September 12, 1945; and

WHEREAS, on October 28, 1969, under BSA Cal. No. 279-69-BZ, the Board permitted an extension of the gasoline service station use, pursuant to ZR § 11-412, to include minor auto repairs and the parking of cars awaiting service for a term of ten (10) years, expiring October 28, 1979; and

WHEREAS, on December 1, 1970, November 9, 1971, and December 12, 1972, under BSA Cal. No. 279-69-BZ, the

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Board granted one (1) year extensions of time to obtain permits and complete construction, the last of which expired on October 28, 1973; and

WHEREAS, on October 20, 1992, under BSA Cal. No. 911-89-BZ, the Board reestablished the expired variance permitting an automotive service station with accessory uses and legalized the enlargement of the service station building for a term of five (5) years, expiring October 20, 1997; and

WHEREAS, on March 13, 2001, under BSA Cal. No. 221-00-BZ, the Board granted a variance, pursuant to ZR § 72-21, permitting the continuation of the existing automotive service station and addition of accessory off-street parking for a term of ten (10) years, expiring March 13, 2011; and

WHEREAS, the applicant represents that the automotive service station was demolished in 2015; and

WHEREAS, the applicant originally proposed to construct a UG 6 eating and drinking establishment with a drive through window operating 24 hours a day, 7 days per week, with 2,448 square feet of floor area, 16 accessory parking spaces, queuing for 10 cars, a menu board/annunciator system facing an adjoining residence, ingress from curb cuts located on Foster Road and Amboy Road, sole egress from the curb cut on Amboy Road by right turn only, and 4 foot wide planting strips along both the northern and western lots lines; and

WHEREAS, in the course of hearing, the applicant revised the proposal and now seeks to construct a UG 6 eating and drinking establishment with a drive through window operating 5:00 a.m. to midnight, 7 days a week with 2,200 square feet of floor area, 13 accessory parking spaces, queuing for 7 cars, a menu board/annunciator at the rear of the proposed building, sole ingress from Foster Road, egress from both Foster Road and Amboy Road by right turns only, a 10 foot wide planting strip along the northern lot line, adjacent to the residential neighbor, and a 4 foot wide planting strip along the western lot line; and

WHEREAS, pursuant to ZR § 22-10, UG 6 uses are not permitted within R3X zoning districts and, thus, the applicant seeks the subject relief; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the presence of contamination at the site due to its historical use is a unique physical conditions that create a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations; and

WHEREAS, specifically, the applicant submits that the historic use of the site as an automotive service station for more than 80 years resulted in contaminated soil and groundwater as well as soil vapor at the site requiring extensive remediation including removal of underground storage tanks, removal of heavily contaminated free product, extraction of soil vapor under buildings and sheet piling and capping of the site with asphalt to contain remaining contamination and prevent its spreading to surrounding properties; and

WHEREAS, the site is a voluntary participant in the Brownfield Cleanup Program (“BCP”) administered by the New York State Department of Environmental Conservation (“DEC”) and, by letter dated July 18, 2016, DEC approved the

submitted Remedial Action Work Plan and issued a Decision Document, pursuant to which the environmental remediation is required to be implemented; and

WHEREAS, in light of the foregoing, the Board finds that the contamination present at the site as a result of its historic and legal use as an automotive service station is a unique physical condition that creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, with regards to the (b) finding, the applicant submits that there is no reasonable possibility that a conforming development at the subject site will bring a reasonable return and, in support of that contention, submitted a financial analysis of (1) two detached two-family residential buildings with approximately 3,450 gross square feet and 4,465 gross square feet and on-site parking; (2) two detached two-family residential buildings with approximately 3,450 gross square feet and 6,394 gross square feet and on-site parking; (3) a detached two-story mixed-use community facility and residential building with two residential units; and (4) the subject proposal; and

WHEREAS, the applicant additionally analyzed a lesser variance—a detached two-story mixed-use community facility and residential building partially located within the street widening lines that would, thus, require a waiver of GCL § 35; and

WHEREAS, the financial analyses submitted with the application conclude that only the subject proposal would generate a reasonable return, approximately 5.6 percent; and

WHEREAS, at hearing, the Board acknowledged that the shape of the site, presence of widening lines for both Foster Road and Amboy Road—at a width of approximately 6 feet parallel to Foster Road and varying widths parallel to Amboy Road of up to 19 feet—and the location of a New York State-regulated wetland on the lot to the west and directly adjacent to the subject site, though not unique to the subject property for the purposes of satisfying the finding of ZR § 72-21(a), limit the portion of the site that may be developed as-of-right; and

WHEREAS, at hearing, the applicant stated that, despite the location of portions of the subject site within street widening lines, no waiver of General City Law (“GCL”) § 35 was required for the subject proposal; thus, such relief was neither considered nor granted by the Board; and

WHEREAS, upon review of the applicant’s submissions, the Board finds, in accordance with ZR § 72-21(b), that, due to the site’s unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant submits that the subject proposal will not substantially impair the appropriate use or development of adjacent properties and not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, specifically, the applicant represents that the proposed UG 6 use is a less aggressive use than the automotive service station that previously occupied the site and had most recently fallen into disrepair; that the UG 6 use is consistent with the commercial uses that predominate the stretch of

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Amboy Road located near the site; and that the proposal includes environmental remediation of the site as well as landscaping, including a ten-foot wide landscaped buffer between the site and its residential neighbor to the west, which will be beneficial to the surrounding area; and

WHEREAS, additionally, the applicant submitted an operational plan in response to inquiries as to how the site would operate with large drive through orders or in cases when the seven reservoir spaces proposed at the site are insufficient for the number of cars on-site; and

WHEREAS, the Board adopts this operational plan as a condition of its grant and finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents and the Board finds that the hardship claimed as grounds for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant submits that the subject proposal is the minimum variance necessary to afford relief because it is the only scenario that provides a reasonable return; and

WHEREAS, the applicant further submits that the drive through component of the proposal is necessary for the proposal to recognize a reasonable return because rents for UG 6 eating and drinking establishments without a drive through are substantially lower (by approximately \$15/square foot of floor area) than rents for such establishments with a drive through and the premium rents made possible by the addition of a drive through are required to overcome the expense of environmental remediation at the site; and

WHEREAS, in response to the Board's consideration of a term on a grant of the requested variance, the applicant represents that the subject proposal has a payback period of approximately 18 years, a long period for a project of this type, and, thus, a term of less than 20 years would reduce the amount of rent the proposed use could demand and, as a consequence, make the subject proposal financially unfeasible; and

WHEREAS, accordingly, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 16BSA104R, dated January 26, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation

Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by letter dated August 22, 2017, the New York City Department of Transportation ("DOT") states that the proposed use is expected to generate 106, 73 and 59 new trips during the weekday AM, midday and PM peak hours, respectively, and that the occurrence of deliveries between midnight and 5:00 a.m., when the establishment is closed, will ensure that the deliveries do not conflict with on-site circulation or parking; and

WHEREAS, DOT further states that the applicant has agreed to monitor the queue of the drive through and, in the case that the drive through queue exceeds seven cars, the applicant will coordinate with DOT to develop measures to ensure that the queue can be accommodated on-site and will not spill onto surrounding streets; and

WHEREAS, DOT concludes that the subject proposal will not have significant adverse traffic impacts and requests that, prior to opening, the applicant coordinate with DOT to ensure that appropriate signage and markings are installed on-site and on-street according to DOT standards and requirements, the design and installation of which will be at the applicant's expense; and

WHEREAS, by letters dated July 13, 2015, July 21, 2015, July 8, 2016, and July 18, 2016, DEC approved the BCP site Interim Remedial Measure ("IRM") Work Plan, Remedial Investigation Work Plan, Remedial Investigation Report ("RIR"), and Remedial Action Work Plan ("RAWP"), respectively; and

WHEREAS, in its letter dated July 8, 2016, DEC states that, on May 5, 2016, DEC, in conjunction with the New York State Department of Health determined that the site does not represent a significant threat to public health and/or the environment; and

WHEREAS, by letter dated June 7, 2016, DEC states that NYSDEC Permit No. 2-6405-00046/00005 previously issued for the site and set to expire on December 31, 2021, was modified to reflect the relocation of a planting area proposed at the site and that strict compliance with permit conditions is required including, among other things, the submittal of a "Notice of Intent to Commence Work" at least five days prior to the start of the permitted activity and submittal of a "Notice of Completion of Work" within ten days of the completion of work; and

WHEREAS, by email dated March 10, 2017, the Waterfront Open Space Division of the New York City Department of City Planning ("DCP"), which reviewed the proposal for consistency with the policies and intent of the New York City Waterfront Revitalization Program ("WRP") on behalf of the New York City Coastal Commission under WRP #16-080, states that, based on the information submitted, it finds that the proposed action will not substantially hinder the achievement of any WRP policy; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located within an R3X zoning district, Use Group 6 eating and drinking establishment with a drive through, contrary to ZR § 22-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 14, 2017”-Ten (10) sheets; and *on further condition*:

THAT site shall be remediated pursuant to the Brownfield Cleanup Program administered by the New York State Department of Environmental Conservation (“DEC”), specifically in accordance with the June 2016 Decision Document issued by DEC, prior to the issuance of permits for the building;

THAT failure to satisfactorily complete the Brownfield Cleanup Program shall require amendment to this variance;

THAT shrubs shall be planted along with perimeter of the site to provide a dense buffer, as illustrated on the Board-approved plans, and such shrubs shall be maintained and replaced as necessary;

THAT a snow fence demarcation zone shall be installed beneath gravel on the site;

THAT the annunciator sound level of the menu board shall be permanently limited to prevent sound levels experienced at the lot lines the subject lot shares with residential uses does not exceed 40 dBA;

THAT prior to opening, the applicant and/or operator of the use shall coordinate with the New York City Department of Transportation (“DOT”) to ensure that appropriate signage and markings are installed on-site and on-street according to DOT standards and requirements, the design and installation of which shall be at the applicant and/or operator’s expense;

THAT the site shall operate pursuant to the following operational plan, submitted into the record by the applicant and herein adopted by the Board:

Management will monitor the drive-through queuing to ensure that the vehicles do not exceed seven cars. During times of peak operation of the drive-thru, internal staff will prioritize fulfilling drive-thru order to minimize service times and therefore, drive-thru queuing. In the event that more than seven cars are in the drive-through lane a representative from the establishment will direct the cars to park and place their order from the store until such time as the drive-thru queue is alleviated. For the infrequent larger, time consuming, drive-thru orders, the patron will be directed to pull forward and park and the order will be brought to them in order to allow the remaining drive-thru queue to be

processed without delay.”;

THAT in the case that the drive through queue exceeds seven cars, the applicant and/or operator of the use shall coordinate with DOT to develop measures to ensure that the queue can be accommodated on-site and will not spill onto surrounding streets;

THAT the Amboy Road curb cut shall remain exit only at all times;

THAT the retail store and drive through hours shall be limited to 5:00 a.m. to midnight excluding baking time, which may occur outside those hours;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2017.

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## 2016-4224-BZ

APPLICANT – Law Office of Lyra J. Altman, for Elie Fein, owner.

SUBJECT – Application July 1, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1869 East 21<sup>st</sup> Street, Block 6804, Lot 63, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 27, 2016, acting on Department of Buildings (“DOB”) Application No. 321358320 reads in pertinent part:

The proposed enlargement of the existing one family residence in an R3-2 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Sections 23-142 of the Zoning Resolution;



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2. Creates non-compliance with respect to the lot coverage and open space and is contrary to Sections 23-142 of the Zoning Resolution;
3. Creates non-compliance with respect to the side yard by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution;
4. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-2 zoning district, the proposed enlargement of a single-family two-story detached residence that does not comply with the zoning requirements for floor area ratio, lot coverage, open space, side yards and rear yards, contrary to ZR §§ 23-142, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on June 20, 2017, after due notice by publication in *The City Record*, with a continued hearing on August 15, 2017, and then to decision on August 22, 2017; and

WHEREAS, Commissioner Ottley-Brown and former Commissioner Montanez performed inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 21st Street, between Quentin Road and Avenue R, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along East 21st Street, a depth of 100 feet and 4,000 square feet of lot area; and

WHEREAS, the site is occupied by a two-story single-family detached residence with 1,396 square feet of floor area, a floor area ratio ("FAR") of 0.35, 19 percent lot coverage, 81 percent open space, side yards measuring 4'-5" and 18'-5", a 42'-9.75" rear yard and a garage; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit

Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

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 detached single-family residence, as contemplated by ZR § 73-622; and

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WHEREAS, the applicant proposes to remove the garage in the rear yard and enlarge the existing dwelling into side and rear yards and an extension of the existing second floor into the front yard, resulting in a dwelling with 3,447 square feet of floor area, 0.86 FAR, 45 percent lot coverage, 55 percent open space, side yards measuring 4'-5" and 9 feet and a 20 foot deep rear yard; and

WHEREAS, at the subject site, a maximum FAR of 0.50, maximum lot coverage of 35 percent and a minimum of 65 percent open space is required pursuant to ZR § 23-142; two sides yards, each at least 5 feet wide and having a combined width of at least 13 feet are required pursuant to ZR § 23-461; and a rear yard of not less than 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, with regards to the existing non-complying 4'-5" side yard, which is proposed to be maintained, the applicant submitted a 1929 Belcher Hyde Map of the area demonstrating that a building was located at the site in substantially the same location as the existing building in or around 1929, prior to the 1961 Zoning Resolution; and

WHEREAS, the applicant submitted an analysis of single- or two-family dwellings located within 400 feet of the subject premises located within an R3-2 zoning district (the "Study Area") concluding that 19 out of the 88 dwellings (22 percent) have FARs greater than 0.50, ranging from 0.52 FAR to 0.99 FAR, including the dwellings on either side of the subject site and six dwellings directly across the street from the subject site, and 10 of the 17 in the Study Area located on the east side of East 21st street, the same side of the block as the subject site dwellings (59 percent) have FARs greater than 0.50, ranging from 0.53 FAR to 0.75 FAR; and

WHEREAS, in addition, 55 of the 88 dwellings in the Study Area (63 percent) have lot coverage greater than 35 percent (ranging from 36 percent lot coverage to 57 percent lot coverage) and less than 65 percent open space and 12 of the 45 dwellings on the subject block (27 percent) have rear yards of less than 30 feet, but 32 of those 45 dwellings (71 percent) have garages located in the rear yard that reduce their effective depths; and

WHEREAS, in light of the foregoing, 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 NYCRR 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, in an R3-2 zoning district, the proposed enlargement of a two-story single-family detached residence that does not comply with the zoning requirements for floor area ratio, lot coverage, open space, side yards and rear yards, contrary to ZR §§ 23-142, 23-461 and 23-47; *on condition* that all work will substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 18, 2017"-Seventeen (17) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.86, a

maximum of 45 percent lot coverage, a minimum of 55 percent open space, side yards measuring at least 4'-5" and 9 feet in width and a rear yard of at least 20 feet, as illustrated on the BSA-approved plan; and

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

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 special 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2017.

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## **174-14-BZ**

APPLICANT – Jim Kusi, for Robert Calcano, owner.  
SUBJECT – Application July 23, 2014 – Re-instatement (§11-411) of a previously approved variance permitting the operation an Automotive Service Station (UG 16B) with accessory uses which expired November 6, 1994; Waiver of the Rules. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 820 East 182<sup>nd</sup> Street aka 2165-75 Southern Boulevard, Block 3111, Lot 59, Borough of Bronx.

## **COMMUNITY BOARD #2BX**

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for adjourned hearing.

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## **302-14-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Stanfordville, LLC, owner.

SUBJECT – Application November 10, 2014 – Special Permit (§73-125) to allow proposed ambulatory diagnostic or treatment health care facility in excess of 1500 sq. ft. in a two-story mixed use building. R3X zoning district.

PREMISES AFFECTED – 45-05 Francis Lewis Boulevard, southeast corner of intersection of Francis Lewis Boulevard and 45<sup>th</sup> Avenue. Block 5538, Lot 30. Borough of Queens.

## **COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

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## 317-14-BZ

APPLICANT – Brian Cave LLP, for Acadia 3780-3858 Nostrand Avenue LLC, owner.

SUBJECT – Application December 4, 2014 – Special Permit (§73-44): that would allow the reduction in the number of off street parking spaces for ambulatory diagnostic treatment facilities listed in use group 4 and Uses in Parking Requirement Category Br, located within and C2-2/R4 zoning district.

PREMISES AFFECTED – 3780-3860 Nostrand Avenue, Block 7445, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for decision, hearing closed.

## 4-15-BZ

APPLICANT – Sheldon Lobel, P.C., for Bais Chaya Esther Inc., owner.

SUBJECT – Application January 9, 2015 – Variance (§72-21) to permit the conversion of the existing building at the premises from residential to community facility use.

PREMISES AFFECTED – 119 Webster Avenue, block 5416, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for decision, hearing closed.

## 2016-4208-BZ

APPLICANT – Sheldon Lobel, P.C., for USD 142 W 19 LLC, owner.

SUBJECT – Application May 13, 2016 – Variance (§72-21) to permit the development of a 10-story residential building contrary to ZR §23-692. C6-3A zoning district.

PREMISES AFFECTED – 142 West 19<sup>th</sup> Street, Block 794, Lot 63, Borough of Manhattan.

### COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

## REGULAR MEETING

TUESDAY AFTERNOON, AUGUST 22, 2017  
1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

## ZONING CALENDAR

### 10-15-BZ

#### CEQR #15-BSA-143M

APPLICANT – Goldman Harris LLC, for Steven Elghanayan/Epic Lafayette LLC, owner; Kevin P. McGrath/Five Points Academy, lessee.

SUBJECT – Application January 15, 2015 – Special Permit (§73-36) to allow a physical culture establishment (*Five Points Academy*) in the cellar and ground floor of the premises, located within an M1-5B zoning district.

PREMISES AFFECTED – 148 Lafayette Street, Block 233, Lot 26, Borough of Manhattan.

#### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Child Plan Examiner of the Manhattan Borough Office of the Department of Buildings (“DOB”), dated December 16, 2014, acting on DOB Application No. 122127796, reads in pertinent part:

ZR 42-10, ZR 73-36: The proposed Physical Culture Establishment in zoning district M1-5B is not a permitted use as of right. A Special Permit from the Board of Standards and Appeals per Section 73-36 of the Zoning Resolution [is required];

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-5B zoning district, a physical culture establishment (“PCE”) located in portion of the ground floor and cellar level of an existing thirteen-story plus cellar commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 22, 2017, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, at hearing, one neighbor and one nearby business owner testified in support of this application; and

WHEREAS, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the

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northwest corner of Lafayette Street and Howard Street, in an M1-5B zoning district, in Manhattan; and

WHEREAS, the site has approximately 114 feet of frontage along Lafayette Street, 90 feet of frontage along Howard Street, 10,524 square feet of lot area and is occupied by a thirteen-floor plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a

special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 2,069 square feet of floor area on the ground floor, consisting of an entry and reception area, locker rooms with showers and areas for weight lifting and suspension training, and 5,004 square feet of floor space in the cellar with a boxing ring, punching bags, weightlifting and cardiovascular exercise areas and storage; and

WHEREAS, the PCE has been in operation as Five Point Academy since June 2014 with the following hours of operation: Monday through Friday, 5:30 a.m. to 9:30 p.m., Saturday 7:00 a.m. to 3:00 p.m. and Sunday 9:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located in a commercial building in an area with buildings containing commercial retail and restaurant uses on the ground floor and commercial or residential uses on the upper floors; that operation of the PCE at the subject site will not adversely affect adjacent uses, which, on the ground floor, include a retail art supply store and the entrance lobby for offices located on the floors above and, in the cellar, include accessory storage and mechanical spaces for the building; and that the PCE use provides physical improvement instruction valuable to people who live and work in the surrounding area; and

WHEREAS, additionally, the applicant states that sound attenuation measures—including rubber mats, interlocking rubber flooring and 2-hour rated concrete and gypsum board demising walls separating portions of the PCE space from adjacent uses—have been installed in the PCE space to mitigate any sound transmission associated with the use; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides

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facilities for suspension and weight training, yoga classes, cardiovascular machines, and martial arts instruction for physical improvement as contemplated by the special permit; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; 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 applicant states the subject space was previously occupied by a retail tenant and that the sprinklers and fire alarm systems—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—installed in connection with the prior use remain sufficient for the safe operation of the subject PCE; in addition, the applicant submitted DOB and FDNY signoffs for the existing fire alarm system in the subject space; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 15-BSA-143M, dated January 15, 2015; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located in an M1-5B zoning district, the operation of a physical culture establishment on portions of the ground floor and cellar level of an existing thirteen-story plus cellar commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 23, 2017” – Eight (8) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on June 1, 2024;

THAT sound attenuation measures shall be maintained as indicated on the Board-approved plans to ensure that the subject use does not violate the New York City Noise Code;

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 the existing fire alarm and sprinkler systems shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a revised Certificate of Occupancy shall be obtained within one (1) year;

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, August 22, 2017.

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## 2017-239-BZ

### CEQR #18-BSA-015Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for John Kalnberg, owner.

SUBJECT – Application August 14, 2017 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of a home damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of front yard regulations pursuant to ZR 23-45. R3-1 zoning district.

PREMISES AFFECTED – 47 Doty Avenue, Block 3124, Lot 5, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R3-1 zoning district, the reconstruction of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on August 22, 2017, and then to decision on the

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same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuild residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Doty Avenue, between Robin Road and Father Capodanno Boulevard, in an R3-1 zoning district, on Staten Island; and

WHEREAS, the site has approximately 40 feet of frontage along Doty Avenue, 45 feet of depth, 1,800 square feet of lot area and is occupied by a two-story single-family detached residence; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction of a one-family detached residence with a front yard 13 feet in depth; and

WHEREAS, at the subject site, front yards must be 15 feet in depth under ZR § 23-45; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

(a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;

- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with lot-area and front-yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of the front-yard requirement and that waiver of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; the applicant further states that the majority of residences within the surrounding neighborhood are similar detached residences; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA015Q, dated August 14, 2017.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure; *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review; and makes the required findings under ZR § 64-92 to *permit*, in an R3-1 zoning district, the reconstruction of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, contrary to ZR § 23-45; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received

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August 14, 2017”- Three (3) sheets; and *on further condition:*

THAT there shall be a front yard at least 13 feet in depth, as illustrated on the Board-approved plans;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT the foundation system shall have a 2-hour fire resistance rating in accordance with Section 601 of the New York City Building Code;

THAT the exterior walls, ceilings and interior floors shall have 1-hour fire resistance ratings;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by August 22, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2017.

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## 2017-241-BZ

### CEQR #18-BSA-017X

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for John Kalnberg, owner.

SUBJECT – Application August 16, 2017 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of a home damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of front yard regulations pursuant to ZR 23-45. R3-1 zoning district.

PREMISES AFFECTED – 636 Clarence Avenue, Block 5486, Lot 18. Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the

Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in a C3A zoning district, the reconstruction and enlargement of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for permitted obstructions in required yards and open areas between residential buildings, contrary to ZR §§ 23-44(a)(7) and 23-461(c); and

WHEREAS, a public hearing was held on this application on August 22, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuild residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Clarence Avenue, between Randall Avenue and Schley Avenue, in a C3A zoning district, in the Bronx; and

WHEREAS, the site has approximately 25 feet of frontage along Clarence Avenue, 165 feet of depth, 4,200 square feet of lot area and was occupied by a single-family detached residence; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction of a single-family detached residence with eaves and gutters that project 12 inches into the north side yard and with 6’-5” feet of separation between the proposed building and the residential building to the north; and

WHEREAS, at the subject site, eaves, gutters or downspouts may project into a required yard not more than 16 inches or 20 percent of the width of such yard, whichever is less, under ZR § 23-44(a)(7), and an open area of 8 feet is required between residential buildings under ZR § 23-461(c); and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing buildings in compliance with flood-resistant construction standards and for developments and enlargements in compliance with flood-resistant construction standards, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the bulk regulations of Section 64-30, 64-40 (SPECIAL

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# MINUTES

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BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it existed, was non-compliant with regulations for permitted obstructions and open areas between residential buildings, creates practical difficulties in complying with flood-resistant construction standards without the modification of the requirements for permitted obstructions and for open areas between buildings and that waiver of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, the applicant states that the majority of residences within the surrounding neighborhood are single-family residences, a significant number of which are on lots that have non-complying yard configurations; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction

and enlargement satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA017X, dated August 16, 2017.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure; *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review; and makes the required findings under ZR § 64-92 *to permit*, in a C3A zoning district, the reconstruction and enlargement of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for permitted obstructions in required yards and open areas between residential buildings, contrary to ZR §§ 23-44(a)(7) and 23-461(c); *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received August 16, 2017"- Four (4) sheets; and *on further condition*:

THAT eaves and gutters shall project no more than 12 inches into the north side yard, and there shall be at least 6'-5" feet of separation between the proposed building and the residential building to the north, as illustrated on the Board-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the exterior walls, floors and ceilings of the residence shall have 1-hour fire resistance rating;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by August 22, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2017.



# MINUTES

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**2017-242-BZ**

**CEQR #18-BSA-018K**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for John Kalnberg, owner.

SUBJECT – Application August 14, 2017 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of a home damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of front yard regulations pursuant to ZR 23-45. R3-1 zoning district.

PREMISES AFFECTED – 15 Stanton Road, Block 8800, Lot 85, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R4-1 zoning district, the reconstruction of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards, rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 64-A351, 23-461(a), 64-A353, 23-47, 64-A353, 23-142, 64-A311; and

WHEREAS, a public hearing was held on this application on August 22, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuilt residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the northeast corner of Stanton Road and Gunnison Court, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 35 feet of frontage along Stanton Road, 55 feet of frontage along

Gunnison Court, 1,907 square feet of lot area and is occupied by a single-family detached residence; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-410-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a single-family residence that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, inter alia, upon the reconstructed residence having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the residence being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the residence where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest windowsill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction of a two-story single-family detached residence with 13’-4” feet of open space along the east lot line, 13 feet of open space along the south lot line, 6’-6” of open space along the west lot line, 3 feet of open space along the north lot line, 1,100 square feet of open space and 40 percent lot coverage, contrary to the zoning requirements for front yards, side yards, rear yards, open space and lot coverage; and

WHEREAS, at the subject site, front-yard, side-yard, rear-yard, open-space and lot-coverage requirements are set forth in ZR §§ 23-45, 64-A351, 23-461(a), 64-A353, 23-47, 64-A353, 23-142, 64-A311; and

WHEREAS, the subject site does not front a “street,” as defined in ZR § 12-10, and is accessed, instead, by a private pathway, allowing ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a “front lot line,” a “front yard,” a “rear lot line,” a “rear yard” and “side yards,” as those terms are defined in the same section and, therefore, proposes open space, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning

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# MINUTES

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Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with regulations for lot size, front yards, rear yards, side yards, open space and lot coverage, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard, open-space and lot-coverage requirements and that waiving the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA018K, dated August 16, 2017.

Therefore, it is Resolved, that the Board of Standards and Appeals waives its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of

Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to *permit*, in an R4-1 zoning district, the reconstruction of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards, rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 64-A351, 23-461(a), 64-A353, 23-47, 64-A353, 23-142, 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received August 16, 2017"-Four (4) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a minimum of 13'-4" feet of open space along the east lot line, a minimum of 13 feet of open space along the south lot line, a minimum of 6'-6" of open space along the west lot line, a minimum of 3 feet of open space along the north lot line, with exterior balconies, stairs, eaves and gutters permitted in the required open space, a minimum of 1,100 square feet of open space and a maximum of 40 percent lot coverage, as illustrated on the Board-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by June 27, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 22, 2017.

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# MINUTES

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## **157-15-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Naomi Houllou and Albert Houllou, owners.

SUBJECT – Application July 13, 2015 – Special Permit (73-622) for the enlargement of an existing single family contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 3925 Bedford Avenue, Block 6831, Lot 76, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

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**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for continued hearing.

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*Ryan Singer, Executive Director*

## **173-15-BZ**

APPLICANT – Sheldon Lobel, P.C., for Waterview Lofts LLC, owner; 92 Fitness Crew New York 2, LLC, lessee.

SUBJECT – Application August 3, 2015 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Orangetheory Fitness*) on the cellar level of an existing mix-use building contrary to ZR §42-10. M1-2/R6A & MX-8 zoning districts.

PREMISES AFFECTED – 157 Kent Avenue, Block 2349, Lot 15, Borough of Brooklyn.

### **COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to September 9, 2017, at 10 A.M., for continued hearing.

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## **270-15-BZ**

APPLICANT – Moshe M. Friedman, P.E., for 338 Devoe St LLC, owner.

SUBJECT – Application December 10, 2015 – Variance (§72-21) to permit the construction of a 3 story residential building contrary to use regulations. M1-1 zoning district.

PREMISES AFFECTED – 338 Devoe Street, Block 2924, Lot 12, Borough of Brooklyn.

### **COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for continued hearing.

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## **2016-1219-BZ & 2016-1220-A**

APPLICANT – Sheldon Lobel, P.C., for 74<sup>th</sup> and Myrtle LLC, owner.

SUBJECT – Application February 10, 2016 – Variance (§72-21) to permit the development of a two-story plus cellar mixed-use building with ground floor commercial use an residential use on the second floor, contrary to residential floor area, front yard, side yard, parking and use regulations. Proposed construction of a two-story plus cellar building partially within the bed of a proposed street widening, pursuant to Article 3 of General City Law 35. R4-1 zoning district.

PREMISES AFFECTED – 73-45 Myrtle Avenue, aka 78-70 74<sup>th</sup> Street, Block 3823, Lot 88, Borough of Queens.

### **COMMUNITY BOARD #5Q**

# 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.

Volume 102, Nos. 36-38

September 20, 2017

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# DOCKETS

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New Case Filed Up to September 12, 2017

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**2017-248-A**

LIE & 74th Street, Long Island Expressway and 74th Street, Block 02814, Lot(s) 4, Borough of **Queens, Community Board: 5**. An administrative appeal challenging the Department of Buildings' final determination as to whether the NYC Department of Building's correctly found that the Sign is not exempt, permitted as-of-right, or established as a legal non-conforming use. M1-2 zoning district. R4-1, R4, M1-1, M3-1 district.

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**2017-249-A**

MDE & S/O Van Cortland, Major Deegan Expressway and S/O Van Cortland, Block 03269, Lot(s) 70/118, Borough of **Bronx, Community Board: 8**. An administrative appeal challenging the Department of Buildings' final determination as to whether the NYC Department of Building's correctly found that the Sign is not exempt, permitted as-of-right, or established as a legal non-conforming use. M1-2 zoning district. M1-2 district.

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**2017-250-A**

MDE & 167th Street, Major Deegan Expressway at 167th Street, Block 02539, Lot(s) 502, Borough of **Bronx, Community Board: 4**. An administrative appeal challenging the Department of Buildings' final determination as to whether the NYC Department of Building's correctly found that the Sign is not exempt, permitted as-of-right, or established as a legal non-conforming use. M1-2 zoning district. R7-1 district.

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**2017-251-A**

BQE at 31st Avenue, Brooklyn Queens Expressway at 31st Avenue, Block 01137, Lot(s) 22, Borough of **Queens, Community Board: 1**. An administrative appeal challenging the Department of Buildings' final determination as to whether the NYC Department of Building's correctly found that the Sign is not exempt, permitted as-of-right, or established as a legal non-conforming use. M1-2 zoning district. R4, M1-1 district.

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**2017-252-A**

BQE at 32nd Avenue, Brooklyn Queens Expressway at 32nd Avenue, Block 01137, Lot(s) 22, Borough of **Queens, Community Board: 1**. An administrative appeal challenging the Department of Buildings' final determination as to whether the NYC Department of Building's correctly found that the Sign is not exempt, permitted as-of-right, or established as a legal non-conforming use. M1-2 zoning district. R4, M1-1 district.

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**2017-253-A**

BQE & 34th Avenue, Brooklyn Queens Expressway at 34th Avenue, Block 01255, Lot(s) 1, Borough of **Queens, Community Board: 2**. An administrative appeal challenging the Department of Buildings' final determination as to whether the NYC Department of Building's correctly found that the Sign is not exempt, permitted as-of-right, or established as a legal non-conforming use. M1-2 zoning district. R5, M1-1 district.

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**2017-254-A**

115 Arbutus Avenue, Between Christine Court and Denise Court, Block 06523, Lot(s) 24, Borough of **Staten Island, Community Board: 3**. Proposed construction of a one-family home not fronting a legally mapped street contrary to General City Law 36. R3X/SRD zoning district. R3X/SRD district.

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**2017-255-A**

117 Arbutus Avenue, Between Christine Court and Denise Court, Block 06523, Lot(s) 27, Borough of **Staten Island, Community Board: 3**. Proposed construction of a one-family home not fronting a legally mapped street contrary to General City Law 36. R3X/SRD zoning district. R3X/SRD district.

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**2017-256-BZ**

666 Greenwich Street, full block bounded by Greenwich, Christopher, Washington and Barrow Streets, Block 00604, Lot(s) 33, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to operate a physical culture establishment (Peloton) within an existing building contrary to ZR §32-10. C6-2 zoning district (United States Federal Building) (Historic Building) C6-2 district.

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**2017-257-BZ**

159 North 4th Street, lot fronting North 4th Street between Bedford Avenue and Driggs Avenue, Block 02344, Lot(s) 7503, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (CorePower Yoga) in the cellar and ground floor of an existing five-story building contrary to ZR §42-10. M1-2/R6B zoning district. M1-2/R6B district.

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# DOCKETS

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## 2017-258-BZ

6161 Broadway, Corner of West 251 Street and Broadway, Block 05814, Lot(s) 1182, Borough of **Bronx, Community Board: 8**. Special Permit (§73-211) to permit the use of Automotive Service Station (UG 16B) (Mobil) with accessory automotive repair contrary to ZR §32-35. C2-2/R6 zoning district. C2-2/R6 district.

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## 2017-259-BZ

1760 East 28th Street, Between Quentin Road and Avenue R, Block 06810, Lot(s) 0029, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-142); less than the required rear yard (ZR §23-47); and the proposed perimeter wall height exceeds 21'-0" contrary to (ZR §23-631(b)). R3-2 zoning district. R3-2 district.

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## 2017-260-BZ

2672 East 12th Street, West side of East 12th Street between Gilmore Court and Shore Parkway, Block 07455, Lot(s) 0087, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-142); less than the required rear yard (ZR §23-47); and less than the required side yards (ZR §23-461). R4 zoning district. R4 district.

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## 2017-261-BZ

527 East New York Avenue, located on the north side of East New York Avenue between Brookly and Kingston Avenues., Block 01332, Lot(s) 74, Borough of **Brooklyn, Community Board: 9**. Variance (§72-21) to permit the development of a five-story an cellar house of worship (UG 4) (Congregation Chabad-In-Reach-Aliya) contrary to ZR §24-11(Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district. R6 district.

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## 2017-262-BZ

18 Stanwix Street, East Side of Stanwix Street, 28.08 ft. south of intersection with Melrose Street, Block 03162, Lot(s) 0007, Borough of **Brooklyn, Community Board: 4**. Variance (§72-21) to permit the construction of three-story plus cellar residential building contrary to ZR §42-00. M1-1 zoning district. M1-1 district.

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## 2017-263-A

62-66 West Broadway, Northwest corner of West Broadway and Murray Street, Block 00132, Lot(s) 0001, Borough of **Manhattan, Community Board: 1**. Appeal from Department of Buildings determination that advertising sign is not entitled to continuing non-conforming use status at

current size due to a purported gap in evidence of continued use, ignoring the Department's own prior concession of continued use. C6-2A district.

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## 2017-264-BZY

23 East 39th Street, North side of East 39th Street, 100 feet from intersection formed by East 39th and Madison Avenue, Block 00869, Lot(s) 0025, Borough of **Manhattan, Community Board: 5**. Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning district. C5-3 (Special Midtown District). C5-3 district.

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## 2017-265-BZ

318-320 54th Street, Southeast corner of 54 Street between 3rd Avenue and 4th Avenue, Block 00822, Lot(s) 0011, Borough of **Brooklyn, Community Board: 7**. Reinstatement (§11-411) of a previously approved variance which permitted the storage, warehousing, office and showroom (UG 16B) and the assembly of venetian blinds (UG 17) which expired on June 24, 1991; Waiver of the Board's rules. R6B zoning district. R6B district.

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## 2017-266-BZ

2303 Avenue K, Northeast corner of Avenue K and East 23rd Street, Block 07605, Lot(s) 0008, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-141 (Floor Area and Open Space Ratio). R2 zoning district. R2 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 OCTOBER 3, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 3, 2017, 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

#### 617-56-BZ

APPLICANT – Kenneth H. Koons, AIA, for John O’Dwyer, owner.

SUBJECT – Application June 20, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of a transient parking lot (UG 8) which is set to expire on September 27, 2017. C2-3/R6 & C1-3 zoning district.

PREMISES AFFECTED – 3120 Albany Crescent, Block 3267, Lot 15, Borough of Bronx.

**COMMUNITY BOARD #15BX**

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#### 634-84-BZ

APPLICANT – Law Office of Lyra J. Altman, for Kol Israel Congregation and Center, owner.

SUBJECT – Application June 3, 2016 – Amendment of a previously approved Variance (§72-21) which permitted the erection of a two (2) story and cellar community facility (UG 4) building which provided less than the required front yard and required parking. The amendment seeks to permit the enlargement of the synagogue (*Kol Israel Congregation & Center*) contrary to floor area, lot coverage, open space and accessory off-street parking. R2 zoning district.

PREMISES AFFECTED – 2501-2509 Avenue K aka 3211 Bedford Avenue, Block 7607, Lot(s) 6 & 8, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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#### 866-85-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Anne Marie Cicciu Inc., owner.

SUBJECT – Application June 12, 2017 – Extension of Term of a Variance (§72-21) for a UG8 open parking lot and storage of motor vehicles which expired on May 12, 2017. R7-1 zoning district.

PREMISES AFFECTED – 2338 Cambreleng Avenue, Block 3089, Lot 22, Borough of Bronx.

**COMMUNITY BOARD #6BX**

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## APPEALS CALENDAR

#### 266-07-A

APPLICANT – Law Office of Lyra J. Altman, for 1610 Avenue S LLC, owner.

SUBJECT – Application August 15, 2016 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on July 15, 2016. R4-1 zoning district.

PREMISES AFFECTED – 1602-1610 Avenue S aka 1901-1911 East 16<sup>th</sup> Street, Block 7295, Lot 3, Borough of Brooklyn.

**COMMUNITY BOARD # 15BK**

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#### 2017-106-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Sharrotts Realty LLC, owner.

SUBJECT – Application April 13, 2017 – Proposed construction of a warehouse building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. M3-1 (SRD) zoning district.

PREMISES AFFECTED – 721 Sharrotts Road, Block 7385, Lot 215, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

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## REGULAR MEETING OCTOBER 3, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, October 3, 2017, 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

#### 111-15-BZ

APPLICANT – Eric Palatnik, P.C., for 98 Third Avenue Realty LLC c/o Bill Wolf Petroleum Corporation, owner.

SUBJECT – Application October 3, 2017 – Variance (§72-21) to permit a six-story mixed use building with ground floor commercial space and residential space on the upper floors a contrary to ZR section 42-00. M1-2 zoning district.

PREMISES AFFECTED – 98 Third Avenue, Block 388, Lot 31, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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# CALENDAR

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**2016-4295-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Beverly Paneth and Michael Paneth, owners.

SUBJECT – Application November 1, 2016 – Special Permit (73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yard requirements (ZR 23-461 & ZR 23-48) and less than the minimum rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1074 East 24<sup>th</sup> Street, Block 7605, Lot 76, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**2016-4333-BZ**

APPLICANT – Slater & Beckerman P.C., for Grant Development Associates, L.P., owner.

SUBJECT – Application November 18, 2016 – Special Permit (§73-433) to permit the reduction of 35 accessory off-street parking spaces required for 78 existing income-restricted housing units. R7D zoning district.

PREMISES AFFECTED – 1350 Bedford Avenue, Block 1205, Lot 28, Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

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**2017-67-BZ**

APPLICANT – Salim Abraham Jr., for Safanaya Matatov, owner.

SUBJECT – Application March 21, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-141); perimeter wall height (ZR §23-631) and side yards (ZR §23-461). R3-2 zoning district.

PREMISES AFFECTED – 2714 Avenue R, Block 6833, Lot 7, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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*Ryan Singer, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, SEPTEMBER 12, 2017 10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

### SPECIAL ORDER CALENDAR

#### 418-50-BZ

APPLICANT – Law Office of Stuart Klein, for WOTC Tenants’ Corp., owner.

SUBJECT – Application November 21, 2014 – Amendment seek to modify the grant to allow for the addition of 98 parking spaces and the development of a clubhouses which will provide additional amenities and recreation space for the sole use and enjoyment of the residents at the premises, located in an R3-2 zoning district.

PREMISES AFFECTED – 73-69 217<sup>th</sup> Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74<sup>th</sup> Avenue (Block 7754, Lot 3); 73-10 220<sup>th</sup> Street (Block 7755, Lot 3), Borough of Queens.

#### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Withdrawn without prejudice.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown .....3

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application to amend a variance, previously granted by the Board, to permit the addition of additional parking spaces and clubhouse with amenity and recreational space on the site; and

WHEREAS, a public hearing was held on this application on May 2, 2017, after due notice by publication in *The City Record*, with a continued hearing on September 12, 2017, and then to a vote on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, Queens, recommends disapproval of the application, citing concerns from residents living adjacent to the site voiced at the community board meeting regarding the proposal to build within the 100 foot buffer between the subject site and its neighbors provided by a prior Board grant; that additional parking space will add to pollution; and that a proposed driveway entrance would be unsafe; and

WHEREAS, the Board was in receipt of letters from New York State Assemblyman David I. Weprin and New York State Senator Tony Avella in opposition to the subject application and letters from New York City Council Member Barry S. Grodenchik requesting that the applicant adequately maintain the 100 foot buffer area in compliance with a prior Board grant; and

WHEREAS, Assemblyman Weprin, Senator Avella and Council Member Grodenchik additionally provided oral

testimony in opposition to the application; and

WHEREAS, the subject site is comprised of three tax blocks, within an R3-2 zoning district—Block 7739 bound by 217<sup>th</sup> Street to the west, 73<sup>rd</sup> Avenue to the north, 220<sup>th</sup> Street to the east, 74<sup>th</sup> Avenue to the southeast and 75<sup>th</sup> Avenue to the south; Block 7742 bound by 220<sup>th</sup> Street to the west, 73<sup>rd</sup> Avenue to the north, Springfield Boulevard to the east and 75<sup>th</sup> Avenue to the south; and Block 7755 bound by 74<sup>th</sup> Avenue to the west, 220<sup>th</sup> Street to the north and east and 75<sup>th</sup> Avenue to the south—and Lot 3 on Block 7754, which is bound by 217<sup>th</sup> Street to the west, 75<sup>th</sup> Avenue to the north, Springfield Boulevard to the east and 77<sup>th</sup> Avenue to the south, and is partially located within an R3-2 zoning district and partially located within an R2A zoning district, in Queens (the “Premises”); and

WHEREAS, the site has approximately 1,788,036 square feet of lot area and is occupied by 449 two-family dwelling units and 749 accessory off-street parking spaces; and

WHEREAS, the Premises is otherwise known as Windsor Oaks, a cooperative apartment complex, and this application was filed on behalf of the Windsor Oaks Tenants’ Corporation; and

WHEREAS, the Board was in receipt of petitions from residents of Windsor Oaks, one group in favor of the proposal and another in opposition to the proposal, as well as letters in opposition to the proposal from residents and homeowners of the surrounding area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 25, 1950, when, under the subject calendar number, the Board granted a variance to permit the construction of more than one building on the lot without the required yards and courts and the parking of motor vehicles belonging to the residents of the proposed buildings (the “1950 Variance”); and

WHEREAS, on July 3, 1951, under the subject calendar number, the Board amended the resolution to permit an extension of time to obtain permits and complete work under the 1950 Variance; and

WHEREAS, the 1950 Variance was conditioned, *inter alia*, on the southern portion of Block 7754, Lot 3 being maintained unbuilt upon, as then-proposed, with fencing along the lot lines to the south, east and west, and planted for a depth of 100 feet from the southerly line with grass, trees and shrubs with existing trees to be retained as possible; that the planting in the area be suitable and maintained at all times in good condition; that no playground or picnic grounds and no benches or similar facilities be located within the strip 100 feet in width adjoining the southerly lot line; and that no parking or storage of motor vehicles on any portion of the space within 150 feet of the southerly lot line (the “Buffer Zone”); and

WHEREAS, the applicant now proposes to modify the 1950 Variance to permit, within the Buffer Zone, the construction of a new driveway, 98 additional parking spaces and a clubhouse having approximately 5,000 square feet of floor area with amenity and recreation space for the use of Windsor Oaks residents; and

WHEREAS, at hearing, Commissioners requested that the applicant explore alternative locations for the proposed

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# MINUTES

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clubhouse and parking outside of the Buffer Zone in light of the vastness of the Premises and the specificity of the 1950 Variance grant in ensuring that the Buffer Zone be maintained undeveloped; Commissioners additionally noted the concerns of community members in opposition to the proposed amendment to the variance, including residents of homes located on Block 7754 to the south of the Buffer Zone, outside of Windsor Oaks, who, in the more than 60 years of its existence, have come to rely on and enjoy the unimproved greenspace; and

WHEREAS, the Greenbelt Neighborhood Alliance, represented by counsel, testified in opposition to the application, suggesting that its scale was such that a new variance application was required, citing the fact that the subject proposal would reduce the size of the Buffer Zone by nearly half; and

WHEREAS, additional testimony in opposition to the application was provided at hearing by members of the public, voicing concerns that the applicant has not been properly maintaining the Buffer Zone and has, instead, used it as a dumping ground for trash, household garbage and landscaping waste; the Board also heard testimony against the proposed driveway, specifically, concerns that it would exacerbate the already dangerous pedestrian traffic conditions in the area, against the proposed location of additional parking within the Buffer Zone, alleging that there were more suitable locations for additional parking than the Buffer Zone, and that the proposal, as a whole, would adversely impact both the environment and quality of life in the area; and

WHEREAS, by letter dated September 8, 2017, a representative of the Windsor Oaks Board of Directors requested that the subject application be withdrawn without prejudice, alleging that the Board had a “pre-textual agenda and chose to ignore the recommendations of its own staff” with regards to permitting development within the Buffer Zone and criticizing suggestions made by the Board to amend the proposal as, among other things, “ludicrous”, “disingenuous,” “defy[ing] credulity” and “clear[ly] ignoran[t]”; and

WHEREAS, at the September 11, 2017, executive session, the Board clarified that staff review and comments are not indicative of Board approval and are, instead, meant to ensure that an application is complete prior to Commissioner review; further, Commissioners read all submissions on an application—both those by the applicant and those submitted by opposition—prior to formulating their views, which are then expressed to the public, and it is the applicant’s responsibility, to the extent they believe that the Board’s understanding of the proposal is flawed, to clarify the application materials and correct the Board’s understanding; and

WHEREAS, in addition, the Board requested that, in light of the evidence presented by opposition that the Premises were out of compliance with the 1950 Variance grant—specifically, that the Buffer Zone was not being properly maintained—a compliance hearing be scheduled for this application and requested that in advance of that hearing, the applicant inspect the Buffer Zone and initiate any work required to ensure compliance of the Buffer Zone with the conditions of the 1950 Variance; and

Therefore, it is Resolved, that the Board of Standards and Appeals accepts the withdrawal of this application without prejudice.

Adopted by the Board of Standards and Appeals, September 12, 2017.

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**949-57-BZ**

APPLICANT – Akerman, LLP, for Pelham Bridges Realities, LLC, owner; NY Dealers Stations, LLC, owner.  
SUBJECT – Application July 7, 2015 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on October 29, 2014; Waiver of the Rules. R5D zoning district.

PREMISES AFFECTED – 2100 Williamsbridge Avenue, Block 4310, Lot 30, Borough of Bronx.

**COMMUNITY BOARD #11BX**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown .....3  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and, pursuant to ZR §11-411, an extension of the term of a variance, previously granted by the Board, which expired on October 29, 2014; and

WHEREAS, a public hearing was held on this application on September 20, 2016, after due notice by publication in *The City Record*, with continued hearings on January 31, 2017, and March 7, 2017, May 2, 2017, and June 27, 2017, M, and then to decision on September 12, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, Bronx, waived its recommendation on this application; and

WHEREAS, the subject site is located on the northeast corner of Williamsbridge Road and Lydig Avenue, in an R5D zoning district, in the Bronx; and

WHEREAS, the site has approximately 100 feet of frontage along Williamsbridge Road, 86 feet of frontage along Lydig Avenue, 9,210 square feet of lot area and is occupied by an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 8, 1958, when, under the subject calendar number, the Board granted a variance to permit the construction and maintenance of a gasoline service station with accessory uses, including a car wash, lubricatorium, minor repairs with hand tools only and office, and the locating of show windows and business entrances within 75 feet of a residence district for a term of fifteen (15) years, expiring July 8, 1973; and

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# MINUTES

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WHEREAS, on October 31, 1961, under the subject calendar number, the Board granted a one-year extension of time to complete construction; and

WHEREAS, on September 25, 1962, under the subject calendar number, the variance was amended to permit redesign and rearrangement of the service station, but prohibiting a proposed fluorescent floodlight on Lydig Avenue near the easterly lot line; and

WHEREAS, on May 14, 1963, under the subject calendar number, the Board approved an amendment to the variance to permit a reduction in the width of the accessory building and the addition of a crawl space on the second floor of the same as well as a one-year extension of time to complete construction; and

WHEREAS, on October 29, 1974, under the subject calendar number, the Board waived its Rule of Procedure and granted an extension of the term of the variance for ten (10) years, expiring October 29, 1984; and

WHEREAS, on November 28, 1978, under the subject calendar number, the Board further amended the resolution to permit alterations to the existing ground sign advertising the brand of gasoline on sale to include the wording auto care; and

WHEREAS, on April 30, 1985, under the subject calendar number, the Board granted a waiver of its rules and an extension of the term of the variance for ten (10) years, expiring October 29, 1994, on condition that the parking and storage of motor vehicles on the premises shall be for vehicles awaiting service only; that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and that a new certificate of occupancy be obtained within one (1) years; and

WHEREAS, May 9, 1995, under the subject calendar number, the Board again waived its rules and granted an extension of the term of the variance for ten (10) years, expiring October 29, 2004, on condition that there be no storage behind the building on the premises and that a new certificate of occupancy be obtained within one (1) years; and

WHEREAS, on November 9, 2004, under the subject calendar number, the Board again extended the term of the variance for ten (10) years, expiring October 29, 2014, and an amendment permitting the conversion of the repair bay structure to an accessory convenience store on condition that the premises be maintained free of debris and graffiti and that any graffiti located on the premises be removed within 48 hours; and

WHEREAS, the previous term having expired, the applicant seeks a further extension of the term for an additional ten (10) years; and

WHEREAS, the applicant also requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing of this application less than two years after the expiration of the term; and

WHEREAS, the applicant represents that the use has been continuous since the expiration of the term and that substantial prejudice would result without the requested

waiver; and

WHEREAS, at hearing, the Board observed via photos of the site that the premises were maintained in poor condition—specifically, fencing at the site required repairs; materials were improperly stored outdoors, and an air conditioning unit and a temporary shed were located in rear of the accessory building on the site, contrary to the 1995 Board approval—and that signage in excess of that permitted was present on the site; and

WHEREAS, accordingly, the Board requested that certain site improvement work be completed at the premises prior to the Board's voting on this application, including removal of excess signage from the site, removal of the temporary shed from behind the accessory building, repairs to the chain link fence enclosure, addition of landscaping to the rear of the accessory building to prevent improper use of this area for storage, the relocation of a dumpster from adjacent to a residential property to the east of the site to adjacent to a commercial use to the north of the site and the installation of a wrought iron picket fence above the existing brick wall to a total height of 8 feet; and

WHEREAS, the applicant having satisfactorily addressed the Board's concerns regarding the site's appearance and maintenance, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 11-411 and finds that a ten (10) year extension of the term of the variance is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 8, 1958, as amended through November 9, 2004, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years from the expiration of the last grant to expire on October 29, 2024, *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received June 8, 2017-Eight (8) sheets; and *on further condition*:

THAT the premises shall be maintained free of debris and graffiti;

THAT graffiti located at the premises shall be removed within 48 hours;

THAT building walls and masonry fencing shall be painted regularly and be maintained in good condition;

THAT all planting, fencing, asphaltting and striping at the site shall be maintained as shown on the BSA-approved plans and replaced as necessary to maintain the site in good condition;

THAT all signage shall comply with regulations applicable in C1 zoning districts;

THAT a sound attenuating enclosure shall be installed around the air conditioning unit located in the rear of the accessory building on the site;

THAT there shall be no storage behind the accessory building on the premises;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions not

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# MINUTES

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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 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, September 12, 2017.

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## 240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties LLC, owner.

SUBJECT – Application December 24, 2015 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair facility (UG 16B) which is set to expired on November 3, 2018; Amendment (§11-413) to permit a change in use from automotive repair facility (UG 16B) to automotive sales (UG 9A); Extension of Time to Obtain a Certificate of Occupancy which expired on April 1, 2015; Waiver of the Rules to permit the filing for an Extension of Term in excess of 1 year prior to the expiration and for filing in excess of 30 day but less than 1 year of the expiration of the time to obtain a Certificate of Occupancy. C2-2/R6B & R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Block 7305, Lot 19, Borough of Queens.

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for decision, hearing closed.

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## 704-59-BZ

APPLICANT – Carl A. Sulfaro, Esq., for The Rand Properties Group, LLC, owner; Danes Parking Corp., lessee.

SUBJECT – Application May 9, 2016 – Extension of Term (§11-411) of a previously approved variance which permitted a parking lot (UG 8) which expired on June 3, 2010; Waiver of the Rules. R8 zoning district.

PREMISES AFFECTED – 53 East 177<sup>th</sup> Street (fka 53-57 East 177<sup>th</sup> Street), Block 2828, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #5BX

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for continued hearing.

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## 528-64-BZ

APPLICANT – NYC Board of Standards and Appeals  
SUBJECT – Application April 25, 2017 – Compliance Hearing of a previously approved Variance (§72-21) which permitted the erection of a two story enlargement of an auto showroom (UG 16B) (East Hills Chevrolet) R1-2 zoning district.

PREMISES AFFECTED – 240-02 Northern Boulevard, Block 8167, Lot 1, Borough of Queens.

### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

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## 36-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 65-75 Owners Corp., owner; World Gym, Inc., lessee.

SUBJECT – Application December 5, 2014 – Extension of Term and Waiver (§72-01): to extend the term of a previous grant permitting a physical culture establishment (*World Gym*) within an existing cellar and one-story commercial building. C1-2/R3-1 zoning district.

PREMISES AFFECTED – 65-75 Woodhaven Boulevard aka 85-01 66<sup>th</sup> Avenue, Block 3139, Lot 1, Borough of Queens.

### COMMUNITY BOARD #6Q

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for adjourned hearing.

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## 30-00-BZ

APPLICANT – Fried, Frank, Harris Shriver & Jacobson LLP, for The Trustees of Columbia University in the City of New York, lessee.

SUBJECT – Application February 17, 2016 – Extension of term of a previously granted variance granted pursuant to §72-21 of the zoning resolution which permitted an open parking lot (Use Group 8) which expired on February 6, 2016. R7-2 zoning district.

PREMISES AFFECTED – 465-469 West 165<sup>th</sup> Street and 458-464 West 166<sup>th</sup> Street, Block 2111, Lot(s) 53, 54, 55, 57, 71, 72, 73, Borough of Manhattan.

### COMMUNITY BOARD #12M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown .....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for decision, hearing closed.

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# MINUTES

## 180-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TCAM Core Property Fund Operating LP, owner; Equinox 85<sup>th</sup> Street, Inc., lessee.

SUBJECT – Application February 4, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (Equinox) which expires on February 28, 2016. C2-8A/R8B zoning district.

PREMISES AFFECTED – 1511 Third Avenue (a/k/a 201 East 85<sup>th</sup> Street) Block 1531, Lot 1, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for continued hearing.

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## 107-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 817 Lexington LLC entities c/o Managing Guy LLC, owner; Equinox 63<sup>rd</sup> Street, Inc., lessee.

SUBJECT – Application January 27, 2017 – Extension of Term of a previously approved Special Permit (§ 73-36) to allow a physical culture establishment use (Equinox) in the cellar, sub cellar, first floor and second floor of a 22 story mixed use building which expires on February 27, 2017. C1-8X/R8B zoning district. Landmark Building (Barbizon Hotel For Women).

PREMISES AFFECTED – 140 East 63<sup>rd</sup> Street, Block 1397, Lot 7505, Borough of Manhattan.

### COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for continued hearing.

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## 223-07-BZ

APPLICANT – Bryan Cave LLP, for Bliss World LLC, owner.

SUBJECT – Application February 17, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Bliss World*) on the third floor in an existing commercial building which expires on June 15, 2017. C5-3 Special Midtown District.

PREMISES AFFECTED – 12 West 57<sup>th</sup> Street, Block 1272, Lot 47, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for postponed hearing.

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## APPEALS CALENDAR

### 2016-4256-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Stecher Street LLC, owner.

SUBJECT – Application September 20, 2016 – Proposed construction of a one family, two-story dwelling not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law. R1-2 (SRD) zoning district.

PREMISES AFFECTED – 147 Stecher Street, Block 6565, Lot 11, Borough of Staten Island.

### COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown .....3  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for decision, hearing closed.

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### 255-15-A

APPLICANT – David L. Businelli, for Michael Ricco, owner.

SUBJECT – Application November 12, 2015 – 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 and waiver under 72-01-(g). R3-1 zoning district.

PREMISES AFFECTED – 106 Ebbetts Street, Block 4056, Lot 86, Borough of Staten Island.

### COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown .....3  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to September 26, 2017, at 10 A.M., for decision, hearing closed.

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### 2017-52-A

APPLICANT – Slater & Beckerman P.C., for 1109 Metropolitan Avenue LLC, owner.

SUBJECT – Application February 22, 2017 – Interpretative Appeal challenging the Department of Buildings determination that a proposed caretaker's apartment for a proposed sign painting shop does not satisfy the ZR 12-10 definition of an "accessory use". M3-1 zoning district.

PREMISES AFFECTED – 1109 Metropolitan Avenue, Block 2927, Lot 25, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.

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# MINUTES

## ZONING CALENDAR

### 322-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Gloria B. Silver, owner.

SUBJECT – Application December 18, 2013 – Reinstatement (§11-411) of a previously approved variance which permitted accessory parking on the zoning lot for the use Group 6 commercial building, which expired on September 23, 1990; Waiver of the Rules. R6/C1-2 and R6 zoning district.

PREMISES AFFECTED – 42-01 Main Street, southeast corner of the intersection of Main Street and Maple Avenue, Block 5135, Lot 1, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Application Denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and, pursuant to ZR § 11-411 and § 1-05 et seq. of the Board’s Rules, a reinstatement of a variance previously granted by the Board, which expired on September 23, 1990; and

WHEREAS, a public hearing was held on this application on March 24, 2015, after due notice by publication in *The City Record*, with continued hearings on July 14, 2015, October 20, 2015, December 15, 2015, February 23, 2016, June 14, 2016, September 13, 2016, January 10, 2017, April 4, 2017, and June 27, 2017, and then to decision on September 12, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Queens, recommended approval of this application for a term of five (5) years instead of ten (10) years, as requested by the applicant; and

WHEREAS, the subject site is located on the southeast corner of Main Street and Maple Avenue, partially within an R6 (C1-2) zoning district and partially within an R6 zoning district, in Queens; and

WHEREAS, the site has approximately 118 feet of frontage along Main Street, 211 feet of frontage along Maple Avenue, 31,500 square feet of lot area and is occupied by a two-story plus mezzanine Use Group (“UG”) 6 commercial building and accessory parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 11, 1954, when, under BSA Cal. No. 889-53-BZ, the Board granted a variance to permit a portion of the premises to be occupied by transient parking of motor vehicles belonging to employees and patrons of the then-proposed two-story plus cellar commercial building for a term of five (5) years, expiring May 11, 1959; and

WHEREAS, on December 1, 1959, March 23, 1965,

June 30, 1970, September 23, 1975, January 6, 1981, and May 3, 1988, under BSA Cal. No. 889-53-BZ, the Board granted extensions of the term of the variance for additional five (5) year terms, the latest of which expired on September 23, 1990; and

WHEREAS, the previous term having expired, the applicant seeks a further extension of the term of the variance for an additional ten (10) years; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of § 1-07.3(b)(4)(i) to permit the filing of this application more than ten (10) years after the expiration of the term; and

WHEREAS, the applicant represents that the use has been continuous since the expiration of the term and that substantial prejudice would result without the requested waiver; and

WHEREAS, at the time of the filing of this application with the Board, the premises had 20 open Department of Buildings (“DOB”) violations and 16 open Environmental Control Board (“ECB”) violations, the majority of which were related to the subject of this variance; and

WHEREAS, the applicant asserts that the delay in filing this application was due to the tenant’s ignorance that site was subject to a variance and that the term of the variance had expired; and

WHEREAS, the applicant states that after the last extension of term grant in 1988, the commercial building on the site was enlarged, necessitating the provision of an additional 16 parking spaces at the site, which the applicant submits are accommodated within the portion of the subject lot located within a C1-2 zoning district and through a reciprocal parking agreement for 10 parking spaces on an adjacent lot; and

WHEREAS, at the Board’s request the applicant amended the site plan to accommodate all parking spaces required for the commercial building on site using triple stackers; and

WHEREAS, the applicant subsequently submitted several amended site plans with altered layouts for parking at the site; and

WHEREAS, nevertheless, over the course of the many hearings held on this application, the Board grew frustrated with the applicant’s lack of responsiveness to the Board’s request for physical improvements to the site, continued accrual of DOB violations, failure to timely pay outstanding fines and failure to install the stackers needed to provide all of the required parking for the UG 6 use on the subject site; and

WHEREAS, accordingly, the Board finds that the evidence in the record does not support a reinstatement of the subject variance pursuant to ZR § 11-411 and such variance has, accordingly, expired.

*Therefore, it is Resolved*, that the application for a waiver of the Board’s Rules of Practice and Procedure and reinstatement of a variance previously granted by the Board, pursuant to ZR § 11-411, is *denied*.

Adopted by the Board of Standards and Appeals,

# MINUTES

September 12, 2017.

**2016-4299-BZ**

**CEQR #17-BSA-038K**

APPLICANT – Jesse Masyr, Esq., Fox Rothschild LLP, for Thor 280 Richards Street, LLC, owner.

SUBJECT – Application November 4, 2016 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1). M3-1 zoning district.

PREMISES AFFECTED – 280 Richards Street, Block 612, Lot 150, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown .....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 13, 2016, acting on DOB Application No. 321183465 reads in pertinent part:

ZR 44-21: The number of accessory parking spaces that shall be provided for Use Group 6B Office use do not comply with ZR 44-21; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, on a site located within an M3-1 zoning district, the reduction in the number of required accessory parking spaces for a Use Group (“UG”) 6B office from 2,048 spaces to 1,024 spaces, contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this application on June 27, 2017, after due notice by publication in *The City Record*, with a continued hearing on September 12, 2017, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and the surrounding neighborhood; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application on condition that the existing cobblestones on Richards Street be preserved and maintained; that the applicant enter a binding agreement regarding alternative off-site accessory parking spaces; and that ten percent of the proposed parking spaces be set aside as free parking to allow for mix of visitors from a broader range of income levels to access the site; and

WHEREAS, the subject site is a waterfront lot located on the west side of the intersection of Beard Street and Richard Street, bound on the remaining three sides by the Erie Basin, in an M3-1 zoning district, in Brooklyn; and

WHEREAS, the site is additionally located in the New York City Waterfront Revitalization Program (“WRP”) Coastal Zone Boundary and a Zone AE flood zone on FEMA’s 2015 Preliminary Flood Insurance Rate Map; and

WHEREAS, the site has approximately 587 feet of frontage along Beard Street and 696,580 square feet of lot area, of which approximately 451,618 square feet are landward of the bulkhead line, and is currently vacant; and

WHEREAS, the applicant proposes to construct a five-story commercial building with approximately 614,430 zoning square feet of UG 6B office use and 24,118 zoning square feet of UG 6A retail use and below-grade accessory parking facility with 1,014 attended parking spaces and 90 self-parking spaces; and

WHEREAS, pursuant to ZR § 44-21, 2,128 parking spaces—2,048 parking spaces for the UG 6B office use and 80 parking spaces for the UG 6A retail use—are required for the proposed use, calculated at a rate of one space per 300 square feet of floor area; and

WHEREAS, the applicant proposes to provide the 80 parking spaces generated by the UG 6A retail use and seeks the subject relief to reduce the number of parking spaces provided for the UG 6B use from 2,048 to 1,024; and

WHEREAS, ZR § 73-44 provides as follows:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

**REDUCED ACCESSORY OFF-STREET  
PARKING SPACES REQUIRED FOR  
AMBULATORY DIAGNOSTIC  
OR TREATMENT FACILITIES LISTED IN  
USE GROUP 4 AND  
COMMERCIAL USES IN PARKING  
REQUIREMENT CATEGORY B1**

Parking Spaces Required Per Number of Square Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar space*, except *cellar space used*



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for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for a UG 6 use at the subject site from one space per 300 square feet of floor area to one space per 600 square feet of floor area provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant submitted a signed letter from its broker and marketing materials produced by the same relating to efforts to lease space in the proposed building for office use, particularly to businesses in the technology, advertising, media and information industries; additionally, the applicant provided an affidavit from an authorized representative affirming that the UG 6B office use is contemplated in good faith; and

WHEREAS, the Board finds that the proposed UG 6B office use at the subject site is contemplated in good faith; and

WHEREAS, the Board notes that its determination is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, in satisfaction of ZR § 73-03(a), the applicant provided a parking demand analysis demonstrating that the proposed development will generate a peak hour demand on weekdays between 10:00 a.m. and 11:00 a.m. and 2:00 p.m. and 3:00 p.m. of 907 parking spaces; and

WHEREAS, the peak hour demand assumes a 40 percent auto share, despite data for the Red Hook census tract that 47 percent of workers in the area drive to work, and, in defense of that assumption, the applicant points to another recent development in Brooklyn—the Brooklyn Navy Yard—occupied by tenants similar in profile to those anticipated to occupy the subject development and situated a similar distance from public transportation that has a 42 percent auto share; the applicant further submits that the parking demand analysis has taken the high use of alternative taxi modes of transportation—specifically Uber and Lyft—to further justify the assumption of a lower auto share; and

WHEREAS, at hearing, the Board questioned the comparability of the Brooklyn Navy Yard development, which is easily accessible by bike from many of the neighborhoods in which its workers reside and also runs a shuttle bus to the site from a variety of nearby subway lines; and

WHEREAS, accordingly, the Board suggested that, similar to the Brooklyn Navy Yard, the subject proposal operate a regular shuttle bus to the site from nearby subway lines, the nearest of which, the applicant submits, is one mile away; and

WHEREAS, in response to the Board's inquiries, the applicant supplemented its parking demand analysis with an alternative study utilizing a 47 percent auto share demonstrating that, during the same peak hours, the demand at the site will be 1,065 parking spaces, 39 spaces fewer than the number of spaces proposed; and

WHEREAS, additionally, at hearing, the applicant agreed that providing a shuttle would remove any doubt that

the proposed reduction in accessory parking spaces can satisfy the parking demand of the proposed UG 6B office use and proposed that the most appropriate trigger for when a shuttle to and from the site would commence operation was 50 percent occupancy of the zoning square footage of the UG 6B office use; and

WHEREAS, with respect to the impact of the parking facility on traffic on adjacent streets, the applicant submits that two valet drop-off zones will be located at the facility—one on the northern end with at least 15 reservoir spaces and one on the southern end with at least 16 reservoir spaces—that will ensure that vehicles can queue for parking on-site and not use the surrounding street network; and

WHEREAS, with regards to the location of the site within the flood zone, the applicant submits that the proposed development will comply with Appendix G of the New York City Building Code and all applicable requirements, including the dry flood-proofing of all below grade areas, including the cellar level parking, up to the design flood elevation; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-03 and 73-44 have been met; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA038K, dated September 11, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, the New York City Landmarks Preservation Commission completed an environmental review of the site and concluded that, though the site is located within the radius of a Designated New York City Landmark or within a Designated Historic District and in the radius of an area eligible for National Register Listing, the site has no architectural or archaeological significance; and

WHEREAS, on November 9, 2015, the Department of the Army, New York District, Corps of Engineers (“Army Corps of Engineers”) issued Permit Number NAN-2015-00586, expiring November 9, 2018, authorizing specified work at the subject premises, including repairs to the existing timber bulkhead and shore stabilization work,

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pursuant to approved plans and subject to specified conditions; and

WHEREAS, the subject site is also subject to New York State Department of Environmental Conservation (“DEC”) Permit No. 2-6102-00130/00004 for the rehabilitation of the bulkhead; and

WHEREAS, by letter dated July 12, 2017, the Bureau of Sustainability New York City Department of Environmental Protection (“DEP”) states that it reviewed the March 2017 Environmental Assessment Statement, the November 2015 Phase I Environmental Site Assessment Report (Phase I), the March 2012 limited Phase II Environmental Site Investigation (Phase II), the April 2017 Soil Vapor Investigation, the April 2017 Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) and requested that the CHASP include the names and phone numbers of the Site Health and Safety Officer and Alternate Site Health and Safety Officer; that the open status spill (Spill Number 0811098) on the subject property be remediated and closed in accordance with DEC requirements; stated that ACM may be present at the subject property and that those materials should be properly removed and/or managed prior to the start of any construction activities and disposed of in accordance with all federal, state and local regulation; and that, upon completion of the clean fill/top soil investigation activities (for the 2-feet of clean cover soil in landscaped area), a clean soil report—including, at a minimum, an executive summary, narrative of the field activities, laboratory data, and comparison of soil analytical results—be submitted to DEP for review and approval prior to importation and placement on-site; and

WHEREAS, DEP additionally requested that, at the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure Report indicating that all remedial requirements have been properly implemented be submitted to DEP for review and approval for the proposed project; and

WHEREAS, by letter dated July 19, 2017, the Bureau of Environmental Planning and Analysis for DEP states that, based on the materials reviewed, DEP had determined that the proposed project would not result in any potential for significant adverse impacts in regards to air quality; and

WHEREAS, by communication dated September 11, 2017, the Waterfront and Open Space Division of the New York City Department of City Planning states that, based on the information submitted, the proposed development, assigned WRP #16-140, will not substantially hinder the achievement of any WRP policy and is consistent with WRP policies; 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 Type I Negative Declaration, with conditions

as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-03 and 73-44 to permit, on a site located within an M3-1 zoning district, the reduction in the required number of accessory parking spaces for a Use Group 6B office use from 2,048 to 1,024 spaces, contrary to ZR § 44-21; on condition that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received May 17, 2017”—Seventeen (17) sheets, and on further condition:

THAT upon 50 percent occupancy of the floor area dedicated to UG 6B office use at the site, a shuttle bus shall commence operation between the site and nearby public transportation during office hours;

THAT there shall be no change in the uses at the site without prior review and approval by the Board;

THAT no certificate of occupancy shall be issued if the UG 6B office use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT upon completion of the clean fill/top soil investigation activities at the site (for the 2-feet of clean cover soil in landscaped area), a clean soil report—including, at a minimum, an executive summary, narrative of the field activities, laboratory data, and comparison of soil analytical results—shall be submitted to DEP for review and approval prior to importation and placement onsite;

THAT upon the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure Report indicating that all remedial requirements have been properly implemented be submitted to DEP for review and approval for the proposed project;

THAT all required revisions, modifications and/or extensions to existing permits issued by DEC and/or Army Corps of Engineering shall be obtained;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years;

THAT substantial construction shall be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 12, 2017.

# MINUTES

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**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for continued hearing.  
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## **128-15-BZ thru 130-15-BZ**

APPLICANT – Law Office of Steven Simicich, for John Massamillo, owner.

SUBJECT – Application May 29, 2015 – Variance (§72-21) to allow for the construction on a three family attached residential building (Use Group 2). R2/SHPD zoning district.

PREMISES AFFECTED – 680, 682 and 684 Van Duzer Street, Block 613, Lot(s) 95, 96 and 97, Borough of Staten Island.

### **COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.  
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## **2016-4127-BZ**

APPLICANT – Dennis D. Dell’Angelo, for 1547 East 26<sup>th</sup> Street, LLC, owner; Israel Stern, lessee.

SUBJECT – Application February 26, 2016 – Special Permit (§73-622) for the enlargement of an existing single-family residence contrary to floor area and lot coverage (ZR 23-141); perimeter wall height (ZR 23-631) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1547 East 26<sup>th</sup> Street, Block 6773, Lot 77, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for continued hearing.  
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## **2016-4138-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 323 Sixth LLC, owner; IFC Center, lessee.

SUBJECT – Application March 16, 2016 – Variance (§72-21) for an enlargement of an existing motion picture theater (*IFC Center*) contrary to both use and bulk requirements. C1-5/R7-2 & R6 zoning district.

PREMISES AFFECTED – 323-27 Avenue of the Americas, Block 589, Lot(s) 19, 30, 31, Borough of Manhattan.

### **COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for continued hearing.  
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## **2016-4301-BZ**

APPLICANT – Eric Palatnik, P.C., for Robertas A Urbonas, owner.

SUBJECT – Application November 9, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-142); side yard (ZR 23-48); lot area and width (ZR 23-32) and less than the required rear yard (ZR 23-47). R5-OP zoning district.

PREMISES AFFECTED – 136 Oxford Street, Block 8757, Lot 97, Borough of Brooklyn.

### **COMMUNITY BOARD #15BK**

## **REGULAR MEETING**

**TUESDAY AFTERNOON, SEPTEMBER 12, 2017**

**1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

## **ZONING CALENDAR**

### **2017-49-BZ**

#### **CEQR #17-BSA-093M**

APPLICANT – Akerman, LLP, for Fabrics Save-a-Thon Manhattan, Inc., owner; The Cliffs at Harlem, LLC, lessee.

SUBJECT – Application February 17, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*The Cliffs*) on the second floor of an existing building contrary to ZR §32-10. C4-4D/C6-3 (Special 125th Purpose District).

PREMISES AFFECTED – 243 West 124<sup>th</sup> Street aka 256-258 West 125<sup>th</sup> Street, Block 1930, Lot 53, Borough of Manhattan.

#### **COMMUNITY BOARD #10M**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 20, 2017, acting on Department of Buildings (“DOB”) Application No. 122963454, reads in pertinent part:

ZR 32-10: Proposed physical culture establishment, in C[4-4D/C6-3 (125) zoning district is contrary to Section 32-10 ZR and requires a special permit from BSA; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site partially located within a C4-4D zoning district and partially located within a C6-3 zoning district, in the Special 125th Street District, a physical culture establishment (“PCE”) on a portion of the first floor, the second floor and in a proposed mezzanine of an existing two-story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 12, 2017, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, the Land Use Committee of Community Board 10, Manhattan had no objections and voted unanimously in support of the application; and

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WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the north side of West 124th Street between Frederick Douglas Boulevard and Adam C Powell Boulevard, partially within a C4-4D zoning district and partially within a C6-3 zoning district, within the Special 125th Street District, in Manhattan; and

WHEREAS, the site has approximately 100 feet of frontage along West 124th Street, 50 feet of frontage along West 125th Street, has a through lot portion 202 feet in depth and an interior lot portion fronting West 124th Street 101 feet in depth, 15,138 square feet of lot area, and is occupied by a two-story plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any

application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and Certificate of Occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 PCE is proposed to occupy a total of 17,543 square feet of floor area comprised of approximately 1,568 square feet of floor area on the ground floor, consisting of an entrance lobby fronting West 125th Street, stairs and ADA accessible elevator to the primary PCE space on the second floor, and two secondary means of egress fronting on West 124<sup>th</sup> Street; 14,876 square feet of floor area on the second floor consisting of a reception desk, climbing walls, men's and women's locker rooms, office space, and an open gym area; and 1,102 square feet of floor area on the proposed first floor mezzanine with cardiovascular exercise equipment; and

WHEREAS, the PCE is proposed to be operated as The Cliffs with the following hours of operation: Monday through Friday, 7:00 a.m. to 12:00 a.m. and Saturday through Sunday, 9:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it of its location in a mixed-use neighborhood that includes both commercial and residential uses and will serve as an alternative to conventional fitness clubs for area residents; and

WHEREAS, the Board finds that the PCE is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE will provide indoor climbing facilities for improved physical fitness, including instructional classes for clients of all climbing abilities; and

WHEREAS, the Board finds that the subject PCE use

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is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; and

WHEREAS, the Department of Investigation (“DOI”) has performed a background check on the corporate owner and operator of the establishment and the principals thereof and provided a complaint filed in Criminal Court of the City of New York, County of Queens, against a named principal in 2013; and

WHEREAS, the principal subsequently paid a fine and received a one year provisional discharge; and

WHEREAS, the Board found the charge to be unrelated to the types of offense the subject special permit was intended to prevent, to wit, houses of ill repute and, accordingly, deemed the support issued by DOI to be satisfactory; and

WHEREAS, the applicant submits that an approved fire alarm system—including area smoke detectors, manual pull stations at required exits, local audible and visual alarms and a connection to an FDNY-approved central station—will be provided in the PCE space and that an automatic sprinkler system connected to an FDNY-approved central station is presently installed throughout the entire building; and

WHEREAS, the site is the subject of a New York City Planning ULURP Action; and

WHEREAS, the site has existing institutional controls, specifically an E designation (E-201) relating to hazardous materials, air quality and noise as identified in the Final Environmental Impact Statement CEQR No. 07DCP030M, dated February 29, 2008; and

WHEREAS, with regards to hazardous materials, the E designation requires that pre-development activities at the site include a Phase I environmental site investigation, and, if necessary, a sampling protocol and remediation to the satisfaction of the New York City Department of Environmental Protection (“DEP”) before the issuance of a building permit; and

WHEREAS, with regards to air quality, the text of the E designation reads as follows: “any new residential and/or commercial development...must ensure that the heating, ventilating and air conditioning stack(s) are located at least 100 and 82 feet for Oil No. 4 and Oil No. 2 from the lot lines or use Natural Gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts”; and

WHEREAS, with regards to noise, the text of the E designation reads as follows:

In order to ensure an acceptable interior noise environment, future residential/commercial users must provide a closed window condition with a minimum of 30 dBA and 40 dBA window/wall attenuation on some facades in order to maintain an interior noise level of 45 dBA. To achieve 40 dBA of building attenuation, special design features that go beyond the normal double-glazed windows are necessary and may include using specially design windows (i.e., windows with small sizes, windows with air gaps, windows with thicker glazing, etc.), and additional building attenuation. In order to maintain a closed-

window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning; and

WHEREAS, the applicant acknowledges that the subject building with comply with all of the requirements of E designation (E-201) for hazardous materials, air quality and noise; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant states that the proposed PCE will not interfere with any public improvement projects; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 17BSA093M, received February 17, 2017 and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to permit, on a site partially located within a C4-4D zoning district and partially located within a C6-3 zoning district, in the Special 125th Street District, the operation of a physical culture establishment on a portion of the first floor, the second floor and in a proposed mezzanine of an existing two-story plus cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received September 12, 2017”– Ten (10) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on September 12, 2027;

THAT there will be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT an approved fire alarm system—including area smoke detectors, manual pull stations at required exits, local audible and visual alarms and a connection to an FDNY-approved central station—shall be installed in the entire PCE space;

THAT the PCE shall be fully sprinklered;

THAT accessibility compliance under Local Law 58/87 shall be as reviewed and approved by DOB;

THAT the building shall comply with the requirements of E designation (E-201) with regards to hazardous materials, air quality and noise;

# MINUTES

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT a revised Certificate of Occupancy shall be obtained within four (4) years;

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, September 12, 2017.

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## 205-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 100-02 Rockaway Blvd 26 LLC, owner; Warrior Fitness Queens Inc., lessee.

SUBJECT – Application August 27, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (*Warrior Fitness*) within a portion of an existing commercial building. M1-1 zoning district.

PREMISES AFFECTED – 100-02 Rockaway Boulevard, Block 9539, Lot 1, Borough of Queens.

### COMMUNITY BOARD #10Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown .....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 17, 2017, at 10 A.M., for decision, hearing closed.

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## 275-15-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly S. Friedman, Esq., for Marymount School of New York, owner.

SUBJECT – Application December 22, 2015 – Variance (§72-21) proposed construction of a 12-story community facility building for the Upper Middle School and Upper School divisions of the Marymount School of New York contrary to underlying bulk regulations. R7-2 zoning district.

PREMISES AFFECTED – 115 East 97<sup>th</sup> Street aka 116 East 98<sup>th</sup> Street, Block 1625, Lot 7, Borough of Manhattan.

### COMMUNITY BOARD #11M

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.

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## 2017-38-BZ

APPLICANT – Eric Palatnik, P.C., for Avrohom Ackerman, owner.

SUBJECT – Application February 7, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-142); side yard (ZR §23-461(a)) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1155 East 28<sup>th</sup> Street, Block 7628, Lot 23, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for continued hearing.

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## 2017-53-BZ

APPLICANT – Francis R. Angelino, Esq., for Unizo Real Estate NY, owner; Mile High Run Club LLC, lessee.

SUBJECT – Application February 23, 2017 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Mile High*) located in the cellar and first floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 24 West 25<sup>th</sup> Street, Block 826, Lot 57, Borough of Manhattan.

### COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown .....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for decision, hearing closed.

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## 2017-188-BZ

APPLICANT – Law Office of Lyra J. Altman, for Charles Ishay and David Ishay, owners.

SUBJECT – Application May 22, 2017 – Special Permit (§73-622) to permit the enlargement of an existing single family home, contrary to floor area (§23-142); side yard requirements (§23-461) and less than the required rear yard (§23-47). R5 (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 1727 Ocean Parkway, Block 6663, Lot(s) 82 & 83, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.

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*Carlo Costanza, Acting Executive Director*

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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 102, No. 39

September 27, 2017

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

VACANT

VACANT

*Commissioners*

Carlo Costanza, *Acting Executive Director*

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# DOCKETS

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**2017-267-BZ**

129-18 Newport Avenue, Northeast corner of Newport Avenue and Beach 130th Street, Block 16211, Lot(s) 0047, Borough of **Queens, Community Board: 14**. Variance (§72-21) to permit the legalization of a three-story mix-used development consisting of a restaurant (UG 6) and two residential units (UG 2) contrary to ZR §52-41 (Increase in non-conformance); ZR §23-44 (obstruction not permit in front yard); ZR §23-45 (minimum required front yard); ZR §54-31 (expansion of a non-conforming use creates new non-compliance) and ZR §23-14 (floor area and open space ratio). R2 zoning district. R2 district.  
-----

**2017-268-BZ**

33-73 154th Street, Located on the east side of 154th Street between 33rd Avenue and 35th Avenue, Block 05239, Lot(s) 0009, Borough of **Queens, Community Board: 7**. Variance (§72-21) to permit the construction of a three-story plus cellar house of worship (Buddhist Temple) (UG 4) with an accessory caretaker's apartment contrary to ZR §24-11 (Floor Area Ratio R2 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**  
**OCTOBER 17, 2017, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, October 17, 2017, 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**

**218-03-BZ**

APPLICANT – Akerman, LLP, for 19-80 Steinway LLC, owner.

SUBJECT – Application December 17, 2017 – Amendment of a previously approved Variance (§72-21) which permitted a nine-story mixed use building with residential, commercial and community facility uses contrary to Z.R. §42-00, §23-141 and §23-631. The amendment seeks to permit a reduction in the number of accessory parking spaces provided in the existing building's accessory garage from 219 spaces to 135 spaces. M1-1 zoning district.

PREMISES AFFECTED – 19-73 38<sup>th</sup> Street, Block 811, Lot 1, Borough of Queens.

**COMMUNITY BOARD #1Q**

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**APPEALS CALENDAR**

**205-15-A thru 214-15-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atid Development LLC, owner.

SUBJECT – Application August 31, 2015 – Proposed development of two-story, one family dwelling with accessory parking space that are proposed to be located within the bed of mapped but unbuilt 129<sup>th</sup> Avenue & Hook Creek Boulevard, contrary to Article 3 of the General City Law, Section 35 located within an R2 zoning district.

PREMISES AFFECTED – 128-60 to 128-76 Hook Creek Boulevard and 128-63 to 128-75 Fortune Way, Block 12887, Lot(s) 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**2017-189-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Dongan 222 LLC, owner.

SUBJECT – Application May 24, 2017– Proposed three-story, two-family dwelling located within the bed of a mapped street contrary to Article III, Section 35 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 222 Dongan Hills Avenue, Block 3549, Lot 16, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**REGULAR MEETING**  
**OCTOBER 17, 2017, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, October 17, 2017, 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**

**2016-4216-BZ**

APPLICANT – Dennis D. Dell'Angelo, for Solomon Neiman, owner.

SUBJECT – Application June 10, 2016 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space ZR §23-141; side yards ZR §23-461 and rear yard ZR §23-47. R2 zoning district.

PREMISES AFFECTED – 1346 East 27<sup>th</sup> Street, for Block 7662, Lot 70, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**2016-4218-BZ**

APPLICANT – Sheldon Lobel, P.C., for 79 Narrows LLC, owner.

SUBJECT – Application June 15, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to maximum permitted floor area (ZR 23-141), required open space (ZR 23141) and required side yards (23-48). R2 zoning district.

PREMISES AFFECTED – 66 79<sup>th</sup> Street, Block 5976, Lot 20, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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**2016-4255-BZ**

APPLICANT – Eric Palatnik, P.C., for Mykhaylo Kadar, owner.

SUBJECT – Application September 16, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (ZR §23-141); side yard (ZR §23-461); and rear yard (ZR §23-47). R3-1 zoning district.

PREMISES AFFECTED – 4801 Ocean Avenue, Block 8744, Lot 51, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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# CALENDAR

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**2016-4274-BZ**

APPLICANT – Pryor Cashman LLP, for Ahron & Sons Realty LLC, owner; Bnos Zion of Bobov, lessee.

SUBJECT – Application October 27, 2016 – Special permit (§73-19) for a school (*Bnos Zion of Bobov*) (Use Group 3) to legalize its use on the first floor of an existing two-story building and to permit its use in the remainder of the existing two-story building and in the proposed enlargement contrary to use regulations (§42-00). Variance (§72-21) to enlarge the existing building by two additional stories contrary to rear yard requirements (§43-26). M1-2 zoning district.

PREMISES AFFECTED – 1411 39<sup>th</sup> Avenue, Block 5347, Lot(s) 13 & 71, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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**2016-4339-BZ**

APPLICANT – Pryor Cashman LLP, for Bnos Zion of Bobov, owner.

SUBJECT – Application November 22, 2016 – Variance (§72-21) to permit construction of a school (Use Group 3) (*Bnos Zion of Bobov*) contrary to underlying bulk requirements. R6 zoning district.

PREMISES AFFECTED – 5018 14<sup>th</sup> Avenue, Block 5649, Lot(s) 44, 46, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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**2017-60-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Premier 644 Greenwich LLC, owner; Bright Horizons Children’s Center LLC, lessee.

SUBJECT – Application March 9, 2017 – Special Permit (§73-19) to allow for a Day Care Center (UG 3) (*Bright Horizons Child Care Center*) to be located on the first (1st) floor of an existing building contrary to ZR §42-00. M1-5 zoning district.

PREMISES AFFECTED – 111 Barrow Street, Block 603, Lot 37, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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**2017-274-A**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Elena Trama, owner.

SUBJECT – Application October 2, 2017 – Waiver of General City Law 36 for property destroyed by Hurricane Sandy that is enrolled in New York City’s Build It Back (BIB) program.

PREMISES AFFECTED – 31 Bogardus Street, Unmapped Street (Bogardus) and Emmons Avenue, Block 8815, Lot 412. Borough of Brooklyn.

**COMMUNITY BOARD #15M**

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**2017-275-BZ**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Elena Trama, owner.

SUBJECT – Application October 2, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R5 zoning district.

PREMISES AFFECTED – 31 Bogardus Street, Unmapped Street (Bogardus) and Emmons Avenue, Block 8815, Lot 412. Borough of Brooklyn.

**COMMUNITY BOARD #15M**

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*Carlo Costanza, Acting Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, SEPTEMBER 19, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

**SPECIAL ORDER CALENDAR**

**558-51-BZ**

APPLICANT – Eric Palatnik, P.C., for BP Products North America Inc., owner.

SUBJECT – Application August 14, 2015 – Extension of Term (§11-411) to seek the term of a previously granted variance for a gasoline service station and maintenance which expired December 21, 2016. C2-2/R5D zoning district.

PREMISES AFFECTED – 68-22 Northern Boulevard, Block 1186, Lot 19, Borough of Queens.

**COMMUNITY BOARD #19Q**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application under ZR § 11-411 for an extension of term of a variance, previously granted by the Board, which expired December 21, 2016; and

WHEREAS, a public hearing was held on this application on June 20, 2017, after due notice by publication in *The City Record*, with a continued hearing on June 20, 2017, and then to decision on September 19, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Northern Boulevard, between the Brooklyn-Queens Expressway and 69th Street, in an R5 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 100 feet of frontage along Northern Boulevard, 100 feet of depth, 1,000 square feet of lot area and is occupied by an automotive service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 5, 1952, when, under the subject calendar number, the Board granted a variance for a term of fifteen (15) years, expiring February 5, 1967, to permit a gasoline service station and accessory uses on condition that the accessory building be located, arranged and designed substantially as indicated on the Board-approved plans, that all uses on the site be removed, that the balance of the site where not occupied by accessory building

and pumps be paved with concrete or bituminous paving, that there be constructed on the rear lot line a masonry wall constructed of brick and properly coped for the full width of the plot and not less than 5'-6" in height, that a similar wall be constructed along the street line of 69th Street for a distance of 60 feet from the rear line but may be reduced to 4'-6" in height for a distance of 10 feet from the northerly end of such wall, that pumps be located as proposed not nearer than 15 feet from the street building line of Northern Boulevard, that no pumps be erected facing 69th street, that curb cuts be restricted to one curb cut to 69th Street not over 20 feet in width within the distance of 25 feet from the intersection and two curb cuts to Northern Boulevard not over 30 feet in width each, that no curb cut be nearer than five feet from any lot line as prolonged, that there be constructed within the building line at the intersection a block of concrete not less than 12 inches in height and extending for a distance of not less than five feet along each building line, that the number of approved gasoline storage tanks of 550 gallons capacity shall not exceed six (6), that minor repairs may be permitted with hand tools only for similar term, provided such repairs are carried on entirely within the accessory building, that there may be parking of cars awaiting service, that the boiler room be separated from the balance of the building by fireproof construction except that the ceiling may be fire retarded, that the boiler room be enterable only from the exterior, that signs be restricted to a permanent sign attached to the façade of the accessory building and to the illuminated globes of the pumps, excluding all roof signs and all temporary signs but permitting the construction within the building line near the intersection of a post standard for supporting a sign which may be illuminated and permitting such sign to extend beyond the building line for a distance of not more than four feet, that such portable fire-fighting appliances shall be maintained as the Fire Department shall direct, that no wall need be constructed along the westerly lot line in view of the proposed ramp wall for the highway and that if, however, such ramp and wall is delayed or postponed or is not on the lot line of this plot there shall be a woven wire fence to a height of 5'-6" along the westerly lot line from the street building line of Northern Boulevard to the rear; and

WHEREAS, on February 17, 1953, under the subject calendar number, the Board granted an extension of time to complete construction; and

WHEREAS, on May 19, 1953, under the subject calendar number, the Board amended the variance to permit minor changes; and

WHEREAS, on November 10, 1953, under the subject calendar number, the Board amended the variance so that the number of gasoline storage tanks permitted be increased from six (6) to ten (10) approved tanks, each of 550-gallon capacity; and

WHEREAS, on December 8, 1953, under the subject calendar number, the Board amended the variance to permit the owner to change the pump arrangement and to omit the use of stucco on the accessory building exterior walls and substitute face brick therefor; and

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# MINUTES

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WHEREAS, on May 2, 1967, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring February 5, 1977, on condition that a certificate of occupancy be obtained; and

WHEREAS, on December 21, 1976, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring December 21, 1986, on condition that the interior of the building be painted and the work areas be kept clean at all times, that the paving around the gasoline pumps be repaired, that any damaged vehicles which are no longer in use be removed, that the site be kept clear of debris and that a new certificate of occupancy be obtained within one (1) year, by December 21, 1977; and

WHEREAS, on February 28, 1984, under the subject calendar number, the Board amended the variance under ZR § 11-412 to permit the construction of a canopy over new gasoline pump islands with new self-serve dispensers, to remove the existing accessory building, to install an attendant's office on one of the pump islands, to relocate the curb cut on 69th Street and to add a trash enclosure on condition that there be no parking of automobiles, trucks or any other vehicles on the sidewalk area or in such a manner as to obstruct pedestrian or vehicular traffic and that the site be maintained clean and free of debris at all times; and

WHEREAS, on February 28, 1984, under BSA Calendar Number 823-83-A, the Board granted on condition an application for a self-service gasoline and oil selling station for a term of five (5) years, expiring February 28, 1989; and

WHEREAS, on November 17, 1987, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring December 21, 1996, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic and that a new certificate of occupancy be obtained within one (1) year, by November 17, 1988; and

WHEREAS, on January 13, 1998, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring December 21, 2006, on condition that fencing be maintained in accordance with the Board-approved drawings, that the curb along 69th Street be restored, that the site be maintained free of graffiti and that a certificate of occupancy be obtained within one (1) year, by January 13, 1999; and

WHEREAS, on September 14, 1999, under the subject calendar number, the Board granted an extension of time to obtain a certificate of occupancy on condition that a new certificate of occupancy be obtained within 32 months, by September 13, 2000; and

WHEREAS, on August 5, 2003, under the subject calendar number, the Board granted an extension of time to obtain a certificate of occupancy and amended the variance to permit a change in signage from a total of 108 square feet of illuminated signage to 66.25 square feet of illuminated signage on condition that the site be maintained free of debris and graffiti, that any graffiti located at the site be removed within 48 hours and that the above conditions appear on the certificate of occupancy and that a certificate

of occupancy be obtained within two (2) years, by August 5, 2005; and

WHEREAS, on August 23, 2005, under the subject calendar number, the Board granted an extension of time to obtain a certificate of occupancy for an additional two (2) years, expiring August 5, 2007; and

WHEREAS, on September 26, 2006, under the subject calendar number, the Board granted an extension of term for an additional ten (10) years, expiring December 21, 2016, on condition that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks an additional ten (10) year term; and

WHEREAS, at the Board's request, the applicant submitted evidence of the installation of a new trash enclosure, restriping of the parking lot to improve visibility of the dedicated parking stall for persons with disabilities and the removal and compliance of signage; and

WHEREAS, based upon the evidence in the record, the Board finds the requested extension of term 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 February 5, 1952, as amended through September 26, 2006, only as to the term of the variance so that as amended this portion of the resolution reads: "to *permit* under ZR § 11-411 an extension of term for an additional ten (10) years from the expiration of the prior grant, expiring December 21, 2026; *on condition* that all work and operation of the site shall substantially conform to drawings as filed with this application, marked "Received July 28, 2017"-Five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring December 21, 2026;

THAT the interior of the building shall be painted and the work areas shall be kept clean at all times;

THAT any damaged vehicles which are no longer in use shall be removed;

THAT there shall be no parking of automobiles, trucks or any other vehicles on the sidewalk area or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT the site shall be maintained clean and free of debris at all times;

THAT fencing shall be maintained in accordance with the Board-approved drawings;

THAT the site shall be maintained free of graffiti;

THAT any graffiti located at the site shall be removed within 48 hours;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by September 19, 2021;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

# MINUTES

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, September 19, 2017.

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## 822-59-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla EM Realty, LLC, owner.

SUBJECT – Application January 8, 2016 – Extension of Time to Complete Construction of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 9, 2015. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1774 Victory Boulevard, Block 709, Lot 28, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction, which expired December 9, 2015; and

WHEREAS, a public hearing was held on this application on June 20, 2017, after due notice by publication in *The City Record*, and then to decision on September 19, 2017; and

WHEREAS, former Commissioner Montanez performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the southwest corner of Victory Boulevard and Manor Road, in an R3-2 (C2-1) zoning district, on Staten Island; and

WHEREAS, the site has approximately 127 feet of frontage along Victory Boulevard, 100 feet of frontage along Manor Road, 14,068 square feet of lot area and is occupied by a gasoline service station with a one-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 1960, when, under the subject calendar number, the Board granted a variance to permit the reconstruction of an existing gasoline service station and to continue the present uses, lubricatorium, minor auto repairs, car washing, sales room, utility room and parking and storage of motor vehicles on condition that the accessory building be moved five feet from the rear lot line, that there be no commitment on future pumps, that pumps to be installed be placed 15 feet back from the existing building line and that the men’s toilet in the accessory building have a door from the utility room and not from the outside; and

WHEREAS, on July 5, 1961, under the subject calendar number, the Board granted an extension of time to

complete construction, expiring July 5, 1962; and

WHEREAS, on November 4, 1964, under the subject calendar number, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, expiring October 26, 1965; and

WHEREAS, on September 28, 1965, under the subject calendar number, the Board granted an extension of time to complete construction, expiring September 28, 1966, and amended the variance so that the gasoline service station might be redesigned, rearranged and constructed substantially as shown on the revised drawings on condition that a certificate of occupancy be obtained; and

WHEREAS, March 22, 1966, under the subject calendar number, the Board amended the variance so that in the event the owner desired to seal the existing tanks and to install 12 new approved gasoline storage tanks, such change shall be permitted; and

WHEREAS, on April 2, 1974, under the subject calendar number, the Board amended the variance so that the gasoline pumps facing Manor Road might be removed and the accessory building might be altered; and

WHEREAS, on June 2, 1987, under the subject calendar number, the Board amended the variance under ZR § 11-412 to convert the sale of gasoline to self-service, to construct a new steel canopy over two (2) new gasoline pump islands with new self-serve “MPD” pumps and to alter the existing office and sales area of the accessory building to accommodate an attendant’s booth on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; and

WHEREAS, on December 9, 2014, under the subject calendar number, the Board amended the variance under ZR § 11-412 to convert existing automotive service bays into an accessory convenience store and to enlarge the accessory building on condition that the building have a maximum of 2,451 square feet of floor area (0.17 FAR), that the site be maintained free of debris and graffiti, that signage be in accordance with C2 regulations, that landscaping and buffering be maintained in accordance with the Board-approved plans, that lighting be directed downward and away from adjoining residences, that the above conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained by December 9, 2015; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an additional four (4) years to complete construction; and

WHEREAS, at hearing, the Board raised concerns about parking and the display of automobiles, the condition of the asphalt, maintenance of the site and the status of the street widening line along Victory Boulevard; and

WHEREAS, in response, the applicant represents that the operation of the site will soon transfer from the current tenant to the owner and agreed that the Board’s resolution for this application shall not issue before such time; and

WHEREAS, additionally, the applicant submits that the applicant has taken interim steps to address site conditions, including repairs to the asphalt and replacement of the LED sign, amended plans to reflect landscaping and

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notes on the asphalt, and confirmed that the Department of Transportation has no impending plans to widen Victory Boulevard adjacent to the subject site but that such widening would have negligible impacts on the subject site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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 June 7, 1960, as amended through December 9, 2014, so that as amended this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction, expiring September 19, 2021; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received September 18, 2017”-Six (6) sheets; and *on further condition*:

THAT the building shall have a maximum of 2,451 square feet of floor area (0.17 FAR);

THAT the site shall be maintained free of debris and graffiti;

THAT signage shall be in accordance with C2 regulations;

THAT landscaping and buffering shall be maintained in accordance with the Board-approved plans;

THAT lighting shall be directed downward and away from adjoining residences;

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT the above conditions shall be noted on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by September 19, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2017.

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## 234-84-BZ

APPLICANT – Robert E. Schuster, AIA, for Forest Realty Management, LLC., owner.

SUBJECT – Application April 28, 2015 – Extension of Term (§11-411) of a previously approved Variance which permitted the operation of an Eating and Drinking Establishment (UG 6) which expired on February 12, 2015; Waiver of the Board's Rules. C81-/R3-1 zoning district.

PREMISES AFFECTED – 1076/82 Forest Avenue, Block 1696, Lot 26, Borough of Staten Island.

## COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-411 for an extension of term of a variance previously approved by the Board, which expired February 12, 2015, and a waiver of the Board's Rules of Practice and Procedure; and

WHEREAS, a public hearing was held on this application on January 31, 2017, after due notice by publication in *The City Record*, with continued hearings on March 7, 2017, April 4, 2017, and July 25, 2017, and then to decision on September 19, 2017; and

WHEREAS, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board, 1, Staten Island, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of Forest Avenue and Van Name Avenue, partially in a C8-1 zoning district and partially in an R3-2 zoning district, on Staten Island; and

WHEREAS, the site has approximately 132 feet of frontage along Forest Avenue, 66 feet of frontage along Van Name Avenue, 10,181 square feet of lot area and is occupied by a two-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 13, 1985, when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story and mezzanine retail store with open accessory parking that created non-conformity within the residence district portion of the site for a term of twenty (20) years, expiring February 13, 2005, on condition that the owner comply with the conditions set forth in the Conditional Negative Declaration, that fences and landscaping shown on the Board-approved plans be installed, maintained and replaced when necessary, that signs conform to C1 district regulations and that these conditions appear on the certificate of occupancy; and

WHEREAS, on September 13, 2005, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring February 12, 2015, and amended the variance to permit the conversion of two stores into one store and the change of use of one store from retail in Use

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Group 6 to an eating and drinking establishment in Use Group 6 on condition that the term appear on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term for an additional ten (10) years; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing for an extension of term less than two (2) years after the expiration of the term; and

WHEREAS, the applicant has demonstrated that the use has been continuous since the expiration of term and that substantial prejudice would result without such a waiver; and

WHEREAS, at hearing, the Board questioned the maintenance of the site, weeds and plantings, the potential presence of vermin, shabby signage, fencing, graffiti, accessibility, paving, the swing gate, the location of the existing ice freezer and street trees; and

WHEREAS, in response, the applicant amended the drawings to improve landscaping with plantings and sidewalk tree pits and to add the swing gate and bumper guards and submitted evidence of improved site conditions, including new shrubs and plantings, repaving and restriping, repaired fencing, graffiti and trash removal and spruced up sidewalk tree pits; and

WHEREAS, based upon the foregoing, the Board finds that an extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated February 13, 1985, as amended September 13, 2005, so that as amended this portion of the resolution reads: "to *grant* an extension of term of the variance for ten (10) years, expiring February 12, 2025; *on condition* that all work and operation of the site shall substantially conform to drawings as filed with this application, marked "Received March 17, 2017"-six (6) sheets; and "Received August 25, 2017"-one (1) sheet and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring February 12, 2025;

THAT graffiti shall be removed immediately upon their occurring;

THAT the building façade shall be painted in uniform colors;

THAT fences and landscaping shall be maintained, repaired and replaced as necessary to maintain the site in an orderly fashion;

THAT no trash shall be stored in the parking areas or in the side yard;

THAT the side yard shall not be used for storage of any kind;

THAT the owner shall comply with the conditions set forth in the Conditional Negative Declaration;

THAT signs shall conform to C1 district regulations;

THAT the above conditions shall appear on the

certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by September 19, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2017.

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## 183-85-BZ

APPLICANT – Eric Palatnik, P.C., for 206 20<sup>th</sup> Street LLC, owner.

SUBJECT – Application September 27, 2016 – Extension of Term of a previously approved Variance (§72-21) for the operation of a (UG 16) open storage yard for building materials and accessory parking for four cars with an accessory office and showroom building, which expires on November 18, 2016. R6B zoning district.

PREMISES AFFECTED – 206/8 20<sup>th</sup> Street, Block 640, Lot 21, Borough of Brooklyn.

## COMMUNITY BOARD #7BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of the variance previously granted by the Board, which expired November 18, 2016; and

WHEREAS, a public hearing was held on this application on May 16, 2017, after due notice by publication in *The City Record*, with a continued hearing on July 25, 2017, and then to decision on September 19, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of 20<sup>th</sup> Street, between 4<sup>th</sup> Avenue and 5<sup>th</sup> Avenue, in an R6B zoning district, in Brooklyn; and

WHEREAS, the site has approximately 50 feet of frontage along 20<sup>th</sup> Street, 100 feet of depth, 5,008 square feet of lot area and is occupied by an open yard for storage



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of building materials and one-story accessory office building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 18, 1986, when, under the subject calendar number, the Board granted a variance to permit the legalization of an enlargement to an existing one-story structure and the change in use from scrap metal storage and junk yard in Use Group 18 to an open storage yard for building materials less than 5,000 square feet in area with an accessory office and showroom building in Use Group 16 for a term of ten (10) years, expiring November 18, 1996, on condition that no parking or storage or work of any kind be done on the sidewalk except for over the sidewalk loading and unloading in front of the site, that the public sidewalk not be used for the transportation of building materials between this site and any other location on this block, that the hours of operation be limited to 7:00 a.m. to 7:00 p.m. Monday through Friday, that all signs comply with C1 district regulations and that these conditions appear on the certificate of occupancy; and

WHEREAS, on July 15, 1997, under the subject calendar number, the Board granted an extension of term of the variance for ten (10) years, expiring November 18, 2006, and an amendment to the resolution to permit extended hours of operation on Saturday from 7:00 a.m. to 5:00 p.m. on condition that the site be maintained clean and free of graffiti and that a new certificate of occupancy be obtained by July 15, 1998; and

WHEREAS, on October 28, 2008, under the subject calendar number, the Board granted an extension of term of the variance for ten (10) years, expiring November 18, 2016, on condition that the term be listed on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term for an additional ten (10) years; and

WHEREAS, at hearing, the Board questioned the dilapidation of the building's walls, the presence of a forklift on the sidewalk, graffiti, razor wire atop the fence and compressed gas storage; and

WHEREAS, in response, the applicant provided evidence that materials were only stored within the site, power-washing of the building's walls, painting of the building's façade, removal of barbed wire from the fence and roof and general cleaning and organization of the site; and

WHEREAS, based upon the foregoing, the Board finds that an extension of term is appropriate with conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated November 18, 1986, as amended through October 28, 2008, so that as amended this portion of the resolution reads: "to *grant* an extension of term of the variance for an additional ten (10) years, expiring November 18, 2026; *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received March 7, 2017"-Four (4) sheets; and *on further condition*:

THAT no parking or storage or work of any kind shall be done on the sidewalk except for over the sidewalk loading and unloading in front of the site;

THAT the public sidewalk shall not be used for the transportation of building materials between this site and any other location on this block;

THAT the hours of operation shall be limited to Monday through Friday, 7:00 a.m. to 7:00 p.m., and Saturday, 7:00 a.m. to 5:00 p.m.;

THAT all signs shall comply with C1 district regulations;

THAT the site shall be maintained clean and free of graffiti;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by September 19, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2017.

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**336-05-BZ**

APPLICANT – Klein Slowik PLLC, for WB Realty Partners LLC, owner; CPM Enterprises LLC, lessee.

SUBJECT – Application October 12, 2016 – Extension of Term of a previously approved Special permit (§73-36) permitting the operation of a Physical Culture Establishment (drive 495) in the subject building, occupying the third and a portion of the second floor which expired on September 12, 2016. M1-5B (SoHo-Cast Iron Historic District).

PREMISES AFFECTED – 495 Broadway aka 66-68 Mercer Street, Block 484, Lot 24, Borough of Manhattan.

**COMMUNITY BOARD #2M**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 73-03 for an extension of term of a special permit for a physical culture establishment ("PCE"), previously granted by the Board, which expired September 12, 2016; and

WHEREAS, a public hearing was held on this

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application on June 27, 2017, after due notice by publication in *The City Record*, and then to decision on September 19, 2017; and

WHEREAS, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Broadway, between Spring Street and Broome Street, in an M1-5B zoning district and the SoHo-Cast Iron Historic District, in Manhattan; and

WHEREAS, the site has approximately 49 feet of frontage along Broadway, 200 feet of depth, 50 feet of frontage along Mercer Street, 9,766 square feet of lot area and is occupied by an eight-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 12, 2006, when, under the subject calendar number, the Board granted a special permit to allow the operation of a PCE on the second and third floors of an existing commercial building for a term of ten (10) years, expiring September 12, 2016, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that the hours of operation be limited to Monday through Thursday, 5:30 a.m. to 10:30 p.m., Friday, 5:30 a.m. to 9:00 p.m., Saturday, 8:00 a.m. to 8:00 p.m., and Sunday, 8:00 a.m. to 6:00 p.m., that the above conditions appear on the certificate of occupancy, that Local Law 58/87 compliance be as reviewed and approved by the Department of Buildings (“DOB”), that all signage comply with regulations applicable in M1-5B zoning districts within the SoHo Cast Iron Historic District, that all fire protection measures, as indicated on the Board-approved plans, be installed and maintained, as approved by DOB and that all exiting requirements be as reviewed and approved by DOB; and

WHEREAS, the term of the special permit having expired, the applicant now seeks an extension of term for an additional ten (10) years; and

WHEREAS, the facility remains in operation as Drive 495 with the following reduced hours of operation: Monday through Thursday, 5:30 a.m. to 9:30 p.m., Friday 5:30 a.m. to 8:30 p.m., and Saturday and Sunday, 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant notes that the PCE continues to occupy a total of 9,270 square feet of floor area, 7,144 square feet of floor area on the second floor and 2,126 square feet of floor area on the third floor; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit

will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03 subsections (d) and (g) are inapplicable to the subject application; and

WHEREAS, § 73-36 mandates a term not to exceed ten (10) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to extend ten (10) years; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated September 12, 2006, so that as amended this portion of the resolution shall read: “to grant an extension of term of the special permit for ten (10) years, expiring September 12, 2026; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received August 30, 2017” – three (3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years from the date of the grant, expiring on September 12, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Thursday, 5:30 a.m. to 9:30 p.m., Friday 5:30 a.m. to 8:30 p.m., and Saturday and Sunday, 8:00 a.m. to 6:00 p.m.;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by September 19, 2021;

THAT Local Law 58/87 compliance shall be as reviewed and approved by the Department of Buildings;

THAT all signage shall comply with regulations applicable in M1-5B zoning districts within the SoHo Cast Iron Historic District;

THAT all fire protection measures, as indicated on the Board-approved plans, shall be installed and maintained, as approved by the Department of Buildings;

THAT all exiting requirements shall be as reviewed and approved by the Department of Buildings;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2017.

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## APPEALS CALENDAR

### 2016-4327-A

APPLICANT – Sky House Condominium, owner.

SUBJECT – Application November 10, 2016 – Appeal challenging NYC Department of Building's determination that the Tower complies with the New York City Zoning Resolution and the New York City Housing Maintenance Code. C5-2 zoning district.

PREMISES AFFECTED – 15 East 30<sup>th</sup> Street, Block 860, Lot (s) 12, 69, 63, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Laid over to September 20, 2017, at 10 A.M., for special hearing.

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## ZONING CALENDAR

### 173-15-BZ

### CEQR 16-BSA-013K

APPLICANT – Sheldon Lobel, P.C., for Waterview Lofts LLC, owner; 92 Fitness Crew New York 2, LLC, lessee.

SUBJECT – Application August 3, 2015 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Orangetheory Fitness*) on the cellar level of an existing mix-use building contrary to ZR §42-10. M1-2/R6A & MX-8 zoning districts.

PREMISES AFFECTED – 157 Kent Avenue, Block 2349, Lot 15, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 28, 2016, acting on Alteration Application No. 320625105, reads in pertinent part:

“Proposed physical cultural establishment as defined by ZR 12-10 at cellar is not permitted as-of-right in a MX-8 Special Zoning District per ZR 42-10 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, in an M1-2/R6A zoning district and the Special Mixed Use District (MX-8), the legalization of a physical culture establishment (“PCE”) on the first floor and cellar of a seven-story mixed-use building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 22, 2017, after due notice by publication in *The City Record*, and then to decision on September 19, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Kent Avenue and North 4th Street, in an M1-2/R6A zoning district and the Special Mixed Use District (MX-8), in Brooklyn; and

WHEREAS, the site has approximately 69 feet of frontage along Kent Avenue, 400 feet of frontage along North 4th Street, 21,300 square feet of lot area and is occupied by a seven-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or

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health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such

conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies a total of 4,290 square feet of floor space as follows: 623 square feet of floor area on the first floor, including an entry vestibule and check-in area, and 3,667 square feet of floor space in the cellar, used for reception, retail, rowers, treadmills, rowers, straps and restrooms; and

WHEREAS, the PCE has been in operation as Orangetheory Fitness since June 2016 with the following hours of operation: Monday through Thursday, 5:00 a.m. to 9:00 p.m., Friday, 5:00 a.m. to 8:00 p.m., Saturday, 7:00 a.m. to 1:00 p.m., and Sunday, 8:00 a.m. to 2:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will not impair the essential character or the future use or development of the surrounding area because it is entirely contained within an existing building and surrounded by other first-floor commercial uses; and

WHEREAS, in addition, the applicant submits that sound attenuation measures—including rubber flooring, a dropped gypsum insulated ceiling with fiberglass batt insulation and additional doors for acoustic separation—have been provided within the space so as to not disturb other tenants in the building; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides facilities for group training, instruction and programs for physical improvement, body building, weight reduction and physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant provided evidence that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, the applicant represents that the PCE will not interfere with any pending public improvement project; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the

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surrounding neighborhood, impair the use or development of adjacent properties, nor be detrimental to the public welfare; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the site without the special permit; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 16BSA013K, dated August 3, 2015.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, in an M1-2/R6A zoning district and the Special Mixed Use District (MX-8), the legalization of a physical culture establishment on the first floor and cellar of a seven-story mixed-use building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 30, 2017” – Ten (10) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring June 1, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be maintained in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by the Department of Buildings;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by September 19, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the

Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2017.

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## 216-15-BZ

APPLICANT – Eric Palatnik, P.C., for Gasteria Oil Corp., owner.

SUBJECT – Application September 2, 2015 – Special Permit (§73-211): to authorize the construction of an automotive service station and accessory convenience store on an irregularly shaped lot, located within an C2-4 zoning district.

PREMISES AFFECTED – 205 West Fordham Road, West 6 Frame Road bordering Sedgwick Avenue. Block 3236, Lot 0220. Borough of the Bronx.

## COMMUNITY BOARD #7BX

**ACTION OF THE BOARD** – Application denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 3, 2015, acting on Department of Buildings (“DOB”) Application No. 220461701 reads in pertinent part:

Proposed amendment to the automotive service [station] is contrary to previous approval under BSA Cal. No. 105-02-BZ and must therefore be referred back to the Board of Standards and Appeals; and

WHEREAS, this is an application for a special permit pursuant to ZR §§ 73-211 and 73-03 to permit the construction of an automotive service station and accessory convenience store on a site located within an R7-1 (C2-4) zoning district; and

WHEREAS, a public hearing was held on this application on June 21, 2016, after due notice by publication in *The City Record*, with continued hearings on October 14, 2016, February 28, 2017, May 2, 2017 and July 25, 2017, and then to decision on September 19, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and the surrounding neighborhood; and

WHEREAS, Community Board 7, the Bronx, recommends disapproval of this application based on comments from local residents of the Fordham Hill cooperative apartment complex that the proposed construction will exacerbate traffic and congestion in the

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area and concerns that an environmental impact statement had not been submitted; and

WHEREAS, by letter dated May 18, 2016, New York City Councilmember Fernando Cabrero expressed his opposition to the subject application on the basis that the proposal would have a negative impact on traffic congestion in the immediate area and there being no need for a new automotive service station in light of an existing automotive service station three blocks south of the subject site; and

WHEREAS, at hearing, a representative of a nearly residential co-operative testified in opposition to the application, citing traffic concerns relating to the proposed gasoline service station, alleging that residents of Fordham Hill, a development of more than 1,100 units, avoid accessing the Major Deegan via West Fordham Road, passing the subject site, because the traffic is so bad and, further, that drivers currently make illegal turns into the automotive service station located across West Fordham Road to the south of the subject site and, therefore, may make such illegal turns to access the proposed; and

WHEREAS, in addition, immediately prior to the hearing on September 19, 2017, the Board was in receipt of more than forty letters from nearby residents in opposition to the application, citing vehicular and pedestrian traffic safety concerns relating to the subject proposal, among others; and

WHEREAS, the subject site is located on the west side of West Fordham Road, between Landing Road and Sedgwick Avenue, within an R7-1 (C2-4) zoning district, in the Bronx; and

WHEREAS, the site has approximately 182 feet of frontage along West Fordham Road, 66 feet of frontage along Landing Road, 12,978 square feet of lot area and is currently developed as a public parking lot with 59 parking space and a one-story building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 22, 2002, when, under BSA Cal. No. 105-02-BZ, the Board granted a special permit, pursuant to ZR §§ 73-211 and 73-03 to permit the construction of an automotive service station with accessory convenience store on condition for a term of ten (10) years, expiring October 22, 2012; and

WHEREAS, the applicant represents that that proposed automotive service station was never construction and the site was subsequently used as a public parking lot; and

WHEREAS, the prior special permit having lapsed by operation of law, the applicant seeks the subject relief; and

WHEREAS, ZR § 73-211 provides as follows:

In any C2, C4, C6 or C7 District whose longer dimension is 375 feet or more (exclusive of land in *streets*), the Board of Standards and Appeals may permit *automotive service stations* provided that the following findings are made:

- (a) that the site for such *use* has a minimum area of 7,500 square feet; and
- (b) that the site for any such *use* which is not located on an arterial highway or a major *street* has a maximum area of 15,000 square

feet.

The Board shall prescribe the following conditions:

- (1) that any facilities for lubrication, minor repairs or washing are located within a *completely enclosed building*;
- (2) that the site is so designed as to provide reservoir space for five waiting automobiles within the *zoning lot* in addition to spaces available within an enclosed lubritorium or at the pumps;
- (3) that entrances and exits are so planned that, at maximum expected operation, vehicular movement into or from the *automotive service station* will cause a minimum of obstruction on *streets* or sidewalks;
- (4) that, along any *rear lot line* or *side lot line* adjoining a *Residence District*, the *zoning lot* is screened as the Board may prescribe, by either of the following methods:
  - (i) a strip at least four feet wide, densely planted with shrubs or trees at least four feet high at the time of planting and which are of a type which may be expected to form a year-round dense screen at least six feet high within three years; or
  - (ii) a wall or barrier or uniformly painted fence of fire-resistant material at least six feet high, but not more than eight feet above finished grade. Such wall, barrier, or fence may be opaque or perforated, provided that not more than 50 percent of its face is open; and
- (5) that *signs*, other than *advertising signs*, shall be subject to the applicable district *sign* regulations, provided that:
  - (i) in C2 Districts, the provisions of Sections 32-642 (Non-illuminated signs) and 32-643 (Illuminated non-flashing signs) shall be modified to permit non-*illuminated* or *illuminated non-flashing signs* with a total *surface area* not exceeding 150 square feet on any *zoning lot*; and
  - (ii) the provisions set forth in Section 32-652 (Permitted projection in all other Commercial Districts) may be modified in accordance with the provisions of Section 73-212 (Projection of accessory signs).

The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area, and to protect *residential zoning lots* which are adjoining or across the *street*.

WHEREAS, the Board confirms that the R7-1 (C2-4) zoning district in which the subject site is located has a

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length of more than 375 feet, that the subject site has a minimum area of 7,500 square feet, and that the site is located on West Fordham Road, a major street, rendering ZR § 73-211(b) inapplicable; and

WHEREAS, the Board notes that its determination is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, the applicant originally proposed to construct an automotive services station with an accessory convenience store open 24 hours a day, 7 days a week and having 1,680 square feet of floor area, including 875 square feet of sales area, six parking spaces, five gasoline pump islands, the reduction of two existing curb cuts (measuring 38 feet and 32 feet) to 30 feet and replacement of one 38 foot curb cut with two 30 foot curb cuts for a total of four 30 foot curb cuts at the site; and

WHEREAS, in the course of hearings and in response to concerns from the Board regarding access to and maneuverability on the site, adequate space for landscaping to buffer the site from surrounding uses, as well as the compatibility of the proposal with existing pedestrian and vehicular traffic in the immediate area, the applicant revised the proposed plans by eliminating one gasoline pump island, angling the remaining four pump islands on the site, eliminating one of the proposed new 30 foot curb cuts and one of the convenience store parking spaces, pulling the convenience store away from the side lot line, adding landscaping across the rear lot line and a portion of the front lot line along the side of the convenience store, adding signage to indicate that left hand turns into and off of the site are prohibited at the southernmost curb cut and extending bollards from the pedestrian island opposite the site (where Sedgwick Avenue and West Fordham Road merge) an additional 10 feet to prevent illegal right turns into the site by cars traveling along West Fordham Road at the northernmost curb cut (thereby permitting access to the site at the this curb cut by cars travelling along Webb Avenue only); and

WHEREAS, despite these revisions, the Board was concerned with vehicular traffic to and from the site conflicting with pedestrian traffic, particularly the locating of curb cuts next to cross walks utilized by pedestrians walking to and from Fordham Landing Park, located immediately to the west of the subject premise, and Devoe Park, located to the northeast of the site across Sedgwick Avenue, and the capacity for vehicles to maneuver on the subject site without substantial use of the sidewalks and/or idling in the curb cuts and forcing pedestrians into the street; and

WHEREAS, in response to neighborhood concerns regarding traffic in the area, the Board requested that the applicant provide materials supporting the assumption that the site would serve pass-by traffic only rather than serve as a destination for gasoline service, and, thus, would not attract new traffic to the surrounding roadways or adversely affect existing traffic conditions in the area; and

WHEREAS, the applicant submitted a Traffic Impact Study, revised April 18, 2017, reporting that based on a

review of traffic counts taken July 28, 2016 and August 2, 2016, the weekday morning vehicular peak hour occurred from 8 a.m. to 9 a.m. (the “Morning Peak”) and the weekday evening vehicular peak hour occurred between 5:15 p.m. and 6:15 p.m. (the “Evening Peak”), and concluding that during the Morning Peak, 51 vehicles would enter and exit the site and during the Evening Peak, 68 vehicles would enter and 67 vehicles would exit the site; additionally, the study assumed, based on the CEQR Technical Manual and comments obtained from the New York City Department of Transportation (“DOT”) that 25 percent of traffic to the site would be comprised of pass-by traffic during the Morning Peak or Evening Peak<sup>1</sup>, meaning that 39 of the 51 vehicles accessing the site during the Morning Peak and 52 of the 68 vehicles accessing the site during the Evening Peak would be newly generated traffic; and

WHEREAS, this version of the Traffic Impact Study notes that the subject site would be unlikely to attract east-bound traffic because a driver that makes a left hand turn into the site will be unable to conveniently, or even legally, exit the site to continue in an easterly direction due to the cross-sectional width and number of lanes on West Fordham Road, which, the applicant notes, carries approximately 35,000 vehicles per day; and

WHEREAS, by letter dated May 31, 2017, the Bronx Office of the New York City Department of City Planning (“DCP”) states that the traffic analysis provided in connection with this application is generally sound, but does not take into consideration the development of a 136-unit affordable housing building that includes a 200 bed homeless shelter at 233 Landing Road, immediately to the west of the subject site, slated to be completed in August 2017, that would create additional pedestrian and vehicular traffic and, further, that it does not consider the future development of the Inwood Manhattan waterfront or the long-term development of the University Heights waterfront (the “DCP Letter”); and

WHEREAS, the DCP Letter additionally states, “While pedestrian traffic volumes on the north side of Fordham Road today are low it is expected they will increase significantly as the waterfront develops. Specifically there will be additional conflicts with vehicles ingressing and egressing the gas station where no crosswalks exist at Fordham and Landing Rd.”; and

WHEREAS, at hearing and in a subsequent written submission, the applicant disputed the DCP Letter, alleging that it was riddled with errors and written with the purpose of dissuading the Board from approving the subject

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<sup>1</sup> This version of the Traffic Impact Study states, however, that “it is an accepted industry standard and well documented within the [Institute of Transportation Engineers] Trip Generation Handbook, 3rd Edition that a significantly greater percentage of pass-by trips are associated with gasoline stations and convenience store uses (64% pass-by trips during the weekday morning peak hour and 56% pass-by trips during the weekday evening peak hour).”

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application and submitted a report from Brooklyn Borough President Eric L. Adams titled “Fueling Brooklyn’s Future,” discussing the current state of fueling stations in Brooklyn and steps to prevent mass gasoline station closures similar to those seen following Hurricane Sandy, in support of their proposition that gasoline service stations are needed across the city; and

WHEREAS, in response to the Board’s request and in further response to the DCP letter, the applicant submitted further revised versions of the Traffic Impact Study, the last of which was revised July 17, 2017, adding review of pedestrian count data at the site (conducted on July 28, 2016, August 2, 2016, and May 20, 2017), concluding that 88 pedestrian traverse the frontage of the subject site during the Saturday midday peak hour of 3:30 p.m. to 4:30 p.m. (the “Saturday Peak”); considering the effects of the planned development at 233 Landing Road and concluding that the 233 Landing Road site would generate 8 total vehicle trips and 122 total pedestrian trips during the Morning Peak, 10 total vehicle trips and 169 total pedestrian trips during the Evening Peak and 11 vehicles trips and 160 pedestrian trips during the Saturday Peak; and

WHEREAS, the latest version of the Traffic Impact Study also revised the conclusion regarding trip generation at the proposed site, reducing the number of vehicles entering and exiting the site during the Morning Peak from 51 to 41 and 51 to 40, respectively, and reducing the number of vehicles entering and exiting the site during the Evening Peak from 68 to 54 and 67 to 54, respectively; the final Traffic Impact Study ultimately concluded that the Saturday Peak overlaid on the Morning Peak and Evening Peak are calculated to allow the site to operate a Level of Service B (on a scale of A to F); and

WHEREAS, by letter dated July 24, 2017, DOT states that the traffic improvement measures proposed by the applicant (specifically, modifications of traffic signal timing at the Sedgewick Avenue and West Fordham Road intersection during the weekday morning and evening peak hours and geometric and pavement marking modifications to extend channelization including short dotted line and flexible delineators to discourage illegal right turns into the most easterly site entrance) appear reasonable and feasible; and

WHEREAS, the Board finds that DOT’s letter suggests the agency’s position of accommodating the subject proposal rather than evaluating its suitability at the subject site and, accordingly, fails to find, as it must pursuant to ZR § 73-03(a), that there are any conditions or safeguards that could be imposed that would enable the hazards or disadvantages of the proposed special permit use to the community at large to be outweighed by the advantages to be derived by its grant; and

WHEREAS, at multiple hearings, the Board inquired about possible further reduction in the number of pumps, the existence and size of the proposed convenience store, the necessity for three curb cuts interrupting a sidewalk utilized by pedestrians accessing nearby parks, the decision to provide diesel and thereby invite trucks having greater

maneuverability needs onto the site, whether trucks could effectively make the turns indicated on the submitted truck circulation plan and whether the site was too narrow to accommodate both gasoline services and a convenience store along with its required accessory parking, but such comments remained unaddressed by the applicant; and

WHEREAS, instead, the applicant submitted that the subject proposal was similar in scope and design of the special permit granted for the site in 2002 and, because the area has not substantially changed, the subject application should be similarly granted; that the diesel proposed at the site was low-flow and, thus, unlikely to attract large trucks, which prefer high-flow diesel that can refuel a truck in a shorter period of time, and that the number of proposed curb cuts is the same as the number of existing curb cuts at the site and, therefore, the proposed would actually not result in any additional adverse impacts to pedestrian traffic; and

WHEREAS, in response, the Board stated at hearings that the land use and development patterns of the surrounding area have, in fact, changed since the first special permit was granted for this site in 2002; that the site is currently in use as a parking lot and the three existing curb cuts are currently utilized much less frequently than the three revised curb cuts would be used if the site were utilized as a gasoline service station; that, though the applicant represents that the site would not be attractive to larger trucks, the best way of ensuring that such trucks do not enter the site would be to eliminate diesel at the site, which the applicant has not done; and reiterated its concerns that the narrowness of the site constrains vehicle circulation both on the site and between the site and the surrounding streets, specifically citing the applicant’s last revision of its vehicle circulation plan, submitted June 29, 2017, illustrating that to exit the site at the southernmost curb cut, a vehicle would have to travel laterally on the sidewalk for a distance of more than 42 feet; and

*Therefore, it is Resolved*, that the decision of the Department of Buildings, dated August 3, 2015, acting on Department of Buildings (“DOB”) Application No. 220461701, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, September 19, 2017.

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## **2016-4131-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Ateret Torah Center, owner.

SUBJECT – Application March 7, 2016 – Special Permit (§73-19) to permit the construction of a school (UG 3) (Yeshiva Ateret Torah) contrary to use regulation on a portion of the lot and a Variance (§72-21) to permit waivers for height and setback, front yard, street wall height, ridge line and absence of off-street loading facilities. C8-2 and R5 (OP) zoning district.

PREMISES AFFECTED – 901 Quentin Road, Block 6641, Block 38, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**



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**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 4, 2016, acting on New Building Application No. 320622769, reads in pertinent part:

Proposed Use Group 3 school is not permitted with the C8-2 portion of the lot, contrary to ZR32-12. BSA special permit is required pursuant to ZR32-31.

Height and setback does not comply with ZR33-432 & 33-42 (f).

Front yard does not comply with zoning requirement per ZR113-542/23-45.

Maximum street wall height does not comply with zoning requirement per ZR113-55/23-631.

Maximum ridge line does not comply with zoning requirement per ZR113-55 /23-631.

Proposed new building containing school without off street loading facilities and bus drive-thru lane does not comply with zoning requirement per ZR113-22(a); and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site partially in a C8-2 zoning district and the Special Ocean Parkway District and partially in an R5 zoning district and the Subdistrict of the Special Ocean Parkway District, a school, contrary to ZR § 32-12, and an application under ZR § 72-21 for a variance to permit the development of a school building that does not comply with zoning requirements for height and setback, front yards, street wall height, ridge line and off-street loading facilities, contrary to ZR §§ 33-432, 33-42(f), 113-542, 23-45, 113-55, 23-631, 113-55, 23-631 and 113-22(a); and

WHEREAS, a public hearing was held on this application on May 16, 2017, after due notice by publication in *The City Record*, with a continued hearing on July 18, 2017, and then to decision on September 19, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Quentin Road, between East 9th Street and East 10th Street, on a site partially in a C8-2 zoning district and the Special Ocean Parkway District and partially in an R5 zoning district and the Subdistrict of the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 200 feet of frontage along Quentin Road, 100 feet of frontage along East 9th Street, 120 feet of frontage along East 10th Street, 22,000 square feet of lot area and is occupied by a four-

story, with cellar, school building, a two-story, with cellar, accessory office building and a trailer; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 30, 1984, when, under BSA Calendar Number 1147-83-BZ, the Board granted a special permit under ZR § 73-19 to allow the development of a three-story, with cellar, building for use as a parochial school on condition that all loading and unloading of children take place on the site and off the street, that application be made to the Department of Traffic for signs prohibiting curbside parking during school hours and that application be made to the Department of Traffic for school crossing guards; and

WHEREAS, on April 15, 1986, under BSA Calendar Number 1147-83-BZ, the Board amended the special permit to change the school structure from a three-story to a four-story structure and to change the interior layout; and

WHEREAS, the applicant proposes to construct a second school building (the “School Building”) on the subject site, which will replace the existing accessory office building and trailer; and

WHEREAS, the applicant first seeks a special permit under ZR §§ 73-19 and 73-03 to allow a school (the “School”) on the portion of the site in a C8-2 zoning district; and

WHEREAS, in C8 zoning districts, schools are not permitted as-of-right under ZR § 32-12; and

WHEREAS, the applicant represents that the School meets the requirements of the special permit authorized by ZR §§ 73-19 and 73-03 for permitting a school in a C8-2 zoning district; and

WHEREAS, ZR § 73-19(a) requires an applicant to demonstrate difficulty in obtaining land for the development of a school within the neighborhood to be served with an adequate size, sufficient to meet the programmatic needs of the School within a district where the School is permitted as-of-right; and

WHEREAS, in support of this contention, the applicant submitted a programmatic-needs report detailing the School’s pedagogical requirements as they relate to the proposed built character of the School Building, including narratives regarding the School’s existing facilities, a proposed floor area chart illustrating the proposed additions of a gym and cafeteria space at the cellar, an assembly space on the first floor, a study hall on the second floor and the addition of 12 new classrooms on the third and fourth floors, statistics regarding the number of students and faculty, a narrative about programmatic deficiencies to be solved by the School Building and occupancy charts illustrating the utilization of classroom spaces throughout the school week; and

WHEREAS, the applicant submits that the School has performed a search of other properties within the neighborhood and found that, of other sites that are of comparable size, only two are unimproved; the first site is owned in common with an adjacent residential home, and the second site has recently had a new-building application approved for development; and

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WHEREAS, the applicant further states that the School already operates one building on the subject site, that purchasing an alternate site would be cost prohibitive and create practical difficulties in meeting the School's programmatic needs because of the redundant staff and facilities that would be needed; and

WHEREAS, the applicant has demonstrated difficulty in obtaining land for the development of a school within the neighborhood to be served by the School and with an adequate size within districts where a school is permitted as-of-right sufficient to meet the programmatic needs of the School; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(a) are met; and

WHEREAS, the applicant states that part of the subject site is located within an R5 zoning district, where the School is permitted as-of-right; and

WHEREAS, consistent with ZR § 73-19(b), the Board finds that the School is located within 400 feet of an R5 zoning district, where the school is permitted as-of-right; and

WHEREAS, the applicant states that the subject site's immediate block within the C8-2 zoning district is only otherwise occupied by the other school building and that the School will be separated from the remainder of the C8-2 zoning district by streets; and

WHEREAS, the applicant submits that nearby commercial uses include eating and drinking establishments, retail stores, a physical culture establishment and a fully enclosed automotive repair establishment located across Quentin Road at substantial distances; and

WHEREAS, the Board finds that adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district is achieved through the use of sound-attenuating fencing, as well as the distances from the School along both street frontages, thus satisfying the requirements of ZR § 73-19(c); and

WHEREAS, as to ZR § 73-19(d), the applicant represents that an area has been designated as a "no standing" zone along Quentin Road for students to be dropped off and picked up in front of the subject site, that drop offs and pickups are monitored by school staff and that little deviation, if any, from current operations of the subject site will be necessary to accommodate the School; and

WHEREAS, by letter dated March 17, 2017, the New York City Department of Transportation ("DOT") has conducted a child and traffic safety review of the School and has no objection to a school at the subject site; and

WHEREAS, in response to comments from the Board, the applicant provided a faculty survey and an operational plan detailing procedures for picking up and dropping off students so as to control vehicular and pedestrian traffic; and

WHEREAS, the Board finds that under ZR § 73-19(d) the movement of traffic through the streets on which the School will be located can be controlled so as to protect children going to and from the School; and

WHEREAS, accordingly, the Board finds that the evidence in the record supports the findings required to be

made under ZR § 73-19; and

WHEREAS, in reference to ZR § 73-03(a) and the application sought under ZR § 73-19, the Board acknowledges that the School, as an educational institution, is entitled to deference under the law of the State of New York as to zoning; specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), an education institution's zoning application is to be granted 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 a denial; and

WHEREAS, as to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the applicant also seeks a variance under ZR § 72-21 to permit the development of the School Building, which does not comply with the zoning regulations for height and setback, front yards, maximum street wall height, maximum ridge line and special off-street loading regulations, contrary to ZR §§ 33-432, 33-42(f), 113-542, 23-45, 113-55, 23-631, 113-55, 23-631 and 113-22(a); and

WHEREAS, the applicant represents that a variance is necessitated by the need for additional spaces based on past and projected growth in the School's enrollment and the need for classrooms, a study hall, gymnasium and assembly space, laboratories and outdoor recreation; and

WHEREAS, the applicant states that the existing school building cannot accommodate the School's programmatic needs, which necessitated the acquisition of the portion of the subject site within the R5 zoning district for accessory office space; and

WHEREAS, the applicant further states that the existing school building is overcrowded and outdated, that there is inadequate space for indoor recreation, lunchrooms and other ancillary spaces and that these conditions create practical difficulties in meeting the School's programmatic needs on-site and have forced the School to move part of its programming off-site; and

WHEREAS, in addition, the applicant notes, and the Board recognizes, that the School, as an educational institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance application; specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), an educational or religious institution's zoning application is to be granted unless it can be shown to have an adverse effect on the health, safety or welfare of the community, and general concerns about traffic and disruption of the residential character of a

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neighborhood are insufficient grounds for the denial of such application; and

WHEREAS, based on the above, the Board finds that the applicant is entitled to deference on this application and satisfaction of the (a) finding is not required; and

WHEREAS, because the School is a non-profit organization and the variance is requested to further its non-profit mission, the finding set forth in ZR § 72-21(b) is not required in order to grant the subject variance; and

WHEREAS, as to ZR § 72-21(c), the applicant represents that the School Building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the School Building will fit in with the existing frontage on Quentin Road and heights of the buildings in the vicinity and submitted streetscape studies and radius diagrams in support of this contention; and

WHEREAS, the applicant notes that the existing accessory office building will be demolished, and, in its stead, there will be a yard with a width of 10 feet that will serve as a buffer between the School Building and residences to the north; and

WHEREAS, at the Board's request, the applicant proposes to provide hedges, plantings and landscaping along the perimeter of the subject site with additional street trees and a sound-attenuated fence with bicycle parking; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created; and

WHEREAS, the Board finds that the hardship claimed as a ground for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, under ZR § 72-21(e), the applicant states that the School Building involves the minimum variance of bulk regulations necessary to accommodate the School's programmatic needs; and

WHEREAS, the applicant submits that a conforming development would not allow the School to fulfill the pedagogical mission detailed in the submitted programmatic-needs report because an as-of-right development would either block windows, split the outdoor recreation area, reduce the first story to an inefficient floor plan, create traffic disturbance or significantly reduce the number of classrooms; and

WHEREAS, accordingly, the Board finds that the proposal represents the minimum variance necessary to provide relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion to

grant and is therefore entitled to relief on the grounds of practical difficulty or unnecessary hardship; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16-BSA-085K, dated April 28, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by letter dated August 18, 2017, the New York City Department of Environmental Protection's Bureau of Environmental Protection and Analysis ("DEP") states that the proposed project will not result in any potential for significant adverse impacts with regard to air quality; and

WHEREAS, the New York City Landmarks Preservation Commission ("LPC") environmental review of the proposal, dated March 17, 2017, indicates that the site has no architectural or archaeological significance; 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 does hereby *issue* 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 to *permit*, on a site partially in a C8-2 zoning district and the Special Ocean Parkway District and partially in an R5 zoning district and the Subdistrict of the Special Ocean Parkway District, a school, contrary to ZR § 32-10, and makes each and every one of the required findings under ZR § 72-21 to *permit* the development of a school building that does not comply with zoning requirements for height and setback, front yards, street wall height, ridge line and off-street loading facilities, contrary to ZR §§ 33-432, 33-42(f), 113-542, 23-45, 113-55, 23-631, 113-55, 23-631 and 113-22(a); *on condition* that all construction and site conditions shall comply with the drawings filed with this application marked "Received September 5, 2017"-Twenty-One (21) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as

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follows: a maximum height of 73'-4.5", a maximum street wall height of 60 feet and a maximum ridge line height of 60 feet, as illustrated on the Board-approved plans; and

THAT a certificate of occupancy shall be obtained within four (4) years, by September 19, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2017.

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## 2016-4147-BZ

APPLICANT – Sheldon Lobel, P.C., for Pietro Alesci, owner.

SUBJECT – Application March 17, 2016 – Variance (§72-21) to permit the development of a three-story, three-family residential building (UG 2) contrary to ZR §42-10. M1-1D zoning district.

PREMISES AFFECTED – 57-12 58<sup>th</sup> Place, Block 2672, Lot 96, Borough of Queens.

### COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated February 16, 2016, acting on Department of Buildings (“DOB”) Application No. 42154939 reads in pertinent part:

Proposed new three family dwelling at premises not permitted by zoning resolution section 42-10; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an M1-1D zoning district, the construction of a three-family dwelling contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on March 7, 2017, after due notice by publication in *The City Record*, with a continued hearing on May 16, 2017, at which point the hearing was closed and scheduled for decision on July 25, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Queens, has no objection to the approval of this application; and

WHEREAS, the subject site is located on the west side of 58th Place, between Maspeth Avenue and 57th Road, within an M1-1D zoning district, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage along 58th Place, a depth of 95 feet, 2,375 square feet of lot area and is currently vacant; and

WHEREAS, the site was previously occupied by a two-story residential building; and

WHEREAS, the site was disposed of by the City of New York, acting by and through the New York City Department of Housing Preservation and Development (“HPD”), to a predecessor in interest in March 2006 and is subject to a deed restriction requiring that all buildings and improvements at the site be conserved and the site be utilized for residential use until, at least, 2026; and

WHEREAS, the applicant represented that HPD had been contacted regarding modifying the deed restriction to permit the construction of the proposed residential building and HPD agreed to modify the deed if the Department of City Planning (“DCP”) granted a zoning authorization, pursuant to ZR § 42-47(a) to permit the development of a new residential building on the site, but, upon the August 2014 demolition of the then-existing two-story residential building, which was in poor condition, uninhabitable and in risk of collapse, DCP determined that there was no longer any existing residential use at the site and, thus, authorization pursuant to ZR § 42-47(a) was no longer available; and

WHEREAS, accordingly, the applicant seeks the subject relief to permit residential use at the site; and

WHEREAS, the applicant provided a Phase I Environmental Site Assessment and by letter dated December 21, 2016, the New York City Department of Environmental Protection (“DEP”) stated that the Phase I report revealed historical manufacturing uses, including an auto garage, junk yard, machine shop, wood manufacturing facility, paper products manufacturing facility and residential use on the subject site and the surrounding area and that a review of regulatory databases reported 33 spills within a ½-mile radius of the site, 3 of which were in active status; and

WHEREAS, accordingly, DEP recommended that a Phase II Environmental Site Assessment be completed to adequately identify and characterize the surface and subsurface soils of the subject site; and

WHEREAS, at hearing, the applicant represented that DEP was incorrect in stating that manufacturing uses were previously located at the site and disagreed that a Phase II was necessary; further, the applicant submitted that the proposed building would be slab on grade, thus, the remedy for any ground contamination would be the installation of a vapor barrier; the applicant additionally offered to complete soil vapor testing in lieu of a Phase II, which the applicant stated was prohibitively expensive; and

WHEREAS, by letter dated, July 24, 2017, the applicant requested withdrawal of the application, without prejudice; and

WHEREAS, pursuant to § 1-12.2 of the Boards Rules

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of Practice and Procedure, if a request to withdraw an application is made after the hearing is closed, the Board may permit withdrawal without prejudice for good cause only and that, if the Board determines that proper enforcement or public policy would thereby be served, the Board may refuse the withdrawal or condition the withdrawal with prejudice on the re-filing of a future application for the same relief; and

WHEREAS, the Board deferred decision on the request to withdraw to September 19, 2017, pending further explanation from the application regarding the reason for the request and whether HPD would require the completion of a Phase II at the site; and

WHEREAS, by communication dated September 6, 2017, HPD stated that they deferred to the Board as lead agency as to the necessity of completing a Phase II; and

WHEREAS, the Board, in turn, defers to DEP, as the agency with the expertise regarding environmental review, in evaluating the necessity of certain environmental investigations, such as the Phase II recommended in this case; and

WHEREAS, the applicant identified the costs of completing a Phase II as the rationale for the request to withdraw the subject application; and

WHEREAS, the Board finds that the financial concerns of the applicant constitute good cause for the withdrawal of this application without prejudice; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals accepts the withdrawal of this application without prejudice.

Adopted by the Board of Standards and Appeals, September 19, 2017.

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## **2016-4277-BZ**

### **CEQR #17-BSA-035Q**

APPLICANT – Fried Frank Harris Shriver & Jacobson, LLP, for Consolidated Edison Company of New York, Inc., owner.

SUBJECT – Application March 28, 2017 – Special Permit (§73-16) to permit the addition of a battery storage facility to an existing electric utility substation that was granted pursuant to BSA Calendar Number: 178-63-BZ. R4 zoning district.

PREMISES AFFECTED – 79-04 151<sup>st</sup> Avenue, Block 11426, Lot 2, Borough of Queens.

### **COMMUNITY BOARD #10Q**

**ACTION OF THE BOARD** – Application granted on condition.

#### **THE VOTE TO GRANT –**

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

#### **THE RESOLUTION –**

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 14, 2016, acting on New Building Application No. 421265213, reads in pertinent part:

“Proposed battery facility as part of an electric utility substation is not permitted as-of-right in the R4 zoning district. Obtain special permit from the Board of Standards and Appeals pursuant to ZR Section 73-16”; and

WHEREAS, this is an application under ZR §§ 73-16 and 73-03 to permit, in an R4 zoning district, an electric utility substation, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on March 28, 2017, after due notice by publication in *The City Record*, with continued hearings on May 23, 2017, and July 25, 2017, and then to decision on September 19, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 10, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Melinda Katz submitted testimony in support of this application; and

WHEREAS, the subject site is located on the southeast corner of 151st Avenue and 79th Street, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 99 feet of frontage along 151st Avenue, 123 feet of frontage along 79th Street, 12,174 square feet of lot area and is occupied by an existing electric utility substation; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 16, 1963, when, under BSA Calendar Number 178-63-BZ, the Board permitted the construction and maintenance of an outdoor electric unit substation on condition that a certificate of occupancy be obtained within one (1) year, by July 16, 1964; and

WHEREAS, the applicant now seeks a special permit to allow an electric utility substation, specifically the addition of a battery storage facility to an existing electric utility substation owned and operated by the Consolidated Edison Company of New York, Inc.; 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 that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; and

WHEREAS, under ZR § 73-16(a), the applicant represents that the electric utility substation will serve either the residential community within which it is proposed to be located and the residential community immediately adjacent;

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and

WHEREAS, the applicant states that the electric utility substation will be connected to the Richmond Hill Network, primarily serving the Lindenwood, Howard Beach and Ozone Park neighborhoods and provided a map illustrating that such residential communities include the community in which the electric utility substation will be located as well as those immediately adjacent; and

WHEREAS, the applicant further states that there are serious difficulties in locating the electric utility substation in a nearby district where it is permitted as of right because the combined lot area of the proposed electric utility substation with the existing one would require location in a manufacturing district; however, the manufacturing districts within a half-mile of the subject site are small, and sites in those districts are unavailable; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-16(a) are met; and

WHEREAS, because this application does not propose a public transit or railroad electric substation, ZR § 73-16(b) is not applicable; and

WHEREAS, consistent with ZR § 73-16(c), the applicant represents that the site is located so as to minimize any adverse effects on the integrity of existing and future development in the R4 zoning district; and

WHEREAS, in response to questions from the Board regarding visual screening, landscaping and sound attenuation, the applicant submits that the proposed electric utility substation will be screened by a new ten-foot high, brick-faced wall along 151st Avenue and 79th Street, which will screen views of the subject site from the east and south and provide sound attenuation; and

WHEREAS, the applicant will also replace fencing with brick-faced wall along 151st Avenue and an ornamental security fence along 79th Street, repaint the existing fencing along the eastern and southern lot lines and provide evergreen screening growing to a height of 20–25 feet with new hedges and street trees; and

WHEREAS, the Board finds that the requirements of ZR § 73-16(c) are met; and

WHEREAS, the applicant represents that, under ZR § 73-16(d), the architectural and landscaping treatment of the proposed electric utility substation will blend harmoniously with the surrounding area; and

WHEREAS, the applicant submitted a study illustrating that the surrounding area is characterized by a variety of residential uses, many of which feature ground-floor brick-front facades, which the brick-faced screening wall will visually complement; and

WHEREAS, the applicant further represents that the proposed screening wall will be treated with a solution designed to protect masonry surfaces from graffiti and will feature ivy in new sidewalk beds, subject to approval by the Department of Transportation, or on the interior of the subject site so as to grow over the proposed screening wall; and

WHEREAS, the Board finds that the applicant has met the requirements of ZR § 73-16(d); and

WHEREAS, consistent with ZR § 73-16(e), the applicant represents that the proposed electric utility substation will conform the performance standards applicable to M1 zoning districts enumerated in ZR §§ 42-21–42-28; and

WHEREAS, with respect to noise under ZR § 42-21, the applicant provided a sound study of the battery installation proposed indicating that the levels of noise produced adjacent to the subject site will be 43–48 dBA, comparable to the noise level of a quiet urban area at night; and

WHEREAS, by letter dated August 30, 2017, the Department of Environmental Protection states that the proposed project would not result in any potential for significant adverse impacts in regards to noise; and

WHEREAS, examining vibration under ZR § 42-22, the applicant submitted a vibration monitoring plan and represents that the only potential source of vibration within the proposed electric utility substation would be eight HVAC condenser units serving the battery containers, which will be located on elevated metal platforms and would have minimal vibration effects on the surrounding area, if any, which effects would be within the ranges permitted for steady state and impact vibrations; and

WHEREAS, turning to fire and explosive hazards under ZR § 42-47, the applicant represents that the battery installation proposed will utilize lithium ion batteries, which are Class I materials, consistent with M1 zoning district performance standards and have been selected for their thermal stability and low risk of thermal runaway; and

WHEREAS, in order to ensure safe operation of the battery installation proposed, the applicant submits that the facility will be continuously monitored when active with maintenance crews visiting quarterly for maintenance checks and more frequently on an as-needed basis, and the applicant has developed an emergency protocol in conjunction with the Fire Department, including the following: remote shutdown of any cells at risk of thermal overload, a dry fire suppression system in the event that any cell catches fire and a back-up wet-sprinkler system in the event that the dry suppression system is ineffective; and

WHEREAS, by letter dated March, 22, 2017, the Fire Department states that it has no objection to this application on condition that any standard protocols relating to fire and life safety that are developed in the future be added to the battery installation proposed at such time as they are officially established; and

WHEREAS, the applicant states that the proposed electric utility substation will not generate or cause any smoke, dust or other particulate matter, odorous matter, toxic noxious matter, radiation hazards, humidity, heat or glare and will not include oxygen manufacture, storage or use; and

WHEREAS, the Board finds that the applicant has met the requirements of ZR § 73-16(e); 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

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outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-035Q, dated October 31, 2016; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-16 and 73-03.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-16 and 73-03 to *permit*, in an R4 zoning district, an electric utility substation, contrary to ZR § 22-10; all work and site conditions shall substantially conform to drawings filed with this application marked “Received August 29, 2017” – Three (3) sheets; and *on further condition*:

THAT a certificate of occupancy shall be obtained within four (4) years, by September 19, 2021; and

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2017.

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## 2016-4337-BZ

### CEQR #17-BSA-045K

APPLICANT – Eric Palatnik, P.C., for Dr. Joshua Schiller and Ms. Vivian Lee, owners.

SUBJECT – Application November 22, 2016 – Variance (§72-21) to permit the enlargement of an existing single family home contrary to side yards (ZR 23-461a and rear yards (ZR 23-543). R5 zoning district.

PREMISES AFFECTED – 127 Vanderbilt Street, Block 5264, Lot 51, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 6, 2016, acting on Alteration Application No. 321195853, reads in pertinent part:

“ZR 23-543: Proposed enlargement increases the degree of non-compliance for both of its required rear yards”; and

WHEREAS, this is an application under ZR §§ 73-69 and 73-03 to permit, in an R5 zoning district, modifications to the rear yards required for a zoning lot existing on April 30, 2008, contrary to ZR § 23-543; and

WHEREAS, a public hearing was held on this application on July 25, 2017, after due notice by publication in *The City Record*, and then to decision on September 19, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and WHEREAS, Community Board 7, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Vanderbilt Street, between McDonald Avenue and 20th Street, in an R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 18 feet of frontage along Vanderbilt Street, 150 feet of depth, 4,300 square feet of lot area and is occupied by a two-story, with cellar, residence; and

WHEREAS, the applicant originally sought a variance under ZR § 72-21 to permit an enlargement of the existing residence that would not comply with regulations for rear yards and side yards; and

WHEREAS, in response to comments from the Board about the inability of the subject site to meet the required findings under ZR § 72-21, the applicant instead seeks a modification to the rear yards required for a zoning lot existing on April 30, 2008, under ZR §§ 73-69 and 73-03; and

WHEREAS, as a threshold matter, the applicant submits that the zoning lot existed on April 30, 2008, and provided evidence in the form of historic tax maps, a 1948 alteration application, 1949 alteration plans, a 1950 certificate of occupancy, a deed from 1978 and Sanborn maps dating from 1950 to 2007 demonstrating that the subject zoning lot was “a lot of record existing on December 15, 1961,” consistent with subdivision (a) of the “zoning lot” definition in ZR § 12-10, and that the subject zoning lot has remained unchanged since; and

WHEREAS, under ZR § 73-69(a), the applicant submits that no horizontal enlargement to the residence would be possible without increasing the degree of non-compliance with respect to the subject site’s required rear yards, that the rear yards required overlap one another, that a forward encroachment into the 18-foot-wide portion of the lot would create non-compliances with side-yard requirements and that the existing residence contains only

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two bedrooms, dining room and kitchen; and

WHEREAS, the Board finds that because of the irregular shape of the subject zoning lot, compliance with rear-yard regulations would create site planning constraints and adversely affect the layout and development of the site; and

WHEREAS, the applicant submits that the requested rear-yard modification results in a residence with a Floor Area Ratio ("FAR") of 0.31 where 1.25 FAR is permitted and lot coverage of 24 percent where 55 percent is permitted and that, accordingly, the requested reduction is the minimum necessary to afford relief; and

WHEREAS, the Board finds that the requested reduction in rear-yard depth is the least amount necessary to grant relief; and

WHEREAS, the applicant represents that the surrounding area is characterized by low-density residences with varying rear-yard depths, that the proposed enlargement would not encroach into the open space of adjacent residences, that all of the surrounding residences have floor area ratios greater than the 0.31 FAR proposed and that adjacent lot contain garages directly in line with the subject residence; 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 modification is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-045K, dated November 22, 2016; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-69 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-69 and 73-03 to *permit*, in an R5 zoning district, modifications to the rear yards required for a zoning lot existing on April 30, 2008, contrary to ZR § 23-543; *on condition* that all work and site conditions shall substantially conform the drawings filed with this application marked "Received September 19, 2017"- Ten (10) sheets; and *on further condition*:

THAT a certificate of occupancy shall be obtained within four (4) years, by September 19, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 19, 2017.

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## 31-14-BZ

APPLICANT – Moshe M. Friedman, PE, for Bnos Square of Williamsburg, owner.

SUBJECT – Application February 11, 2014 – Special Permit (§73-19) to allow a conversion of an existing Synagogue (*Bnos Square of Williamsburg*) building (Use Group 4 to (Use Group 3). M1-2 zoning district.

PREMISES AFFECTED – 165 Spencer Street, 32'6" Northerly from the corner of the northerly side of Willoughby Avenue and easterly side of Spencer Street, Block 1751, Lot 3, Borough of Brooklyn.

## COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for decision, hearing closed.

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**REGULAR MEETING  
TUESDAY AFTERNOON, SEPTEMBER 19, 2017  
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

**ZONING CALENDAR**

**2017-45-BZ**

APPLICANT – Deirdre A. Carson, Esq., Greenberg Traurig, LLP, for 3896 Tenth Avenue Associates, owner; Inwood Academy For Leadership Charter School, lessee.

SUBJECT – Application February 15, 2017 – Special Permit (§73-19) to allow for the operation of a school (Use Group 3) (*Inwood Academy*) contrary to ZR §32-12. C8-3 zoning district.

PREMISES AFFECTED – 3896 Tenth Avenue, Block 2223, Lot 16, Borough of Manhattan.

**COMMUNITY BOARD #12M**

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for continued hearing.  
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**2017-244-BZ**

APPLICANT – Eric Palatnik, P.C., for Co-Op City Baptist Church, owner.

SUBJECT – Application August 17, 2017 – Variance (§72-21) to reinstate a variance granted under Cal. No. 7-04-BZ – to permit construction of Use Group 4 house of worship contrary to the underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 2208 Boller Avenue, Block 5135, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #10BX**

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for continued hearing.  
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*Carlo Costanza, Acting Executive Director*

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**REGULAR MEETING  
WEDNESDAY MORNING, SEPTEMBER 20, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

## APPEALS CALENDAR

### 2016-4327-A

APPLICANT – Sky House Condominium, owner.

SUBJECT – Application November 10, 2016 – Appeal challenging NYC Department of Building's determination that the Tower complies with the New York City Zoning Resolution and the New York City Housing Maintenance Code. C5-2 zoning district.

PREMISES AFFECTED – 15 East 30<sup>th</sup> Street, Block 860, Lot (s) 12, 69, 63, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Appeal denied.

THE VOTE TO GRANT –

Affirmative: .....0

Negative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown .....3

THE RESOLUTION –

WHEREAS, the determination of the Department of Buildings (“DOB”), dated March 1, 2017, acting on a public challenge to New Building Application No. 122128679, reads in pertinent part:

The challenger’s second zoning challenge pertains to the classification of the Chandler Hotel’s existing use as a residential use and not a commercial use (Point II). The Chandler Hotel at 12 East 31st Street is on tax lot No. 74, which is one of six adjoining tax lots, including the subject building’s tax lot No. 12, which have been merged into a single zoning lot. Per the latest Certificate of Occupancy (CO) (No. 38263) in the Department’s BIS website, dated March 8, 1951, the Chandler Hotel’s lawful use is a “hotel.” In addition, the CO states that “[t]his building complies with Section 67 of the Multiple Dwelling Law.”

[ . . . ]

As per the Chandler Hotel’s inspection I-cards, circa 1938, from the Housing Preservation and Development’s (HPD) website . . . , the Chandler Hotel is classified as a “Heretofore Erected Existing Class B” (HEXB) multiple dwelling “originally erected as [an] apartment [and] transient hotel.” Per the NYS Multiple Dwelling Law’s (MDL) definition in MDL § 4(9), “[a] ‘class B’ multiple dwelling is a multiple dwelling which is occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals. This class shall include hotels . . . .” MDL § 4(12)

defines hotel as “an inn having thirty or more sleeping rooms.” According to the I-card issued contemporaneously with the 1951 CO, none of the units in the Chandler Hotel were identified as residential apartments. Therefore, based on the above DOB and HPD records, this public challenge is hereby denied.

[ . . . ]

The challenger’s third zoning challenge pertains to the subject building’s mechanical floor spaces’ use and “unnecessary height” (Point III). The challenger does not specify which of the subject building’s mechanical floor spaces will be constructed with “unnecessary height.”

Per the Zoning Resolution’s definition for “floor area” in Section ZR 12-10, “the floor area of a building shall not include . . . (8) floor space used for mechanical equipment . . . .” Per the mechanical plans approved by the Department for the building’s second, third, fourth, fiftieth and fifty-first stories, those stories contain mechanical equipment throughout each story, which supports the building’s mechanical systems. As such, these stories may be excluded from the building’s floor area, as demonstrated on the approved zoning analysis . . . .

In addition, the Zoning Resolution does not regulate the floor-to-ceiling height of a building’s mechanical spaces. The building’s bulk, including the building’s height, is limited by the applicable height and setback regulations, including the tower regulations, in the Zoning Resolution. The approved zoning analysis . . . demonstrates that the subject building’s bulk complies with the tower regulations in ZR 23-65 (Tower Regulations), including ZR 23-652 (Standard Tower). Therefore, this public challenge is hereby denied.

[ . . . ]

The [fifth] zoning challenge pertains to the minimum required distance between the subject building and the Chandler Hotel.

In response, the challenger states that “I agree that the building space requirements of 23-71 are not applicable ‘because the existing and proposed building are abutting on the same zoning lot and therefore considered to be one building.’”

In addition, the challenger cites to subdivision 2 in MDL § 28 (Two or more buildings on same lot) in the NYS Multiple Dwelling Law . . . . Because the Chandler Hotel on tax lot No. 74 and the subject building on tax lot No. 12 are located on two separate tax lots, MDL 28(2) is not applicable. Therefore, this public challenge is hereby denied; and

WHEREAS, this is an appeal for interpretation under ZR § 72-11 and Charter § 666(6)(a), brought on behalf of Sky House Condominium (“Appellant”), owner in fee of

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land located in Manhattan known and designated as Block 859, Lot 7501 (11 East 29th Street), alleging errors of law pertaining to floor space used for mechanical equipment within a building proposed at 15 East 30th Street (the “Proposed Building”) and to the use classification of Hotel Chandler, an existing building located at 12 East 31st Street (the “Hotel”); and

WHEREAS, for the reasons that follow, the Board denies this appeal; and

WHEREAS, a public hearing was held on this appeal on July 25, 2017, after due notice by publication in *The City Record*, with a continued hearing on September 20, 2017, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the New York City Department of City Planning (“DCP”) submitted testimony stating that there are no regulations in the Zoning Resolution controlling the height of stories with floor space used for mechanical equipment, that no inner court regulations apply to commercial hotel uses and that there are no provisions of the Zoning Resolution that would preclude the merger of two or more zoning lots in the event that such a merger would create any non-compliance with the bulk regulations of the Zoning Resolution; and

WHEREAS, New York City Councilmember Daniel R. Garodnick submitted testimony expressing concern that the idea of a “structural void,” a shorthand term referring to the second, third and fourth stories of the Proposed Building and identified as mechanical floors, does not exist in the Zoning Resolution, that the DOB determination at issue in this appeal may set precedent for other developments in the City and that the proposed building may adversely affect legally mandated light and air available to Hotel Chandler; and

WHEREAS, Friends of the Upper East Side Historic Districts, The Municipal Art Society of New York and the Greenwich Village Society for Historic Preservation presented written and oral testimony in opposition to the proposed building and in support of this appeal; and

WHEREAS, DOB, Appellant, the owner of the Proposed Building (the “Owner”) and the Hotel have been represented by counsel throughout this appeal; and

## BACKGROUND

WHEREAS, the subject zoning lot is bounded by East 31st Street to the north, Madison Avenue to the east and East 30th Street to the south, in a C5-2 zoning district, in Manhattan; and

WHEREAS, the zoning lot has approximately 220 feet of frontage along East 31st Street, 143 total feet of non-continuous frontage along Madison Avenue, 118 square feet of frontage along East 30th Street and consists of Tax Lots 10, 12, 16, 63, 64, 67, 69, 71, 74, 1101–1107 and 90671;

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1 ZR § 12-10 states that a “zoning lot” “may or may not coincide with a lot as shown on the official tax map of the City of New York.” Here, pursuant to subdivision (d) of the “zoning lot” definition, multiple tax lots have been merged

and

WHEREAS, the Proposed Building is under construction at 15 East 30th Street (Tax Lot 12); and

WHEREAS, 12 East 31st Street (Tax Lot 74) is occupied by the Hotel, a 13-story with cellar and sub-cellar building; and

## PROCEDURAL HISTORY

WHEREAS, this appeal concerns the development of the Proposed Building, a 56-story, with cellar, mixed-use residential and commercial building; and

WHEREAS, a construction application for the Proposed Building was filed with DOB on September 11, 2014, and permits were issued in conjunction with New Building Application No. 122128679 (the “NB Application”) on July 21, 2016, and subsequently renewed; and

WHEREAS, beginning February 11, 2015, numerous determinations regarding application of the Zoning Resolution to the Proposed Building were posted publicly on DOB’s website in accordance with DOB’s public-challenge rule, 1 RCNY § 101-15, which affords members of the public an opportunity to learn about proposed buildings early in the construction process; and

WHEREAS, by letter dated April 25, 2016, Appellant submitted a challenge to the Proposed Building, which DOB accepted in part and denied in part on June 29, 2016; and

WHEREAS, by letter dated July 14, 2016, Appellant internally appealed DOB’s challenge denial to DOB’s Technical Affairs Unit; and

WHEREAS, on June 29, 2016, and July 13, 2016, DOB audited the NB Application, finding open issues, which were resolved by August 4, 2016, when the NB Application passed its third audit; and

WHEREAS, post approval amendments to the NB Application were submitted and subsequently approved by DOB on August 11, 2016, and October 17, 2017; and

WHEREAS, on November 10, 2016, Appellant filed this appeal, contesting DOB’s reissuance of Permit No. 122128679-01-NB for the Proposed Building on October 11, 2016; and

WHEREAS, on March 1, 2017, DOB issued the determination cited above (the “Final Determination”) and Appellant filed an amendment to this appeal on March 31, 2017; and

WHEREAS, on May 5, 2017, the Board’s staff instructed Appellant to notify the Hotel of this appeal because of Appellant’s apparent challenge to the Hotel’s CO; and

## ISSUES PRESENTED

WHEREAS, the two issues in this appeal are whether

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into one zoning lot pursuant to a restrictive declaration executed by each party in interest and recorded in the Conveyances Section of the New York City Department of Finance Office of the City Register (Document ID No. 2017041300245001), and the Board credits DOB’s testimony that these tax lots constitute one merged zoning lot.

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(1) DOB appropriately determined that floor space used for mechanical equipment within the Proposed Building could be deducted from floor area under ZR § 12-10 without limitation as to height and (2) DOB properly considered a certificate of occupancy for the Hotel in determining its legal use and occupancy and in applying bulk regulations to the Proposed Building<sup>2</sup>; and

## DISCUSSION

### (1) MECHANICAL SPACE

WHEREAS, Appellant, DOB and the Owner dispute whether floor space on the second, third and fourth stories of the Proposed Building may properly be deducted from floor area; and

WHEREAS, ZR § 12-10 reads in pertinent part that “the *floor area* of a *building* shall not include: . . . floor space used for mechanical equipment” and that an “*accessory use* . . . is a *use* which is clearly incidental to, and customarily found in connection with, such principal *use*”; and

WHEREAS, Appellant contends that the spaces on the second, third and fourth stories<sup>3</sup> of the Proposed Building used for mechanical equipment are too tall to permit their exemption from floor area and that the height of those floors are too excessive and unrelated to the housing of mechanical equipment that they must be classified as their own use (a “Structural Void”<sup>4</sup>) with the primary purpose of increasing the height of the building, which is not a permitted use in the Zoning Resolution; and

WHEREAS, the Board considers Appellant’s contentions in turn but ultimately finds them unconvincing; and

### (A) Height

WHEREAS, Appellant argues that the Proposed Building will contain Structural Voids rather than bona fide mechanical floor space used for mechanical equipment and that a Structural Void is not a listed—and thereby permitted—floor area deduction under the Zoning Resolution; and

WHEREAS, Appellant states that Structural Voids,

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<sup>2</sup> Appellant’s revised statement of facts, dated March 31, 2017, indicates that these are the two issues on appeal. Subsequent submissions by Appellant attempt to muddy the issues by including, for instance, discussion of provisions of the Housing Maintenance Code without providing a final agency determination from DOB interpreting said provisions. Consistent with the Board’s Rules of Practice and Procedure §§ 1-06.1(a) and 1-06.3(a), the Board declines to consider new arguments not presented to—and decided by—DOB in the first instance.

<sup>3</sup> Appellant states in a letter dated August 8, 2017, that it does not address whether the fiftieth and fifty-first stories of the Proposed Building are primarily used for accessory building mechanicals in this appeal, but Appellant does not state what differentiates those stories from the second, third and fourth stories contested here.

<sup>4</sup> The Board notes that “structural void” is a shorthand term, not one found or defined in the Zoning Resolution.

masquerading as accessory building mechanicals, are designed to boost building heights, views and sales prices; and

WHEREAS, Appellant states, in a submission dated March 31, 2017, that approximately 172 feet of height, or 24 percent of the Proposed Building’s volume, is devoted to accessory building mechanicals, but Appellant also states that the Structural Void proposed is 132 feet in height<sup>5</sup>; and

WHEREAS, the Owner replies that mechanical deductions constitute approximately five percent of the Proposed Building’s above-grade square footage and that Appellant’s figures are unsupported by calculations; and

WHEREAS, Appellant cites no provision in the Zoning Resolution restricting the height of floor space used for mechanical equipment as is at issue here,<sup>6</sup> and Appellant states that it has found no case law or legal guidance on the topic but contends that, under *New York Botanical Garden v. Bd. of Standards & Appeals of City of New York*, 91 N.Y.2d 413, 423 (1998), the Zoning Resolution’s silence as to the height permitted for accessory uses is not determinative; and

WHEREAS, Appellant also cites to *47 East 3rd Street*, BSA Cal. No. 128-14-A (May 12, 2015), where the Board stated that “DOB may take into consideration, with respect to a purported accessory use, the relative size of the purported accessory use where the size of the purported accessory use is indicative of its status as subordinate and minor in significance to said principal use”; and

WHEREAS, DOB replies that the Zoning Resolution does not contain any regulations pertaining to the floor-to-ceiling height of a building’s mechanical spaces and, by letter dated July 20, 2017, DCP corroborates that there are no regulations in the Zoning Resolution controlling the height of stories with floor space used for mechanical equipment; and

WHEREAS, the Owner replies that, where the Zoning Resolution restricts floor-to-ceiling heights or overall building heights, it does so explicitly, though no such provision restricts the height of the Proposed Building under ZR § 23-65; and

WHEREAS, based upon its review of the record, the definition of “floor area” set forth in ZR § 12-10 and the Zoning Resolution as a whole, the Board finds that the Zoning Resolution does not control the floor-to-ceiling height of floor space used for mechanical equipment; and

### (B) Accessory Use

WHEREAS, Appellant additionally argues that a Structural Void does not constitute a lawful accessory use and, thus, the excessive heights of the second, third and

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<sup>5</sup> Presumably this discrepancy results from Appellant’s inclusion or exclusion of the fiftieth and fifty-first stories from its calculations.

<sup>6</sup> The Owner submits that the Zoning Resolution does regulate the height of mechanical equipment in the limited context of height restrictions for permitted obstructions under ZR §§ 23-62(g), 33-42(f) and 43-42(e), but those sections are inapplicable in this appeal.

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fourth floors are not permitted by the Zoning Resolution; and

WHEREAS, pursuant to ZR § 12-10, an “accessory use”:

- (a) is a *use* conducted on the same *zoning lot* as the principal *use* to which it is related (whether located within the same or an *accessory building or other structure*, or as an *accessory use* of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, *accessory* docks, off-street parking or off-street loading need not be located on the same *zoning lot*; and
- (b) is a *use* which is clearly incidental to, and customarily found in connection with, such principal *use*; and
- (c) is either on the same ownership as such principal *use*, or is operated and maintained on the same *zoning lot* substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal *use*; and

WHEREAS, Appellant posits that the Structural Void proposed on the second, third and fourth stories of the Proposed Building will hold only limited amounts of mechanical equipment that are not proportional to the size of the space or consistent with current standards for apartment buildings; and

WHEREAS, DOB and the Owner reply that the space at issue will be used for mechanical equipment, which is a lawful accessory use because the mechanical equipment proposed is “clearly incidental to” and “customarily found in connection with” the principal use of the Proposed Building under ZR § 12-10; and

WHEREAS, DCP states that, regardless of floor-to-ceiling height, any space devoted to accessory mechanical equipment is considered a lawful accessory use; and

WHEREAS, the Board notes that, under *New York Botanical Garden*, 91 N.Y.2d 413, 420 (1998):

Whether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use of the land in question in relation to the accessory use, taking into consideration the over-all character of the particular area in question . . . . This analysis is, to a great extent, fact-based . . . [and] one that will clearly benefit from the expertise of specialists in land use planning; and

WHEREAS, accordingly, the Board considers whether the proposed mechanical equipment is “clearly incidental to” and “customarily found in connection with” the principal use of the Proposed Building under ZR § 12-10; and

(i) Clearly Incidental

WHEREAS, despite the Board’s request to do so, Appellant provided no testimony from a mechanical engineer evaluating whether the amount of floor space used for

mechanical equipment in the Proposed Building is excessive or irregular, and, in its submission dated August 8, 2017, Appellant states that it “does not intend to hire an engineer or enter into a technical argument about what really constitutes mechanical space”; and

WHEREAS, at hearing, Appellant stated that, after searching, Appellant was unable to find someone willing and qualified to testify on the record evaluating the amount of floor space used for mechanical equipment in the Proposed Building; and

WHEREAS, instead, Appellant urges DOB to employ its discretion, as upheld in *9th & 10th St. L.L.C. v. Bd. of Standards & Appeals of City of New York*, 10 N.Y.3d 264 (2008), to require specific proof that floor space denoted on the approved plans as being used for mechanical equipment could be put to that use; and

WHEREAS, DOB states that, based upon its review, the architectural and mechanical plans for the Proposed Building show mechanical space sufficient to justify its exemption from floor are as follows: the second floor contains an emergency generator and switchboard, cooling towers, primary cold-water pumps, secondary condenser water-loop pumps, an expansion tank, heat exchangers and an air separator; the third floor has a cogeneration power plan, a precipitator, boilers, hot-water pumps, an air separator, an expansion tank, heat exchangers, part of the indoor-cooling towers from the second floor and other equipment; and the fourth floor includes domestic hot-water pumps, domestic-water heat-exchanger units, air-handler units, fan units and other equipment; and

WHEREAS, DOB and the Owner represent that, here, DOB has no reason to doubt that the mechanical space can be used as proposed, especially in light of composite mechanical plans for the Proposed Building illustrating the mechanical equipment proposed for the second, third and fourth stories; and

WHEREAS, the Board credits DOB’s review of the proposed plans and finds that, unlike *9th & 10th St. L.L.C.*, there is no reason to suspect that floor spaces designated as being used for mechanical equipment on the approved plans will not be put to such use; and

WHEREAS, the Owner submits sworn affidavits from Fatma M. Amer, former First Deputy Commissioner for DOB with more than 25 years of experience in technical positions, stating that composite mechanical plans for the Proposed Building demonstrate that the second, third and fourth stories will be used solely for mechanical equipment with no other uses; and

WHEREAS, the Owner additionally cites *246 Spring Street*, BSA Cal. No. 315-08-A (Oct. 5, 2010), where the Board upheld DOB’s determination that the specific floor-area deductions taken for swimming pool service process equipment spaces and electric meter rooms were proper; and

WHEREAS, the Board credits DOB’s review of the specific mechanical equipment proposed and, in the absence of contradicting testimony or evidence from a licensed and appropriately experienced engineer, the Board has no basis upon which to question the evidence in the record

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suggesting that the floor space on the second, third and fourth stories of the Proposed Building is “clearly incidental” to the principal use of the Proposed Building, in satisfaction of subdivision (b) of the “accessory use” definition in ZR § 12-10; and

(ii) Customary Connection

WHEREAS, at hearing, Appellant stated that large spaces used for mechanical equipment are not unique to this building and can be found in dozens of buildings currently planned, under construction and recently built in the City; and

WHEREAS, Appellant further stated that, on 57th Street in Manhattan, there is another building under construction with multiple stories devoted to mechanical equipment, totaling approximately 390 feet or 27 percent of that building’s height, though Appellant did not specify how much floor space was used for such mechanical equipment; and

WHEREAS, the Owner states that other buildings within the City have been constructed using similar floor-area deductions for mechanical space, including 220 Central Park South, 520 Park Avenue, 111 West 57th Street, 217 West 57th Street and 432 Park Avenue in Manhattan; and

WHEREAS, at hearing, the Board noted that, on the same street as the Proposed Building, a similar building was completed within the past year that featured four interstitial mechanical floors and also discussed the similarity of the building located at 432 Park Avenue, Manhattan, to the Proposed Building; and

WHEREAS, Friends of the Upper East Side Historic Districts states that a building under construction at 180 East 88th Street, Manhattan, contains a three-story space used for mechanical equipment that is exempt from floor area, though no mention is made of the specific amount of floor space deducted; and

WHEREAS, The Municipal Art Society of New York states that several developments—including 217 West 57th Street, Manhattan, with 350 feet of its height devoted to mechanical space and an unspecified amount of floor space thereby exempted—contain tall mechanical spaces that extend heights, improve views and increase prices; and

WHEREAS, in response to concerns from Appellant and the community regarding the applicability of this appeal to other development within the City, the Board notes that, while it has the power, among other things, “to hear and decide appeals from and to review interpretations of this Resolution” under ZR § 72-01(a), the Board does not have the power to zone, *see* Charter § 666; and

WHEREAS, accordingly, insofar as Appellant or members of the community take issue with provisions of the Zoning Resolution—or absence thereof—as enacted, that grievance falls outside the scope of the Board’s authority to review this appeal; and

WHEREAS, the Board notes that whether the amount of mechanical equipment proposed for the Proposed Building is customarily found in connection with mixed-use buildings similar to the Proposed Building is “a fact-based determination,” *New York Botanical Garden v. Bd. of*

*Standards & Appeals of City of New York*, 91 N.Y.2d 413, 421 (1998); and

WHEREAS, in response to an inquiry from the Board regarding whether a standard percentage of floor space dedicated to mechanical equipment has been interpreted as reasonable for similar developments and, thus, properly exempt from floor-area calculations, DOB states that mechanical floor space deductions are evaluated on a case-by-case basis and that the deduction of floor space on the second, third and fourth stories of the Proposed Building is consistent with its evaluation of mechanical floor space in comparable mixed-use developments in the City; and

WHEREAS, based upon the foregoing, the Board finds that, in accordance with the “floor area” and “accessory use” definitions of ZR § 12-10, DOB properly classified the floor space identified for the placement of mechanical equipment in the Proposed Building as a permissible accessory use and properly deducted that floor space from the calculation of floor area; and

(2) OCCUPANCY OF THE HOTEL

WHEREAS, Appellant, DOB and the Owner dispute the Hotel’s legal occupancy under the Multiple Dwelling Law as of 1951 and today, the Hotel’s legal use under the Zoning Resolution and the affect that the Hotel’s legal occupancy and use have on the applicability of certain bulk regulations to construction of the Proposed Building, specifically with regards to distance between buildings; and

WHEREAS, the Board considers each contention in turn, but ultimately finds none of Appellant’s arguments persuasive; and

(A) Legal Occupancy in 1951

WHEREAS, a certificate of occupancy was issued for the Hotel on March 8, 1951 (the “CO”), which states in pertinent part:

Occupancy classification—Heretofore Erected  
Exist. Cl. B Hotel . . .

2nd to 12th story, incl. . . . Fifteen (15) hotel  
rooms on each story. . . .

13th story . . . Eleven hotel rooms. . . .

No changes of use or occupancy not consistent  
with this certificate shall be made unless first  
approved by the Borough Superintendent . . . The  
building or any part thereof shall not be used for  
any purpose other than that for which it is  
certified . . . and the use to which any story may  
be put shall be restricted to that fixed by this  
certificate except as specifically stated; and

WHEREAS, Appellant states that, according to the CO, the Hotel “is used for hotel rooms”<sup>7</sup>; and

WHEREAS, DOB and the Owner represent that the permissible occupancy of the Hotel is technically as a class

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<sup>7</sup> Appellant also argues that the CO is “largely illegible and unconvincing of the [Hotel’s] status in 1951.” The Board does not find the CO illegible, especially in light of the fact that Appellant, DOB and the Owner have all concluded that the CO permits occupancy for a class B hotel.

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B hotel,<sup>8</sup> as defined in the Multiple Dwelling Law (“MDL”), and further emphasize that the definition of “class B” multiple dwelling in MDL § 4(9) indicates that such dwelling is occupied “as a rule transiently”; and WHEREAS, the Board finds that, as authorized under the CO in 1951, the legal occupancy of the Hotel was as a class B hotel—a multiple dwelling designed to be occupied, as a rule transiently, as an inn having more than thirty sleeping rooms; and

(B) Current Legal Occupancy and Use

(i) Legal Occupancy under the Multiple Dwelling Law

WHEREAS, Appellant argues that the legal use of the Hotel in 1951 is irrelevant to this appeal, and that it is its current use, allegedly contrary to the CO, that dictates the applicability of certain bulk regulations to the Proposed Building; and

WHEREAS, in response, DOB directs the Board’s attention to Charter § 645(e), which reads in relevant part:

[E]very certificate of occupancy shall, unless and until set aside, vacated or modified by the board of standards and appeals or a court of competent jurisdiction, be and remain binding and conclusive upon all agencies and officers of the city . . . as to all matters therein set forth, and no order, direction or requirement affecting or at variance with any matter set forth in any certificate of occupancy shall be made or issued by any agency or officer of the city . . . unless and until the certificate is set aside, vacated or modified . . . upon the application of the agency, department, commission, officer or member thereof seeking to make or issue such order, direction or requirement; and

WHEREAS, accordingly, DOB argues that because the CO is binding as to matters set forth therein, it would be improper for DOB to look beyond the CO to determine the Hotel’s legal occupancy; and

WHEREAS, the Board notes that DOB has not filed an appeal with the Board to set aside, vacate or modify the CO and that nothing in the record indicates that the CO was temporary, has otherwise expired as a matter of law or been superseded; and

WHEREAS, accordingly, the Board finds that the CO is currently in effect and that the Hotel’s current legal

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8 MDL § 4 states in relevant part: “9. A ‘class B’ multiple dwelling is a multiple dwelling which is occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals. This class shall include hotels, lodging houses, rooming houses, boarding houses, boarding schools, furnished room houses, lodgings, club houses, college and school dormitories and dwellings designed as private dwellings but occupied by one or two families with five or more transient boarders, roomers or lodgers in one household. . . . 12. A ‘hotel’ is an inn having thirty or more sleeping rooms.”

occupancy remains class B hotel, as defined in the Multiple Dwelling Law and stated therein; and

(ii) Legal Use under the Zoning Resolution

(a) **Apartment Hotel**

WHEREAS, Appellant alleges that currently, the legal primary use of the Hotel is residential because the Hotel meets the definition of “apartment hotel” under ZR § 12-109; and

WHEREAS, ZR § 12-10 defines a “residence,” in pertinent part, as “one or more *dwelling units* or *rooming units* . . . . A *residence* may, for example, consist of . . . multiple dwellings . . . or *apartment hotels*. However, *residences* do not include: (a) such transient accommodations as *transient hotels*”; and

WHEREAS, ZR § 12-10 defines an “apartment hotel,” in pertinent part, as:

[A] *building* or part of a *building* that is a Class A multiple dwelling as defined in the Multiple Dwelling Law, which:

- (a) has three or more *dwelling units* or *rooming units*;
- (b) has one or more common entrances serving all such units; and
- (c) provides one or more of the following services: housekeeping, telephone, desk, or bellhop service, or the furnishing or laundering of linens; and

WHEREAS, Appellant does not apply the Multiple Dwelling Law’s definition of “Class A multiple dwelling”<sup>10</sup> and instead presents records from the New York City Department of Finance (“DOF”), argues that they indicate that the Hotel contains rent-regulated residential units<sup>11</sup> and cites *Nutter v. W&J Hotel Company*, 171 Misc. 2d 302 (N.Y.C. Civil Ct. 1997) for the proposition that rent-stabilized units in hotels are treated as permanent residences under the New York Rent Stabilization Law (“RSL”); and

WHEREAS, in response, DOB points out that hotels subject to rent regulation include “[a]ny Class A or Class B multiple dwelling” under 9 NYCRR § 2520.6; thus, Appellant’s reference to the RSL proves unpersuasive as

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9 Contradictorily, Appellant states in its submission dated August 8, 2017, “The Hotel is a transient hotel and a multiple dwelling.” The Board notes that apartment hotels and transient hotels are mutually exclusive primary uses but considers Appellant’s argument to be that the Hotel is primarily used as an apartment hotel.

10 Nor does Appellant apply the Zoning Resolution’s definitions of “dwelling unit” or “rooming unit” under subdivision (a) of the “apartment hotel” definition set forth in ZR § 12-10. However, Appellant does state that the Hotel has a common entrance on 30th Street in response to subdivision (b) of the definition of “apartment hotel” and submitted a printout from the Hotel’s website and states that the Hotel provides services listed under subdivision (c).

11 However, under the heading “Annual Property Tax Detail,” the DOF property tax statement indicates that the Hotel is “Tax class 4 – Commercial Property.”

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determinative of the Hotel's proper use classification; and

WHEREAS, both DOB and the Owner submit that the presence of an incidental number of rent-regulated units within the Hotel would not convert the Hotel into a class A multiple dwelling and, thus, residential; and

WHEREAS, the Board notes that, in administering and enforcing the Zoning Resolution, neither DOB nor the Board is "required to blindly import a definition" from other statutes with varying purposes, *see Appelbaum v. Deutsch*, 66 N.Y.2d 975, 977 (1985); and

WHEREAS, the Board does not credit Appellant's suggestion that the Hotel's tax classification or the treatment of rent-stabilized units under the RSL as determinative of the Hotel's legal primary use; and

WHEREAS, rather, the Board looks to the definitions section of the Multiple Dwelling Law, which is directly referenced in the relevant text of the Zoning Resolution, and notes that MDL § 4(8)(a) states in pertinent part:

A "class A" multiple dwelling is a multiple dwelling that is occupied for permanent residence purposes. This class shall include . . . all other multiple dwellings except class B multiple dwellings. A class A multiple dwelling shall only be used for permanent residence purposes. For the purposes of this definition, "permanent residence purposes" shall consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more . . . ; and

WHEREAS, the Owner emphasizes that, under MDL § 4(8)(a), a class A multiple dwelling "shall only" be used for permanent residence purposes; and

WHEREAS, the Board notes that, because the Hotel's current legal occupancy is class B multiple dwelling while class A multiple dwellings include "all other multiple dwellings except class B multiple dwellings" under MDL § 4(8)(a), the Hotel cannot be a "Class A multiple dwelling as defined in the Multiple Dwelling Law" in accordance with the "apartment hotel" definition of ZR § 12-10; and

WHEREAS, accordingly, the Board finds that the Hotel is not an apartment hotel under ZR § 12-10; and

## **(b) Transient Hotel**

WHEREAS, DOB and the Owner contend that the Hotel is instead a commercial<sup>12</sup> building and classified as a transient hotel under ZR § 12-10; and

WHEREAS, ZR § 12-10 states in relevant part, "A 'transient hotel' is a *building* or part of a *building* in which: (a) living or sleeping accommodations are used primarily for transient occupancy, and may be rented on a daily basis"<sup>13</sup>; and

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<sup>12</sup> ZR § 12-10 states, "A 'commercial' *use* is any *use* listed in Use Group[] 5." Transient hotels and accessory uses are listed in Use Group 5 under ZR § 32-14 and are, therefore, commercial uses.

<sup>13</sup> None of the other elements of the "transient hotel" definition of ZR § 12-10 as they apply to the Hotel are disputed in this appeal.

WHEREAS, Appellant states in its submission dated July 21, 2017, that the Hotel is primarily used "as a transient Class B multiple dwelling"<sup>14</sup>; and

WHEREAS, the Board notes that ZR § 12-01(f) states, "The phrase 'used for' includes 'arranged for', 'designed for', 'intended for', 'maintained for', 'or occupied for'"; and

WHEREAS, as stated above, the Board finds that the Hotel's current certificate of occupancy indicates that the Hotel is designed and arranged for occupancy, as a rule transiently, as an inn having more than thirty sleeping rooms; and

WHEREAS, the Board notes that nothing in the record indicates that the Hotel has been unlawfully altered from its legal occupancy as a class B hotel; and

WHEREAS, to the contrary, the Board notes that the Hotel's website indicates that the Hotel is actively being operated and advertising rooms for short-term, transient occupancy; and

WHEREAS, accordingly, the Board finds that the primary use of the Hotel is consistent with the "transient hotel" definition in ZR § 12-10 and that the Hotel is, therefore, a commercial building; and

## **(C) Applicability of Bulk Regulations**

WHEREAS, Appellant argues that certain bulk regulations<sup>15</sup> applicable to residential buildings apply to the Hotel and were not properly considered in DOB's evaluation of the NB Application and, thus, the Final Determination was in error; and

WHEREAS, in particular, Appellant argues that MDL § 28 precludes construction of the Proposed Building, and MDL § 28(2) reads in relevant part:

Except as otherwise provided . . . for dwellings erected, enlarged, converted or altered pursuant to plans filed prior to December fifteenth, nineteen hundred sixty-one in accordance with the provisions of subdivision one of section twenty-six, if any building or dwelling is placed on the rear of the same lot with a multiple dwelling or a multiple dwelling is placed anywhere on the same lot with another building, there shall be left between the two buildings an open space unoccupied from the ground up and at least forty feet in depth, measured in the direction from one building to the other for the first one hundred

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<sup>14</sup> The Board again notes that this statement contradicts Appellant's argument that the Hotel is an apartment hotel.

<sup>15</sup> By letter from Appellant to DOB dated July 14, 2016, as referenced in the Final Determination, Appellant states, "I agree that the building space requirements of 23-71 are not applicable 'because the existing and proposed buildings are abutting on the same zoning lot and therefore considered to be one building.'" Accordingly, the Board declines to consider the applicability of ZR § 23-71 in this appeal since Appellant apparently conceded this point before DOB. Appellant has also not challenged any bulk regulations of the Zoning Resolution applied by DOB in the Final Determination, including ZR §§ 23-532 and 23-65.



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# MINUTES

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twenty-five feet above the curb level, and eighty feet above that point; and

WHEREAS, both DOB and the Owner state that MDL § 28(2) does not apply because said provision relates to multiple buildings on a single tax lot, not zoning lot, and the Proposed Building and the Hotel are located on two separate tax lots; and

WHEREAS, additionally, the Owner notes that MDL § 4(31) states, “A ‘lot’ is a parcel or plot of ground which is or may be occupied wholly or in part by a dwelling, including the spaces occupied by accessory or other structures and any open or unoccupied spaces thereon, but not including any part of an abutting public street or thoroughfare”; and

WHEREAS, comparing the “lot” definition in MDL § 4(31) with the “zoning lot” definition in ZR § 12-10, the Board notes that the definitions differ in scope and purposes<sup>16</sup>; and

WHEREAS, the Board finds Appellant’s conclusory conflation of the “lot” definition in MDL § 4(31) with the “zoning lot” definition in ZR § 12-10 unpersuasive; and

WHEREAS, the Board credits DOB’s interpretations, especially in light of DOB’s extensive experience administering complex zoning lot mergers; and

WHEREAS, based on the above, the Board finds MDL § 28(2) is inapplicable to the Proposed Building; and

## CONCLUSION

WHEREAS, the Board has considered all of Appellant’s arguments on appeal and finds them to be without merit; and

WHEREAS, for the foregoing reasons, the Board finds that DOB appropriately permitted floor space used for mechanical equipment within the Proposed Building to be deducted from floor area under ZR § 12-10 without limitation as to height and that DOB properly determined that the Hotel constitutes a commercial building occupied as a class B hotel, as defined in MDL § 4, and used as a transient hotel under ZR § 12-10 in applying bulk regulations to the Proposed Building.

*Therefore it is Resolved*, that the determination of the Department of Buildings, dated March 1, 2017, acting on a public challenge to New Building Application No. 122128679, shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, September 20, 2017.

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*Carlo Costanza, Acting Executive Director*

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<sup>16</sup> For instance, MDL § 4(31) states that a lot “may be occupied wholly or in part by a dwelling,” but ZR § 12-10 contains no reference to residences in the “zoning lot” definition. Likewise, ZR § 12-10 states that a “zoning lot” “may or may not coincide with a lot as shown on the official tax map of the City of New York,” but MDL § 4(31) contains no such disclaimer.

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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 102, No. 40

October 4, 2017

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### DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

VACANT

VACANT

*Commissioners*

Carlo Costanza, *Acting Executive Director*

Loreal Monroe, *Counsel*

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- 413-50-BZ            691 East 149<sup>th</sup> Street, Bronx
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- 159-00-BZ            383 3<sup>rd</sup> Avenue, Brooklyn
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- 2017-190-BZ        23-11 31<sup>st</sup> Road, Queens

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# DOCKETS

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New Case Filed Up to September 26, 2017  
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**2017-269-BZ**

65 Grasmere Avenue, Property fronts Grasmere Avenue, Crist Street and Sheridan Avenue and SIRR tracks, Block 03163, Lot(s) 0001, Borough of **Staten Island, Community Board: 2**. Variance (§72-21) to permit the legalization of a one-story enlargement of an existing non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §22-00. R3-2 zoning district. R3-2 district.  
-----

**2017-270-BZ**

1434 Utica Avenue, 4,000 SE corner warehouse zoned M1-1 on a 40x105 ft. lot., Block 04784, Lot(s) 0044, Borough of **Brooklyn, Community Board: 17**. Special Permit (§73-53) to permit the enlargement of an automotive body repair facility (UG 17B) contrary to ZR §43-121 (Maximum Permitted Floor Area). M1-1 zoning district. M 1-1 district.  
-----

**2017-271-A**

605 East 9th Street, On East 9th Street between Avenue B and Avenue C, 93 feet east of Avenue B, Block 00392, Lot(s) 0010, Borough of **Manhattan, Community Board: 3**. Interpretive Appeal requesting the Board to interpret the “proof of ownership or control” provision of RCNY §51-01. R8B R7A district.  
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**2017-272-BZ**

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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 OCTOBER 31, 2017, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 31, 2017, 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

#### 531-86-BZ

APPLICANT – Law Office of Fredrick A. Becker, for FSP 787 Seventh LLC, owner; Athletic Club at the Equitable Center, lessee.

SUBJECT – Application December 5, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (Athletic & Swim Club) which expires on December 16, 2016. C6-6/C6-6.5 (MID) zoning district.

PREMISES AFFECTED – 787 Seventh Avenue, Block 1004, Lot 20, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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#### 104-15-BZ

APPLICANT – Rosenberg & Estis, P.C./Frank E. Chaney, Esq., for 4452 Broadway Mazal LLC, owner.

SUBJECT – Application May 12, 2015 – Variance (§72-21) to permit the development of a mixed-use residential building with retail contrary to underlying bulk and use regulations. R7-2 zoning district with C2-4 overlay.

PREMISES AFFECTED – 4452 Broadway (aka 44-90 Fairview Avenue), Block 2170, Lot(s) 62, 400, Borough of Manhattan.

**COMMUNITY BOARD #12M**

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## REGULAR MEETING OCTOBER 31, 2017, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 31, 2017, 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

#### 2016-4328-BZ

APPLICANT – Sheldon Lobel, P.C., for JSM Associates I LLC, owner; OTF Studios, LLC, lessee.

SUBJECT – Application November 10, 2016 – Special Permit (§73-36) to permit the operation a Physical Cultural Establishment (*Orangetheory Fitness*) on the first and cellar floors of the existing building. C6-3 zoning district.

PREMISES AFFECTED – 51 Astor Place, Block 554, Lot 35, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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#### 2016-4467-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Winston Network, Inc., c/o Outfront Media Inc., owner.

SUBJECT – Application December 16, 2016 – Variance (§72-21) to permit the legalization of an illuminated advertising sign contrary to ZR §22-35 (advertising signs not permitted in residential districts) and ZR §52-731.1 (non-conforming advertising signs in residential districts shall be terminated after 10 years from December 15, 1961).

R4 zoning district.

PREMISES AFFECTED – 69-25 Astoria Boulevard, Block 1001, Lot 21, Borough of Queens.

**COMMUNITY BOARD #1Q**

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#### 2017-97-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 55 Washington Street LLC, owner; Gleason's Gym, lessee.

SUBJECT – Application March 29, 2017 – Special Permit (§73-36) to permit the legalization of physical culture establishment (*Gleason's Gym*) on a portion of the first floor of an existing building. M1-2/R8A (Dumbo Historic District) zoning district.

PREMISES AFFECTED – 55 Washington Street, Block 38, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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# CALENDAR

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**2017-140-BZ**

APPLICANT – Law Office of Jay Goldstein, for 55 Prospect LLC, owner; Yoga Vida Dumbo LLC, lessee.

SUBJECT – Application April 28, 2017 – Special Permit (§73-36) to permit the legalization of physical culture establishment (*Yoga Vida Dumbo*) on a portion of the cellar and first floor of an existing building. M1-6 zoning district.

PREMISES AFFECTED – 55 Prospect St, Block 63, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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**2017-227-BZ**

APPLICANT – Sheldon Lobel, P.C., for 313 LLC, owner; Fuelsoul Group LLC dba Orangetheory Fitness, lessee.

SUBJECT – Application July 14, 2017 – Special Permit (§73-36) to permit the operation a Physical Cultural Establishment (*Orangetheory Fitness*) on a portion of the first floor of an existing building contrary to ZR §32-10. C6-4M Special Garment Center District.

PREMISES AFFECTED – 313-321 West 37<sup>th</sup> Street, Block 761, Lot 22, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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*Carlo Costanza, Acting Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, SEPTEMBER 26, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and  
Commissioner Ottley-Brown.

**SPECIAL ORDER CALENDAR**

**1016-84-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Livia Liberace Trust, owner; Raja Auto Sales & Auto Repair & Body Shop, Inc., lessee.

SUBJECT – Application August 18, 2016 – Extension of Term (§11-411) of a previously approved Variance for the operation of an auto repair shop (UG16B) with accessory uses which expired on July 30, 2015; Waiver of the Rules. C8-2 & R5 (Special Ocean Parkway District) zoning district. PREMISES AFFECTED – 790 Coney Island Avenue a/k/a 790-798 Coney Island Avenue, Block 5393, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application under ZR § 11-411 for an extension of term of a variance, previously granted by the Board, which expired July 30, 2015, and for a waiver of the Board's Rules of Practice and Procedure; and

WHEREAS, a public hearing was held on this application on March 21, 2017, after due notice by publication in *The City Record*, and then to decision on September 26, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Coney Island Avenue, between Cortelyou Road and Ditmas Avenue, partially in a C8-2 zoning district and partially in an R5 zoning district, in the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 80 feet of frontage along Coney Island Avenue, 128 feet of depth, 10,480 square feet of lot area and is occupied by a one-story, with cellar and mezzanine, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 23, 1923, when, under BSA Calendar Number 930-23-BZ, the Board granted a variance

to permit the construction and maintenance of an extension to an existing garage for the storage of more than five motor vehicles on condition that the rear and side walls of the extension be unpierced throughout their entire height and length, that the roof be of flat design and construction, that not more than one vehicular entrance be permitted within the lines of the proposed extension, that the front portion of this addition be arranged and operated as a store or shop, that the front elevation be finished, as to design and material, in harmony with the existing garage building and that permits be obtained within nine (9) months and the building completed within eighteen (18) months; and

WHEREAS, on November 20, 1923, under BSA Calendar Number 930-23-BZ, the Board granted an interpretation of its resolution that the plans on file for interpretation were in substantial compliance with the resolution as to variation of the use district; and

WHEREAS, on February 1, 1927, under BSA Calendar Number 930-23-BZ, the Board modified the variance as to the location of the store or shop on condition that the rear and side walls of the extension be unpierced throughout their entire height and length, that the roof be of flat design and construction, that not more than one vehicular entrance be permitted within the lines of this proposed extension, that the front of the site, the southerly half on the Coney Island Avenue front be maintained as a store or accessory shop, that the front elevation be finished, as to design and material, in harmony with the existing garage building and that permits be obtained within nine (9) months and the building completed within eighteen (18) months; and

WHEREAS, on April 20, 1948, under BSA Calendar Number 65-48-BZ, the Board granted a variance to permit the occupancy of a building by the Kings County Buick Corporation as proposed as a service station for cars dealt in by that agency and to permit minor repairing in connection with such agency as proposed, that the buildings not be increased in height or area and comply with the resolutions adopted by the Board under BSA Calendar Numbers 569-23-BZ and 930-23-BZ, that all permits be obtained and work completed within one (1) year, by April 20, 1949, and that such portable fire-fighting appliance be maintained as directed by the Fire Department; and

WHEREAS, on April 17, 1951, under BSA Calendar Number 65-48-BZ, the Board amended the variance to permit for a term of ten (10) years, expiring April 17, 1961, the parking of cars being serviced on the adjoining site under the same ownership on condition that the site be leveled substantially to the grade of the adjoining building and surfaced with clean gravel or steam cinders and treated with a binder and properly rolled, that access to this lot be solely by a door as proposed in the southerly wall of the existing building on the subject site under the same ownership, that on all lot lines except where the wall of the existing building occurs, there be maintained a fence of the woven wire chain link type erected on a masonry base not less than 12" in height to a total height of not less than 5'-6", that this plot not be used for public parking and no fee be

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charged, that no signs be erected on the site as herein proposed for storing of cars being serviced, that the existing business signs then constructed on the building may be continued provided the sign that extends above the roof parapet is removed and no addition signs are constructed, that the rearrangement proposed as to repair work and minor adjustments be permitted, that all permits be obtained and work completed within six (6) months, by October 17, 1951; and

WHEREAS, on July 3, 1951, under BSA Calendar Number 65-48-BZ, the Board amended the variance so that the masonry base hereinbefore required to be constructed in connection with the wire chain link fence may be omitted; and

WHEREAS, on October 30, 1951, under BSA Calendar Number 65-48-BZ, the Board granted an extension of time to complete construction; and

WHEREAS, on December 22, 1953, under BSA Calendar Number 65-48-BZ, the Board granted an extension of time to complete construction; and

WHEREAS, on June 20, 1961, under BSA Calendar Number 65-48-BZ, the Board granted an extension of term of the variance for ten (10) years, expiring June 20, 1971, on condition that a certificate of occupancy be obtained; and

WHEREAS, on September 8, 1971, under BSA Calendar Number 65-48-BZ, the Board granted an extension of term of the variance for ten (10) years, expiring June 20, 1981, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on July 30, 1985, under the subject calendar number, the Board permitted the renewal of the variance under ZR § 11-411 to reestablish a portion of the variance for an auto repair shop with accessory uses of acetylene torch and arc welding and spray painting, sale and display of new and used automobiles and storage of tow trucks and auto parts for a term of ten (10) years, expiring July 30, 1995, on condition that the owner comply with the conditions set forth in the Conditional Negative Declaration, that no more than two (2) quarts of paint be sprayed per day, that hours of operation be limited to Monday through Friday, 8:00 a.m. to 5:30 p.m., and Saturday, 8:00 a.m. to 12:00 p.m., that the front doors be kept closed while the site is in operation, that signs projecting above the parapet be removed, that signs comply with C8 district regulations and that these conditions appear on the certificate of occupancy; and

WHEREAS, on March 31, 1998, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring July 30, 2005, on condition that no fender or body work nor spray painting of vehicles be conducted on the site, that no towing service be operated from the site, that there be no vehicular parking on the sidewalks, that the business signs be in conformance with the Board-approved plans, that the site be maintained graffiti free and that a new certificate of occupancy be obtained within one (1) year, by March 31, 1999; and

WHEREAS, on January 10, 2006, under the subject calendar number, the Board granted an extension of term for

ten (10) years, expiring July 30, 2015, on condition that the hours of operation be from Monday through Friday, 8:00 a.m. to 5:30 p.m., and Saturday and Sunday, 8:00 a.m. to 12:00 p.m., that all body and fender work occur only within the building in the area indicated on the Board-approved plans, that no more than two (2) quarts of paint be sprayed per day, that the front doors be kept closed while the site is in operation and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(b)(3)(i) to permit the filing for an extension of term more than two (2) years but less than ten (10) years after the expiration of the term; and

WHEREAS, the applicant has demonstrated that the use has been continuous since the expiration of term and that substantial prejudice would result without such a waiver; and

WHEREAS, at hearing, the Board questioned paint spraying at the site and signs' compliance; and

WHEREAS, in response, the applicant removed excess signage, provided sign calculations, submits that no painting or spraying shall be permitted unless or until a spray booth approved by the Department of Environmental Protection and by the Fire Department has been installed and amended the drawings as to painting and spraying; and

WHEREAS, based upon the foregoing, the Board finds the requested waiver and extension of term appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated July 30, 1985, as amended through January 10, 2006, so that as amended this portion of the resolution reads: "to *grant* an extension of term for ten (10) years, expiring July 30, 2025; *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received September 7, 2017'- Four (4) sheets; and *on further condition*:

THAT no paint spraying of any kind whatsoever on the premises or on the public way in front of the premises shall be permitted in the absence of the installation of a spray booth approved by the Department of Environmental Protection and by the Fire Department;

THAT the hours of operation shall be limited to Monday through Friday, 8:00 a.m. to 5:30 p.m., and Saturday and Sunday, 8:00 a.m. to 12:00 p.m.;

THAT all body and fender shall work occur only within the building in the area indicated on the Board-approved plans;

THAT the front doors shall be kept closed while the premises are in operation;

THAT no towing service shall be operated from the premises;

THAT there shall be no vehicular parking on the sidewalks;



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THAT accessory signs shall be in conformance with the Board-approved plans;

THAT the premises shall be maintained graffiti free;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by September 26, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 26, 2017.

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## 294-06-BZ

APPLICANT – Goldman Harris LLC, for John & Steven, Inc., owner; Club Fitness NY, lessee.

SUBJECT – Application May 10, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitted the operation of a Physical Culture Establishment (*Club Fitness*) in the cellar, second and third floors of a three-story building which expired on April 10, 2017. C4-2A & C4-3 zoning district.

PREMISES AFFECTED – 31-11 Broadway, Block 613, Lot(s) 1 & 3, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit, previously granted by the Board, allowing the operation of a physical culture establishment (“PCE”), which expired April 10, 2017; and

WHEREAS, a public hearing was held on this application on September 26, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Broadway and 32nd Street, partially in a C4-2A zoning district and partially in a C4-3 zoning district, in Queens; and

WHEREAS, the site has approximately 100 feet of

frontage along Broadway, 228 feet of frontage along 32nd Street, 22,822 square feet of lot area and is occupied by a three-story, with cellar, commercial building on Lot 1 and by a two-story, with cellar, commercial building on Lot 4; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 6, 1921, when, under BSA Calendar Number 628-21-BZ, the Board granted a variance to permit the maintenance of a motion picture theater on condition that there be no entrance to or exit from the theater in the residence area, that no display signs, bill posters or bill boards be hung or maintained in the residence district and that the front elevation be finished in face brick with stone trimmings; the theater has since been demolished; and

WHEREAS, on October 17, 1967, under BSA Calendar Number 97-67-BZ, the Board granted a variance to permit the addition to the use of the cellar club room to include cabaret on condition that there be a maximum of five musical instruments and one vocalist; the cabaret use has since been discontinued; and

WHEREAS, the Board notes that both variances have been abandoned and are no longer in effect; and

WHEREAS, on April 10, 2007, under the subject calendar number, the Board granted a special permit to allow the operation of a PCE on portions of the cellar, first, second, and third floors of the existing two- and three-story commercial buildings for a term of ten (10) years, expiring April 10, 2017, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that the hours of operation be limited to Monday through Sunday, 5:00 a.m. to midnight and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on August 14, 2012, the Board amended the special permit to permit modifications to the approved plans, including a 4,700 square foot enlargement of the cellar, on condition that signage on the site comply with C4 district regulations and that there be no change in ownership or operating control of the PCE without prior approval from the Board; and

WHEREAS, the term of the special permit having expired, the applicant now seeks an extension of term; and

WHEREAS, the facility remains in operation as Club Fitness with the following hours of operation: Monday through Sunday, 5:00 a.m. to 12:00 a.m.; and

WHEREAS, the applicant notes that the PCE continues to occupy 28,434 square feet of floor area in the buildings: 4,700 square feet in the cellar, 3,686 square feet of floor area on the first floor, 13,393 square feet of floor area on the second floor and 11,355 on the third floor, as previously approved by the Board; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

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WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03 subsections (d) and (g) are inapplicable to the subject application; and

WHEREAS, § 73-36 mandates a term not to exceed ten (10) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to extend ten (10) years; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated April 10, 2007, as amended August 14, 2012, so that as amended this portion of the resolution shall read: “to grant an extension of term of the special permit for ten (10) years, expiring April 10, 2027; *on condition* that the use and operation of the site shall substantially conform to the Board-approved plans associated with the prior grant; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring April 10, 2027;

THAT the fire inspection report dated January 2, 2014, indicating that Fire Department Inspector J. Asbaghi inspected the site, is accurate, and that inspections and the fire alarm system are up-to-date;

THAT signage on the site shall comply with C4 district regulations;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT the hours of operation be limited to Monday through Sunday, 5:00 a.m. to 12:00 a.m.;

THAT the above conditions shall appear on the certificate of occupancy;

THAT certificates of occupancy shall be obtained within four (4) years, by September 26, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals,  
September 26, 2017.

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**413-50-BZ**

APPLICANT – Eric Palatnik, P.C., for Sandra Yetman, owner; BP Products North America Inc., lessee.

SUBJECT – Application October 8, 2015 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expires on November 18, 2015. C2-4/R7-1 zoning district.

PREMISES AFFECTED – 691 East 149<sup>th</sup> Street, Block 2623, Lot 140, Borough of Bronx.

**COMMUNITY BOARD #1BX**

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for adjourned hearing.

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**65-94-BZ**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for KGH Realty Corp., owner.

SUBJECT – Application March 7, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted an enlargement contrary to side yard regulations and community facility (UG 4) on the ground and cellar floors and commercial offices (UG 6) in the garage which expired on March 5, 2016. R4B zoning district.

PREMISES AFFECTED – 144-02 Jewel Avenue, Block 6642, Lot 2, Borough of Queens.

**COMMUNITY BOARD #8Q**

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for continued hearing.

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**159-00-BZ**

APPLICANT – Eric Palatnik, P.C., for Al-Iman Center, Inc., owner.

SUBJECT – Application September 21, 2015 – Extension of Term & Amendment (72-01): extension of term of a previously granted variance of a Use Group 3 school and an Amendment for elimination of the term of the variance and a change and minor plumbing and portion alterations. C8-2 zoning district.

PREMISES AFFECTED – 383 3<sup>rd</sup> Avenue, Block 980, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for continued hearing.

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**214-00-BZ**

APPLICANT – Sheldon Lobel, P.C., for Zaliv, LLC, owner.

SUBJECT – Application November 13, 2015 – Extension of Term of a previously approved Special Permit (73-242) which permitted the operation of an eating and drinking establishment (UG 6) which expired on November 16, 2015; Extension of Time to Obtain a Certificate of Occupancy

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which expired on March 20, 2013; Waiver of the Rules. C3 zoning district.

PREMISES AFFECTED – 2761 Plumb 2<sup>nd</sup> Street, Block 8841, Lot 500, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for adjourned hearing.

## 227-02-BZ

APPLICANT – Stanley K. Schlein, Esq., for 4201 Webster Corp., owner.

SUBJECT – Application August 21, 2015 – Extension of Term (§§72-01 and 72-22) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with an accessory convenience store which expired on December 12, 2013; Amendment to the condition of term since the term expired in excess of 2 years but less than ten years; Extension of Time to Obtain a Certificate of Occupancy which expired on December 10, 2006; Waiver of the Board’s Rules. R7-A zoning district.

PREMISES AFFECTED – 527 East 233<sup>rd</sup> Street, Block 3395, Lot 80, Borough of Bronx.

## COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for deferred decision.

## 260-06-BZ

APPLICANT – J. Owen Zurhellen, II, for Charlton Cooperative Corp., owner; Tri Ippon LLC, lessee.

SUBJECT – Application March 17, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitted the operation of a Physical Cultural Establishment (*Oishi Judo Club*) on the first floor in a six-story (plus basement) building which expires on April 10, 2017. M1-6 zoning (Special Hudson Square) District

PREMISES AFFECTED – 112 Charlton Street/547 Greenwich Street, Block 597, Lot 45, Borough of Manhattan.

## COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for continued hearing.

## 164-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Rouse SI Shopping Center, LLC, owner; 280 Marsh LLC dba Massage Envy Staten Island, lessee.

SUBJECT – Application August 15, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Massage Envy*) which will expire on October 2, 2017. C4-1 zoning district.

PREMISES AFFECTED – 280 Marsh Avenue (The Crossings @ Staten Island Mall), Block 2400, Lot 300, Borough of Staten Island.

## COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for deferred decision.

## APPEALS CALENDAR

### 255-15-A

APPLICANT – David L. Businelli, for Michael Ricco, owner.

SUBJECT – Application November 12, 2015 – 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 and waiver under 72-01-(g). R3-1 zoning district.

PREMISES AFFECTED – 106 Ebbitts Street, Block 4056, Lot 86, Borough of Staten Island.

## COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Deputy Borough Commissioner, dated November 4, 2015, acting on Department of Buildings (“DOB”) Application No. 520245075, reads in pertinent part:

1. Proposed enlargement located partly within the bed of a mapped street is contrary to Section 35 of the General City Law. Obtain Board of Standards and Appeals Approval;
2. Proposed scope of work to building with existing bulk non-compliances will result with an increase of bulk non-compliances due to the location of such mapped street. Obtain Board of Standards and Appeals Waiver pursuant to ZR 72-01(g); and

WHEREAS, this is an application to permit the reconstruction and enlargement of a residential building partially within the bed of a mapped street, contrary to Section 35 of the General City Law (“GCL”), and that affects compliance of the newly constructed second floor with the front yard requirement, set forth in ZR § 23-45; and

WHEREAS, accordingly, a waiver pursuant to ZR § 72-10(g) is requested to permit a portion of the second floor to remain within the bed of a mapped, but unimproved, portion of Ebbitts Street; and

WHEREAS, a public hearing was held on this application on June 27, 2017, after due notice by publication in *The City Record*, with a continued hearing on September 12, 2017, and then to decision on September 26, 2017; and

WHEREAS, Commissioner Montanez performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application because the

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enlargement was constructed without proper permits and does not comply with applicable bulk regulations; and

WHEREAS, the subject site is located on the southeast corner of Ebbitts Street and Manila Place, in an R3-1 zoning district, on Staten Island; and

WHEREAS, the site has approximately 40 feet of frontage along Ebbitts Street, 80 feet of depth, 3,200 square feet of lot area and was previously occupied by a one-story residential building constructed in or around 1930 within the bed of a mapped, but unimproved, portion of Ebbitts Street; and

WHEREAS, the applicant submits that the building was heavily damaged during Hurricane Sandy and, upon discussion with consultants, the applicant proceeded to demolish the existing building and reconstruct an elevated and enlarged, two-story residential structure in its place, utilizing the former building's foundations and without the required DOB permits; and

WHEREAS, DOB subsequently issued a violation and Stop Work Order for the premises on June 3, 2014, and the applicant filed the subject application; and

WHEREAS, the site is traversed by an approximately 18 foot wide mapped, but unbuilt, portion of Ebbitts Street; and

WHEREAS, the applicant represents that waiver of ZR § 72-01(g) is being sought in order to allow the newly constructed second floor to remain within the required front yard; the applicant further submits that, because the building is otherwise located in the same position as it was originally constructed in or around 1930, no further waivers are required; and

WHEREAS, the applicant further represents that the enlarged residence will be compliant with Appendix G of the New York City Building Code; and

WHEREAS, the Board notes that the reconstructed first floor of the subject residential building is also located within the mapped, but unimproved, portion of Ebbitts Street, but makes no findings as to whether this condition is an existing non-compliance and defers DOB for such a determination; and

WHEREAS, further, and more specifically, the Board is not waiving any applicable bulk regulations relating to the required front yard distance from the front property line fronting Ebbitts Street to the front wall of the first floor; and

WHEREAS, by letter dated November 7, 2016, the New York City Department of Transportation ("DOT") states that, according to the Staten Island Borough President's Topographical Bureau, Ebbitts Street is mapped to a width of 80 feet at this location and the City has a Corporation Counsel Opinion of Dedication for 50 feet; and

WHEREAS, DOT additionally states that the improvement of Ebbitts Street between Manila Place and Milton Avenue, which would involve the taking of a portion of the subject site, is not presently included in the DOT's Capital Improvement Program; and

WHEREAS, by letter dated September 5, 2017, the New York City Department of Environmental Protection ("DEP") states that it has no objection to the proposed application; that there are 10-inch diameter sanitary sewer, 24-inch diameter sewer, 6'-6" by 3 foot storm sewer and two 12-inch diameter

City water mains located in the bed of Ebbitts Street at the subject location and that the 50 foot record width of Ebbitts Street will be available for the installation, maintenance and/or reconstruction of the future and existing sewers and water mains; and

WHEREAS, the Board notes that, pursuant to GCL § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements; and

WHEREAS, the Board additionally 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 Department of Buildings ("DOB"), dated November 4, 2015, acting on DOB Application No. 520245075, by the power vested in it by Section 35 of the General City Law, and also waives ZR § 23-45 as applied to the second floor of the two-story residential building associated with the presence of an mapped but unbuilt portion of Ebbitts 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 drawings filed with the application marked "Received September 18, 2017"–One (1) sheet; and *on further condition*:

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 September 26, 2021;

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 Certificate of Occupancy;

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

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to the relief granted.

Adopted by the Board of Standards and Appeals,  
September 27, 2017.

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**2016-4256-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Stecher Street LLC, owner.

SUBJECT – Application September 20, 2016 – Proposed construction of a one family, two-story dwelling not fronting on a legally mapped street, pursuant to Article 3 Section 36 of the General City Law. R1-2 (SRD) zoning district.

PREMISES AFFECTED – 147 Stecher Street, Block 6565, Lot 11, Borough of Staten Island.

**COMMUNITY BOARD #3SI**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 3, 2016, acting on New Building Application No. 520296171, reads in pertinent part:

“The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law.
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code”;

WHEREAS, this is an appeal to permit, in an R1-2 zoning district in the Special South Richmond Development District and a Lower Density Growth Management Area, the development of a two-story residence that does not front on a mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this appeal on February 28, 2017, after due notice by publication in *The City Record*, with continued hearings on April 4, 2017, June 27, 2017, and September 12, 2017, and then to decision on September 26, 2017; and

WHEREAS, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this appeal; and

WHEREAS, Staten Island Borough President James S. Oddo submitted testimony regarding the ownership of Stecher Street, paving, street maintenance and infrastructure repairs, storm drainage and Fire Code compliance; and

WHEREAS, the subject site is located on the east side

of Stecher Street, between Deisius Street and Eylandt Street, in an R1-2 zoning district in the Special South Richmond Development District and a Lower Density Growth Management Area, on Staten Island; and

WHEREAS, the site has approximately 40 feet of frontage along Stecher Street, 100 feet of depth, 4,000 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to develop the subject site with a two-story residence compliant with all zoning requirements applicable in the subject zoning district; and

WHEREAS, GCL § 36 provides that no certificate of occupancy shall be issued for any building unless a street or highway giving access to such structure has been officially mapped and adequately improved in respect to the public health, safety and general welfare; and

WHEREAS, said statute empowers the Board to vary this requirement where there is practical difficulty or unnecessary hardship; and

WHEREAS, because the subject site is only accessible from Stecher Street, which is not a street duly placed on the official map of the City of New York, the applicant seeks the relief sought herein; and

WHEREAS, Stecher Street is built to a width of 34 feet immediately north of the subject site but is unbuilt at the subject site; Stecher Street connects to Deisius Street, a street appearing on the official map of the City of New York, approximately 285 feet to the north of the subject site; and

WHEREAS, in response to questions from the Board and from Borough President Oddo, the applicant submitted information regarding ownership of Stecher Street, paving, street maintenance and infrastructure repairs, storm drainage and Fire Code compliance; and

WHEREAS, the drawings submitted in support of this appeal demonstrate that the newly improved portion of Stecher Street will have a width of 34 feet and will be paved with new 3”-thick asphalt concrete pavement on 8”-thick graded stone base; and

WHEREAS, the applicant further represents that a drywell will be installed at the subject site to manage drainage, that there will be no adverse effect on any surrounding properties concerning storm water drainage, that all drywells will be a minimum of five feet from property lines and a minimum of 10 feet from the building foundation, that there are no streams or natural water courses on the subject site and that all yards with a slope in excess of three percent will be sodded with all other yards to be seeded; and

WHEREAS, the applicant also states that the proposed curbs will align with existing curbs and that roadways and sidewalks will comply with the New York City Department of Transportation’s standards and design materials; and

WHEREAS, by letter dated October 17, 2016, the New York City Department of Environmental Protection’s Bureau of Water and Sewer Operations states that it has certified the site connection proposed in conjunction with this appeal; and

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WHEREAS, by letter dated February 6, 2017, the New York State Department of Environmental Conservation states that no freshwater wetlands, tidal wetlands or coastal erosion hazard areas permit is required for development on the subject site; and

WHEREAS, by letter dated February 6, 2017, the Fire Department states that, because the proposed development is located on a dead-end street further than 150 feet from the curb line of the nearest street which is not dead-end, the building must be fully sprinklered; and

WHEREAS, in response, the applicant amended the drawings to reflect that the proposed building will be fully sprinklered in conformity with the New York City Fire Code and represents that a fire hydrant will be located within 250 feet of the proposed building's entrance; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved*, that the decision of the Department of Buildings, dated August 3, 2016, acting on New Building Application No. 520296171, be and it hereby is *modified* under the powers vested in the Board of Standards and Appeals by General City Law § 36, and that this appeal be and it hereby is *granted*, limited to the objection noted, *on condition* that all construction shall substantially conform to drawings filed with this appeal marked, "Received August 25, 2017"-One (1) sheet; and *on further condition*:

THAT the restrictive declaration submitted in connection with this appeal shall be recorded in the Office of the County Clerk, County of Richmond, prior to the issuance of any certificate of occupancy;

THAT the restrictive declaration shall be recorded on the certificate of occupancy;

THAT the recorded restrictive declaration shall substantially conform to the form and substance of the following:

DECLARATION made this \_\_\_\_ day of March 2017, by Stecher Street LLC, hereinafter referred to as the "Declarant," located at 2535 Victory Boulevard, Staten Island, New York.

WHEREAS, the Declarant is the owner of certain land located in the City and State of New York, Borough of Staten Island, designated as Block 6565 Lot 11 as depicted on the Tax Map of the City of New York and hereinafter referred to as Parcel A (the "Subject Premises").

WHEREAS, the Declarant has requested the New York City Board of Standards and Appeals (the "BSA") act upon BSA Cal. No. 2016-4256-A for approval to construct a one-family dwelling that does not front on a final mapped street, contrary to Article III, Section 36 of the General City Law (DOB Application No. 520296171); and

WHEREAS, the BSA requires Declarant to execute and file this restrictive declaration prior to obtaining a Certificate of Occupancy for the subject application.

NOW, THEREFORE, in consideration of BSA approval to allow the proposed construction of a building not fronting on a legally mapped street, contrary to Article III, General City Law 36, Declarant does hereby declare that Declarant and his successors and/or assigns shall be legally responsible for developing, operating and maintaining the portion of record Stecher Street, adjacent and west of "Parcel A", 40 feet by 34 feet in area, as depicted on the BSA approved site plan annexed hereto as Schedule A and by this reference made a part hereof.

1. This declaration may not be modified, amended or terminated without the prior written consent of the BSA;
2. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
3. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy; and
4. This declaration shall be recorded at the office of the Staten Island County Clerk against the Subject Premises and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to any building located on the Subject Premises and in any deed for the conveyance thereof.

THIS DECLARATION IS ONLY EFFECTIVE UPON APPROVAL BY THE BOARD OF STANDARDS AND APPEALS OF THE APPLICATION FILED UNDER CAL. NO. 2016-4256-A AND UPON SUBSEQUENT COMPLETION OF CONSTRUCTION AND ISSUE OF A CERTIFICATE OF OCCUPANCY PURSUANT TO SUCH APPROVALS, OTHERWISE THIS DECLARATION IS OF NO EFFECT.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

THAT the proposed building shall be fully fire sprinklered in conformity with the sprinkler provisions of the New York City Fire Code as well as reference standards of the New York City Building Code;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by September 26, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered

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approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 26, 2017.

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## 238-15-A thru 243-15-A

APPLICANT – Jeffrey Geary, for Ed Sze, owner.

SUBJECT – Application October 8, 2015 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – 102-04, 08, 12, 16, 20, 24 Dunton Court, Block 14240, Lot(s) 1306, 1307, 1308, 1309, 1310, 1311, Borough of Queens.

### COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for continued hearing.

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## 2016-4296-A thru 2016-4298-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Galaxy Construction Services, Corp., owners.

SUBJECT – Application November 3, 2016 – Proposed enlargement of an existing one-family home which is within the unbuilt portion of the mapped street contrary to General City Law 35. C3A zoning district.

PREMISES AFFECTED – 3236, 3238 Schley Avenue and 580 Clarence Avenue, Block 5490, Lot(s) 7, 110, 111, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for continued hearing.

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## 2017-143-A

APPLICANT – NYC Department of Buildings, for Marlene Mitchell Kaselis, owner.

SUBJECT – Application May 10, 2017 – Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy.

PREMISES AFFECTED – 25-32 44<sup>th</sup> Street, Block 702, Lot 57, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

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## 2017-144-A

APPLICANT – NYC Department of Buildings, for Marlene Mitchell Kaselis, owner.

SUBJECT – Application May 10, 2017 – Appeal filed by the Department of Buildings seeking to revoke Certificate of Occupancy.

PREMISES AFFECTED – 25-30 44<sup>th</sup> Street, Block 702, Lot 56, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 161-15-BZ

#### CEQR #16-BSA-007X

APPLICANT – Sheldon Lobel, P.C., for Church of Pentecost U.S.A., Inc., owner.

SUBJECT – Application July 23, 2015 – Variance (§72-21) to permit the enlargement of an existing house of worship (UG 4) contrary to lot coverage and rear yard requirements. R6A/R5A zoning district.

PREMISES AFFECTED – 621 East 216<sup>th</sup> Street, Block 4649, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 23, 2015, acting on Alteration Application No. 220386080, reads in pertinent part:

“[P]roposes the following non-compliances, and is therefore referred to the BSA:

- Proposed Rear Yard contrary to ZR 24-36
- Proposed Lot Coverage contrary to ZR 24-11”; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site partially in an R6A zoning district and partially in an R5A zoning district, the enlargement of an existing two-story community-facility building used as a house of worship that does not comply with zoning regulations for lot coverage and rear yards, contrary to ZR §§ 24-11 and 24-36; and

WHEREAS, a public hearing was held on this application on April 25, 2017, after due notice by publication in *The City Record*, with a continued hearing on June 27, 2017, and then to decision on September 26, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, Bronx,

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recommends disapproval of this application, citing concerns with the massing of the proposed building, the prominence of office space within the proposed building, potential increases in traffic and parking demand, the absence of unique physical conditions at the subject site and incompatibility with neighborhood character; and

WHEREAS, the subject site is located on the northeast corner of East 216th Street and Bronx Boulevard, partially in an R6A zoning district and partially in an R5A zoning district, in the Bronx; and

WHEREAS, the site has approximately 111 feet of frontage along East 216th Street, 200 feet of frontage along Bronx Boulevard, 21,102 square feet of lot area and is occupied by a two-story, with cellar, community-facility building used as a house of worship (the "House of Worship"); and

WHEREAS, the applicant now seeks a variance to enlarge the existing building, which has a non-complying rear yard of 1'-4" and complying lot coverage of 40 percent, because the proposed enlargement will create non-compliance at the second and third stories by providing a 15-foot rear yard where 30 feet is required under ZR § 24-36 and non-compliance above the first story by providing 87 percent lot coverage where the maximum permitted lot coverage is 70.5 percent under ZR § 24-11; and

WHEREAS, the applicant represents that the proposed enlargement is necessary in order to accommodate the House of Worship's programmatic needs; and

WHEREAS, in support of this contention, the applicant submitted a programmatic-needs report detailing statistics about the House of Worship's congregation, a program schedule detailing the occupancy of the existing and proposed buildings' spaces throughout the week, operational details about religious services, youth services, administration, summer camp, the food-pantry program and other charitable endeavors; and

WHEREAS, in addition, the applicant notes, and the Board recognizes, that the House of Worship, as a religious institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance application; specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), an educational or religious institution's zoning application is to be granted unless it can be shown to have an adverse effect on 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 such application; and

WHEREAS, based on the above, the Board finds that the applicant is entitled to deference on this application and satisfaction of the (a) finding is not required; and

WHEREAS, because the House of Worship is a non-profit organization and the variance is requested to further its non-profit mission, the finding set forth in ZR § 72-21(b) is not required in order to grant the subject variance; and

WHEREAS, as to ZR § 72-21(c), the applicant represents that the proposed enlargement will not alter the

essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property and will not be detrimental to the public welfare; and

WHEREAS, at hearing, the Board took a hard look at the concerns of Community Board 12, Bronx, including those regarding the massing of the proposed building, the prominence of office space within the proposed building, potential increases in traffic and parking demand and neighborhood character; and

WHEREAS, in response to questions from the Board, the applicant provided detailed renderings of the proposed building within the context of the area in order to show how it would fit into the existing streetscape and submitted a study of nearby community facilities; and

WHEREAS, the applicant reduced the size of office space and the multipurpose room in the proposed building and provided additional information regarding parking, accessibility of the proposed building and compliance with the New York City Construction Codes; and

WHEREAS, as revised, the applicant's proposed building reduces the effect of building massing on neighboring property owners by setting back the second and third stories, thereby enhancing the proposed building's circulation and efficiency as well; and

WHEREAS, with regard to traffic concerns, the applicant submits that the House of Worship will provide shuttle van service to pick up parishioners from a nearby subway station; and

WHEREAS, accordingly, based upon its review of the record, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created; and

WHEREAS, the Board finds that the hardship claimed as a ground for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, under ZR § 72-21(e), the applicant states that the School Building involves the minimum variance of bulk regulations necessary to accommodate the School's programmatic needs; and

WHEREAS, the applicant submits that a conforming enlargement would not allow the House of Worship sufficient space as-of-right to hold services for its growing congregation, as detailed in its programmatic-needs report and illustrated in plans for a conforming enlargement; and

WHEREAS, accordingly, the Board finds that the proposal represents the minimum variance necessary to provide relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion to grant and is therefore entitled to relief on the grounds of practical difficulty or unnecessary hardship; and

WHEREAS, the project is classified as an Unlisted



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# MINUTES

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action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16BSA007X, dated October 31, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by correspondence dated July 21, 2015, the Department of City Planning (“DCP”) states that the proposed activity complies with New York State’s Coastal Management Program as expressed in New York City’s approved Local Waterfront Revitalization Program and will be conducted in a manner consistent with such program; 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 does hereby *issue* 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 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to *permit*, on a site partially in an R6A zoning district and partially in an R5A zoning district, the enlargement of an existing two-story community-facility building used as a house of worship that does not comply with zoning regulations for lot coverage and rear yards, contrary to ZR §§ 24-11 and 24-36; *on condition* that all construction and site conditions shall comply with the drawings filed with this application marked “Received September 7, 2017”-Fourteen (14) sheets; and *on further condition*:

THAT operation of a shuttle van service shall be provided to transport parishioners to and from the subway station;

THAT the above condition shall be noted on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by September 26, 2021; and

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 26, 2017.

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## **1-96-BZ**

APPLICANT – New York City Board of Standards and Appeals.

SUBJECT – Application August 2, 2016 – Amendment for an extension of an existing school building to add 3<sup>rd</sup> and 4<sup>th</sup> floors. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue, southwest corner of Avenue “C”, Block 5369, Lot 6, Borough of Brooklyn.

## **COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for continued hearing.

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## **56-02-BZ**

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Application June 21, 2016 – Compliance Hearing of a previously approved Variance (§72-21) which permitted the construction of a four-story plus cellar school, which created non-compliances with respect to floor area ratio, lot coverage, side, front and rear yards, and which is contrary to ZR §24-11, §24-34, §24-35, §24-36 and §24-521. R5 zoning district.

PREMISES AFFECTED – 317 Dahill Road, Block 5369, Lot(s) 82, 83, 84 and 85 (tentative Lot 82), Borough of Brooklyn.

## **COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for continued hearing.

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## **330-14-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Jack Guindi, owner.

SUBJECT – Application December 30, 2014 – Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461); perimeter wall height (ZR 23-263) and less than the required minimum rear yard (ZR23-47); R3-2 zoning district.

PREMISES AFFECTED – 1746 East 21<sup>st</sup> Street, Block 6783, Lot 18, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for deferred decision.

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**179-15-BZ**

APPLICANT – Moshe M. Friedman, P.E., for 127 Taaffe LLC, owner.

SUBJECT – Application August 10, 2015 – Variance (§72-21) to permit the development of a four-story, multifamily residential building (UG2) contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 129 Taaffe Place, Block 1897, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.

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**REGULAR MEETING****TUESDAY AFTERNOON, SEPTEMBER 26, 2017****1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

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**ZONING CALENDAR****2016-4169-BZ**

APPLICANT – Sheldon Lobel, P.C., for 230 Boerum LLC, owner.

SUBJECT – Application April 15, 2016 – Variance (§72-21) to permit the construction of a residential building contrary to ZR §§42-00 & 42-10. M1-1 zoning district.

PREMISES AFFECTED – 230 Boerum Street, Block 3082, Lot 19, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for continued hearing.

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**2016-4276-BZ**

APPLICANT – Normandy Development and Construction LLC, for 333 Johnson Property Holdings, LLC, owner.

SUBJECT – Application October 31, 2016 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for Use Group 6B office use. M3-1 zoning district.

PREMISES AFFECTED – 333 Johnson Avenue, Block 3056, Lot(s) 200, 230 & 32, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

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**2017-102-BZ**

APPLICANT – Sheldon Lobel, P.C., for Abraham Chehebar, owner.

SUBJECT – Application April 5, 2017 – Special Permit (§73-622) to permit the enlargement of a single-family residence, contrary to floor area requirements (ZR §23-41); perimeter wall height (ZR §23-631); proposed front yard setback (ZR §23-45); and side yards (ZR §23-461). R2X (Special Ocean Parkway District).

PREMISES AFFECTED – 2015 East 5<sup>th</sup> Street, Block 7108, Lot 116, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.

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**2017-190-BZ**

APPLICANT – Fox Rothschild LLP, for Catherine Sheridan Housing Development Fund Company, Inc., owner.

SUBJECT – Application May 25, 2017 – Variance (§72-21) to permit the development of a 7-story building containing 92 affordable independent residences for seniors and a ground floor senior center contrary to ZR §§23-155 & 24-11 (maximum permitted FAR); ZR §24-33 (permitted obstruction in the required rear yards) and ZR §23-622 (maximum height and setbacks). R6B zoning district.

PREMISES AFFECTED – 23-11 31<sup>st</sup> Road, Block 569, Lot 17, Borough of Queens.

**COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.

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*Carlo Costanza, Acting Executive Director*

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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 102, No. 41

October 11, 2017

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

VACANT

VACANT

*Commissioners*

Carlo Costanza, *Acting Executive Director*

Loreal Monroe, *Counsel*

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New Case Filed Up to October 3, 2017  
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**2017-273-BZ**

975 East 24th Street, East side of East 24th Street between Avenue I and Avenue J, Block 07588, Lot(s) 0013, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single family residence contrary to ZR §23-141 (Floor Area Ratio and Open Space); ZR §23-461 (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district. R2 district.  
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**2017-275-BZ**

31 Bogardus Street, located on an unmapped street (Bogardus and Emmons Avenue, Block 08815, Lot(s) 412, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R5 zoning district. R5 district.  
-----

**2017-274-A**

31 Bogardus Street, located on an unmapped street (Bogardus and Emmons Avenue, Block 08815, Lot(s) 412, Borough of **Brooklyn, Community Board: 15**. General City Law 36 Waiver for the reconstruction of properties located on unmapped streets, damaged/destroyed by Hurricane Sandy, which are registered in the NYC Build it Back Program. R5 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 NOVEMBER 14, 2017, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 14, 2017, 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

#### 198-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 270 Park Avenue South LLC, owner; NYHRC, lessee.  
SUBJECT – Application March 17, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (*New York Health and Racquet Club*) which expired on February 10, 2019; Amendment to permit the expansion of the use at the cellar and first floor; Waiver of the Rules. C6-4A zoning district.

PREMISES AFFECTED – 270 Park Avenue South, Block 850, Lot 39, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### APPEALS CALENDAR

#### 2017-25-A thru 2017-28-A

APPLICANT – Gino O. Longo, R.A., for Thomas & Susan Aquafreda & Aquafreda LLC, owner.

SUBJECT – Application January 27, 2017 – Interpretative Appeal challenging the Department of Buildings determination.

PREMISES AFFECTED – 3094 and 3098 Dare Place and 3093 Casler Place, 3095 Casler Place, Block 5229, Lot(s) 487, 488, 489, p492, 500 Borough of Bronx.

**COMMUNITY BOARD #10BX**

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## REGULAR MEETING NOVEMBER 14, 2017, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 14, 2017, 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

#### 196-15-BZ

APPLICANT – Eric Palatnik, P.C., for Mercer Sq. LLC, owner; Gab & Aud, Inc., lessee.

SUBJECT – Application August 24, 2015 – Special Permit §73-36: to permit a physical culture establishment (*Haven Spa*) that will occupy the first floor of a 16-story residential building. C6-2 zoning district.

PREMISES AFFECTED – 250 Mercer Street aka 683 Broadway, Block 535, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #1M**

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#### 2016-4153-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Zichron Yehuda, owner.

SUBJECT – Application March 30, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (*Project Witness*) contrary to floor area ratio and lot coverage (§24-34), front yard (§24-34) and side yard (§24-35(a)). R5 zoning district.

PREMISES AFFECTED – 4701 19<sup>th</sup> Avenue, Block 5457, Lot 166, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

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#### 2016-4230-BZ

APPLICANT – Eric Palatnik, P.C., for Muslim American Society of Upper New York, owner.

SUBJECT – Application July 26, 2016 – Variance (§72-21) to allow the development of a House of Worship (UG 4A) contrary to floor area (ZR §33-123), street wall height and setback (ZR §33-432) and parking (ZR §36-21). C8-1 zoning district.

PREMISES AFFECTED – 1912 & 1920 Amethyst Street, Block 4254, Lot(s) 11, 12, 13, 14, Borough of Bronx.

**COMMUNITY BOARD #11BX**

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#### 2017-23-BZ

APPLICANT – Davidoff Hutcher & Cintron LLP, for Classon Avenue Housing Development Funding Company, Inc., owner; Unity Preparatory Charter School of Brooklyn, lessee.

SUBJECT – Application January 24, 2017 – Variance (§72-21) to allow the development of a UG 3 School (*Unity Preparatory Charter School*) contrary to ZR §§23-153 and 24-165 (maximum lot coverage, ZR §23-153 (permitted floor area, ZR §23-622 (maximum permitted height, maximum number of stories and required 15 foot initial setback and ZR 24-36 (required rear yard). R6B zoning district.

PREMISES AFFECTED – 32 Lexington Avenue aka 15 Quincy Street, Block 1969, Lot 33, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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*Carlo Costanza, Acting Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, OCTOBER 3, 2017 10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

### SPECIAL ORDER CALENDAR

#### 303-05-BZ

APPLICANT – Eric Palatnik, P.C., for 4000 East 102<sup>nd</sup> Street, Corp., owner.

SUBJECT – Application June 24, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the legalization of the second floor of an existing two story commercial structure for use as a physical culture establishment (*American Youth Dance Theatre*) which expires on August 8, 2016; Amendment seeking to legalize the facility's expansion on the first floor and to legalize a change in operator. R8B zoning district.

PREMISES AFFECTED – 428 East 75<sup>th</sup> Street, Block 1469, Lot 36, Borough of Brooklyn.

#### COMMUNITY BOARD #8BK

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 26, 2017, acting on Alteration Application No. 121436179, reads in pertinent part:

“Proposed Dance Studio and Storage (at Cellar) under UG 9, as defined by ZR 12-10, ... is not permitted as-of-right in R8B Zoning District is contrary to ZR 22-10”; and

WHEREAS, this is an application for an extension of term of a variance, previously approved by the Board, which expired August 8, 2016, and an amendment to permit the change of use from a physical culture establishment (“PCE”) to a dance studio in Use Group 9 and an expansion to portions of the first floor and cellar of the existing two-story commercial building, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on August 8, 2017, after due notice by publication in *The City Record*, and then to decision on October 3, 2017; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of East 75th Street, between First Avenue and York Avenue, in an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 36 feet of

frontage along East 75th Street, 102 feet of depth, 3,678 square feet of lot area and is occupied by a two-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 8, 2006, when, under the subject calendar number, the Board granted a variance to permit the legalization of a PCE on the second floor of the building for a term of ten (10) years, expiring August 8, 2016, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that the hours of operation be limited to 6:00 a.m. to 9:00 p.m., Monday through Friday, and 8:00 a.m. to 3:00 p.m., Saturday and Sunday, and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on August 10, 2007, under the subject calendar number, the Board issued a letter of substantial compliance to approve a change in operator to American Youth Dance Theater and minor modifications to the approved plans, including the relocation and reconfiguration of locker rooms, elimination of the massage therapy rooms, addition of a fifth exercise area and addition of retractable partitions; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term for ten (10) years and an amendment; and

WHEREAS, the amendment seeks to change the use from a PCE to a dance studio in Use Group 9 and an expansion to portions of the first floor and cellar of the subject building; and

WHEREAS, the applicant represents that the dance studio occupies 2,052 square feet of floor space in the cellar, 2,015 square feet of floor area on the first floor and 3,358 square feet of floor area on the second floor; and

WHEREAS, the facility operates with the following reduced hours of operation: Monday through Friday, 9:00 a.m. to 8:00 p.m., Saturday and Sunday, 9:00 a.m. to 3:00 p.m.; and

WHEREAS, at hearing, the Board questioned whether circumstances had changed, adequacy of egress, and compliance with conditions related to fire safety; and

WHEREAS, in response, the applicant provided additional information evidencing that the circumstances warranting the original grant still pertained to the subject site and submitted evidence demonstrating egress adequacy and compliance with the Board’s conditions; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term and the proposed amendments are appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated August 8, 2006, so that as amended this portion of the resolution reads: “to *grant* an extension of term for ten (10) years, expiring August 8, 2026, and to *permit* the change of use from a physical culture establishment to a dance studio in Use Group 9 and an expansion to portions of the first floor and cellar, contrary to ZR § 22-10; *on condition* that all

# MINUTES

work and site conditions shall comply with drawings filed with this application marked ‘Received September 15, 2017’-Seven (7) sheets; and *on further condition:*

THAT the term of the variance shall be limited to ten (10) years, expiring August 8, 2026;

THAT there shall be no change in ownership or operating control of the dance studio without prior application to and approval from the Board;

THAT the hours of operation shall be limited to 9:00 a.m. to 8:00 p.m., Monday through Friday, and 8:00 a.m. to 3:00 p.m., Saturday and Sunday;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 3, 2021;

THAT all fire protections measures indicated on the Board-approved plans shall be installed and maintained, as approved by the Department of Buildings;

THAT Local Law 58/87 compliance shall be as reviewed and approved by the Department of Buildings;

THAT all existing requirements shall be as reviewed and approved by the Department of Buildings;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 3, 2017.

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## 19-15-BZ

APPLICANT – Herrick, Feinstein LLP, for Andon Investment L.P., owner; Retro Fitness (dba Fitness of New York LLC), lessee.

SUBJECT – Application September 28, 2016 – Amendment of a previously approved Special Permit (§73-36) to permit a physical culture establishment (*Retro Fitness*) to be located at second-story level (plus entrance at ground-floor level) of a new two-story building. R7-1/C2-2 zoning district.

PREMISES AFFECTED – 92-77 Queens Boulevard, Block 2075, Lot 39, Borough of Queens.

## COMMUNITY BOARD #6Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 3, 2017, acting on New Building Application No. 420944848, reads in pertinent part:

“Proposed Physical Culture Establishment on the 1st floor and 2nd floor does not conform to BSA Approval BZ 19-15. Obtain BSA approval for New layout”; and

WHEREAS, this is an application for an amendment to a special permit, previously granted by the Board, allowing the operation of a physical culture establishment (“PCE”) on the first and second floor of a four-story, with cellar, mixed-use building; and

WHEREAS, a public hearing was held on this application on July 25, 2017, after due notice by publication in *The City Record*, and then to decision on October 3, 2017; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

WHEREAS, the subject site is a through lot fronting on Queens Boulevard and 93rd Street, between 62nd Avenue and the Long Island Expressway, in an R7-1 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 105 feet of frontage along Queens Boulevard, 100 feet of frontage along 93rd Street, 151 feet of depth, 20,634 square feet of lot area and is occupied by a four-story, with cellar, mixed-use commercial and hotel building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 18, 2015, when, under the subject calendar number, the Board granted a special permit to allow the operation of a PCE on the first and second floors of the subject building; and

WHEREAS, the applicant now seeks an amendment to legalize an increase in the amount of floor area used by the PCE on the first and second floors with additional off-street parking; and

WHEREAS, the applicant submits that the PCE will total approximately 19,690 square feet of floor area as follows: 5,585 on the first floor, used for the main entrance, reception and lobby area, lockers and showers, an open fitness area and children’s activity area, and 14,105 square feet of floor area on the second floor, housing an open fitness area with space for cardiovascular fitness and strength training, locker rooms with showers and a multipurpose area for stretching, abdominal work and yoga classes; and

WHEREAS, the applicant represents that accessibility, fire-safety and sound-attenuation measures comply with the Board’s prior grant; and

WHEREAS, at hearing, regarding sound attenuation, the applicant explained that the demising wall between the restaurant and the PCE on the first floor is a double-layer wall with insulation in between; and

WHEREAS, based upon its review of the record, the Board finds the requested amendment appropriate with



# MINUTES

certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated September 18, 2015, so that as amended this portion of the resolution shall read: “to *permit* an expansion of the physical culture establishment on the first and second floors; *on condition* that the use and operation of the site shall substantially conform to drawings filed with this application marked ‘Received October 4, 2017’- Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire September 18, 2025;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 3, 2021;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by September 18, 2019;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 3, 2017.

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## 617-56-BZ

APPLICANT – Kenneth H. Koons, AIA, for John O’Dwyer, owner.

SUBJECT – Application June 20, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of a transient parking lot (UG 8) which is set to expire on September 27, 2017. C2-3/R6 & C1-3 zoning district.

PREMISES AFFECTED – 3120 Albany Crescent, Block 3267, Lot 15, Borough of Bronx.

## COMMUNITY BOARD #15BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**ACTION OF THE BOARD** – Laid over to December

5, 2017, at 10 A.M. for decision, hearing closed.

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## 634-84-BZ

APPLICANT – Law Office of Lyra J. Altman, for Kol Israel Congregation and Center, owner.

SUBJECT – Application June 3, 2016 – Amendment of a previously approved Variance (§72-21) which permitted the erection of a two (2) story and cellar community facility (UG 4) building which provided less than the required front yard and required parking. The amendment seeks to permit the enlargement of the synagogue (*Kol Israel Congregation & Center*) contrary to floor area, lot coverage, open space and accessory off-street parking. R2 zoning district.

PREMISES AFFECTED – 2501-2509 Avenue K aka 3211 Bedford Avenue, Block 7607, Lot(s) 6 & 8, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for continued hearing.

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## 866-85-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Anne Marie Cicciu Inc., owner.

SUBJECT – Application June 12, 2017 – Extension of Term of a Variance (§72-21) for a UG8 open parking lot and storage of motor vehicles which expired on May 12, 2017. R7-1 zoning district.

PREMISES AFFECTED – 2338 Cambreleng Avenue, Block 3089, Lot 22, Borough of Bronx.

## COMMUNITY BOARD #6BX

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.

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## 21-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aquila Realty Company, Inc., owner; Hutch Restaurant Associates LP dba Burger Brother, lessee.

SUBJECT – Application October 13, 2015 – Extension of Term & Amendment (73-243) request an extension of the term of a previously granted special permit that legalized an eating and drinking establishment with a drive-through at the subject premises and an Amendment to approved hours of operation. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roebbling Avenue aka 1590 Hutchinson River Parkway, Southeasterly corner of Roebbling Avenue and Hutchinson River Parkway, Block 5386, Lot 1, Borough of Bronx.

## COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for adjourned hearing.

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## APPEALS CALENDAR

### 2017-106-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Sharrotts Realty LLC, owner.

SUBJECT – Application April 13, 2017 – Proposed construction of a warehouse building not fronting on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. M3-1 (SRD) zoning district.

PREMISES AFFECTED – 721 Sharrotts Road, Block 7385, Lot 215, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Staten Island Deputy Borough Commissioner, dated April 3, 2017, acting on Application No. 520263107 reads in pertinent part:

The street giving access to the proposed building is not duly placed on the official map of the City of New York therefore:

- A) No certificate of occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street of frontage space contrary to Sec 501.3.1 of the 2014 NYC Building Code; and

WHEREAS, this is an application to permit the construction of a one-story plus mezzanine Use Group (“UG”) 17 coffee roasting facility and UG 16 warehouse that does not front on a mapped street, contrary to Section 36 of the General City Law (“GCL”); and

WHEREAS, a public hearing was held on this application on October 3, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the subject lot is located on the north side of Sharrotts Road, west of Arthur Kill Road, in an M3-1 zoning district, in the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 183 feet of frontage along Sharrotts Road, 340 feet of depth, 70,312 square feet of lot area and is currently occupied by one-story frame building and concrete pad with a covered structure proposed to be demolished to facilitate the proposed development; and

WHEREAS, the applicant seeks the subject relief because the proposed building will front on Sharrotts Road, which is not duly placed on the official map of the City of New York; and

WHEREAS, the applicant submits that the proposed development complies with all zoning regulations applicable in

the underlying zoning district and the Special South Richmond Development District; to wit, the proposed building will have approximately 39,500 square feet of floor area, a floor area ratio (“FAR”) of 0.57, include four loading births and that 29 accessory off-street parking spaces will be provided at the site; and

WHEREAS, the City does not have title to the street, but Sharrotts Road is paved and improved at a width 40 feet at the site and a Corporation Counsel Opinion of Dedication, dated January 29, 1996, as dedicated to public use as a public street; and

WHEREAS, Sharrotts Road is accessible from Arthur Kill Road, a paved legally mapped street; and

WHEREAS, the applicant notes that pursuant to Fire Code Section 503.2.10, buildings fronting on a fire apparatus access road with an unobstructed width of less than 34 feet must be fully sprinklered and, though Sharrotts Road is paved to a width of 40 feet at the subject site, the proposed building will be fully sprinklered; and

WHEREAS, the Board has determined that the applicant has submitted adequate evidence to warrant approval of the application subject to certain conditions set forth herein.

*Therefore it is Resolved*, that the decision of the DOB dated April 3, 2017, acting on DOB Application No. 520263107 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 13, 2017”- One (1) sheet; that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the dwelling shall be fully sprinklered, as indicated on the BSA-approved plans;

THAT curb and pavement improvements for the site shall be completed in substantial compliance with the Builder’s Pavement Plan;

THAT all curbs, curb cuts, sidewalks, pavement, street lighting and street signage shall be designed and constructed in accordance with the requirements of the New York City Department of Transportation (“DOT”) and be subject to DOT review and approval;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by DOB;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 3, 2017.

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## 266-07-A

APPLICANT – Law Office of Lyra J. Altman, for 1610 Avenue S LLC, owner.

SUBJECT – Application August 15, 2016 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on July 15, 2016. R4-1 zoning district.

PREMISES AFFECTED – 1602-1610 Avenue S aka 1901-1911 East 16<sup>th</sup> Street, Block 7295, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M. for continued hearing.

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## 235-15-A & 259-15-A

APPLICANT – Sheldon Lobel, P.C., for Richard Roel, owner.

SUBJECT – Applications October 7, 2015 & November 18, 2015 – Proposed construction of building that does not provide adequate frontage on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R2A zoning district.

PREMISES AFFECTED – 8 Cornell Lane, Block 8129, Lot 156, Borough of Queens.

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3  
Negative: .....0

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M. for decision, hearing closed.

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## 2016-4329-A

APPLICANT – Richard G. Leland, for Baychester Retail III LLC, owner.

SUBJECT – Application November 10, 2016 – Administrative appeal challenging the Department of Buildings' final determination dated October 25, 2016, to permit the installation of 54 individual signs at the subject property. C7 zoning district.

PREMISES AFFECTED – 2001 Bartow Avenue, Block 5141, Lot 101, Borough of Bronx.

### COMMUNITY BOARD #10BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3  
Negative: .....0

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M. for decision, hearing closed.

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## ZONING CALENDAR

### 178-14-BZ

#### CEQR #15-BSA-036K

APPLICANT – Sheldon Lobel, P.C., for NLO Holding Corp., owner.

SUBJECT – Application July 24, 2014 – Variance (§72-21) seek a waiver of Section 22-10 ZR to permit a Use Group 6 retail use on the ground floor with accessory cellar storage a proposed four-story, two unit building located with an R6A zoning district.

PREMISES AFFECTED – 263 McGuinness Boulevard aka 261 McGuinness Boulevard, Block 2559, Lot 32, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 7, 2016, acting on Department of Buildings (“DOB”) Application No. 320917193 reads in pertinent part:

Proposed new building new four (4) story mixed 2-family building with ground floor retail not permitted in an R6A district, contrary to ZR 22-00; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an R6A zoning district, Use Group (“UG”) 6 commercial use on the ground floor of a proposed mixed-use commercial and residential building, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on February 28, 2017, after due notice by publication in *The City Record*, with a continued hearing on April 4, 2017, and then to decision on October 3, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was in receipt of one objection to the proposal on the basis that the neighborhood is overcrowded; and

WHEREAS, the subject site is located on the southwest corner of McGuinness Boulevard and Kent Avenue, in an R6A zoning district, in Brooklyn; and

WHEREAS, the site has approximately 87 feet of frontage along McGuinness Boulevard, 11 feet of frontage along Kent Avenue, 1,298 square feet of lot area and is currently vacant; and

WHEREAS, the applicant proposes to develop the site with a four-story building with UG 6 commercial use on the ground floor and two residential duplexes above; and

WHEREAS, pursuant to ZR § 22-10, UG 6 uses are

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not permitted within R6A zoning districts and, thus, the applicant seeks the subject relief; and

WHEREAS, the applicant represents that the proposed building will have a total of 3,731 square feet of floor area and will comply with all bulk requirements applicable in the underlying R6A zoning district; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the size, shape and narrowness of the lot are unique conditions that create a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations, specifically, utilizing the ground floor of the proposed building for conforming residential use; and

WHEREAS, the applicant submits that, based on a study of the 576 lots within 1,000 feet of the subject site (the "Study Area"), 30 lots (5.2 percent) have a lot area equal to or less than that of the subject site and only one of those sites (0.2 percent) also has shorter frontage than the subject site; and

WHEREAS, of those 30 lots, the applicant observes that 13 (43 percent) include commercial floor area and that the one site with shorter frontage is utilized as a parking lot; and

WHEREAS, the applicant further submits that the curved lot line fronting McGuinness Boulevard results in an irregularly shaped lot that ranges in width from approximately 11 feet along the northern lot line to nearly 19 feet at the southern lot line and that there are only nine other irregular lots (1.6 percent) within the Study Area, only one of which is smaller in lot area than the subject site; and

WHEREAS, in light of the foregoing, the Board finds that the size, shape and narrowness of the site are unique physical conditions that create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, with regards to the (b) finding, the applicant submits that there is no reasonable possibility that a conforming development at the subject site will bring a reasonable return and, in support of that contention, submitted a financial analysis for (1) a four-story as-of-right residential building with a floor area ratio ("FAR") of 2.99 (the "AOR Development"); (2) a four-story residential building with an FAR of 2.88 and five dwelling units that would require waivers of ZR §§ 23-662 and 23-33 (the "Lesser Variance") and (3) the subject proposal; and

WHEREAS, the financial analyses submitted with the application conclude that only the subject proposal would generate a reasonable return, approximately 0.9 percent; and

WHEREAS, upon review of the applicant's submissions, the Board finds, in accordance with ZR § 72-21(b), that due to the site's unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the subject proposal will not substantially impair the appropriate use or development of adjacent properties and not be detrimental to the public welfare, in accordance with ZR § 72-21(c);

specifically, the applicant avers that ground floor commercial use is consistent with the character of the neighborhood, particularly along McGuinness Boulevard, where two gas stations are located within 400 feet of premises, and that, further, there is a C2-4 commercial overlap located immediately adjacent to the site to the south; and

WHEREAS, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents and the Board finds that the hardship claimed as grounds for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant submits that the subject proposal is the minimum variance necessary to afford relief because it is the only scenario that provides a reasonable return; and

WHEREAS, accordingly, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 15-BSA-036K, dated January 11, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by letter dated March 1, 2017, the New York City Department of Environmental Preservation ("DEP") states that, based on the results of the air quality analysis, it was determined that the proposal would not result in any potential for significant adverse impacts in regards to air quality; and

WHEREAS, by communication dated September 28, 2017, the New York City Department of City Planning ("DCP") Waterfront and Open Space Division states that it completed review of the project for consistency with the policies and intent of the New York City Waterfront Revitalization Program ("WRP") under WRP # 17-012 and finds that the action will not substantially hinder the achievement of any WRP policy and is consistent with the WRP policies; and

WHEREAS, by letter dated October 27, 2017, DEP states that it reviewed the August 2017 Revised Remedial Action Plan ("RAP") and Construction Health and Safety Plan ("CHASP") for the proposal and found them

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acceptable; DEP additionally requested that a Professional Engineer-certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented—be submitted to DEP for review and approval upon the completion of the project; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located within an R6A zoning district, the construction of a four-story mixed-use residential and commercial building with Use Group 6 commercial use on the ground floor, contrary to ZR § 22-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 17, 2017”-Thirteen (13) sheets; and *on further condition*:

THAT a Professional Engineer-certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented—be submitted to DEP for review and approval upon the completion of the project;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 3, 2017.

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## 2016-4176-BZ

APPLICANT – Akerman, LLP, for Islamic Center of Jackson Heights, Inc., owner.

SUBJECT – Application April 20, 2017 – Variance (§72-21) to permit the construction of a new three-story house of worship (UG 4A) building contrary to ZR §24-34 (front yard) and ZR §24-35 (side yard) requirements. R4 zoning district.

PREMISES AFFECTED – 78-04 31<sup>st</sup> Avenue, Block 1149, Lot 1, Borough of Queens.

## COMMUNITY BOARD #3Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”) dated April 26, 2017, acting on DOB Application No. 421200159 reads in pertinent part:

1. Proposed front yard along 31<sup>st</sup> Avenue is less than required pursuant to ZR 24-34;
2. Proposed front yard along 78<sup>th</sup> Street is less than required pursuant to ZR 24-34;
3. Proposed side yards are less than required by ZR 24-35; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located within an R4 zoning district, the construction of a Use Group 4 house of worship that does not comply with the front yard and side yard regulations set forth in ZR §§ 24-34 and 24-35; and

WHEREAS, this application is filed on behalf of the Islamic Center of Jackson Heights (“ICJH”); and

WHEREAS, a public hearing was held on this application on May 23, 2017, after due notice by publication in *The City Record*, with a continued hearing on July 25, 2017, and then to decision on October 3, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

WHEREAS, New York City Councilmember Daniel Dromm submitted a letter, dated October 7, 2016, in support of this application; and

WHEREAS, the Board is additionally in receipt of approximately three letters in support of the application and 27 letters of objection, citing concerns with regards to the adverse effects the proposal will have on noise, traffic congestion and parking in the immediate area, the present handling of refuse at the site and the insufficient provision of open space at the site for effective drainage and absorption of flood waters; and

WHEREAS, the subject site is located on the southeast corner of 31st Avenue and 78th Street, in an R4 zoning district, in Queens; and

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WHEREAS, the site has approximately 38 feet of frontage along 31st Avenue, 89 feet of frontage along 78th Street, 3,382 square feet of lot area and is currently occupied by a two-story-plus basement mixed-use community facility and residential building and a one-story accessory garage; and

WHEREAS, the applicant represents that the existing building on the site was built in or around 1930 and utilized as a two-family dwelling until 2001 when the applicant purchased the site and converted the first floor and basement levels to a Use Group 4 house of worship; and

WHEREAS, Certificate of Occupancy No. 401252951F issued for the subject site and effective as of April 16, 2010, indicates a two-story building with a Use Group 4 house of worship in the basement and first floor and a Use Group 2 single-family dwelling on the second floor; and

WHEREAS, the applicant submits that at the time of the conversion, the existing building could accommodate the existing congregation, which numbered approximately 20 members, but as the congregation has grown to over 200 members, the existing space—totaling approximately 1,994 square feet of floor space—has proven insufficient; that, as a result, members of the congregation have gathered outside the existing building during prayer services and speakers have been set up outside the building to enable those congregants to hear the sermon and that this practice, rendered necessary by the spatial constraints of the existing building, is the source of neighbors' complaints regarding noise and traffic congestion at the site; and

WHEREAS, accordingly, the applicant seeks to demolish the existing building and construct a three-story plus cellar Use Group 4 house of worship with a 10 foot front yard fronting 31st Avenue, a 5 foot front yard fronting 78th Street and side yards measuring 0 feet and 5 feet; and

WHEREAS, at the subject site, two front yards measuring at least 15 feet each are required pursuant to ZR § 24-34 and two side yards with a minimum required width of 8 feet are required pursuant to ZR § 24-35; and

WHEREAS, accordingly, the applicant seeks the subject relief; and

WHEREAS, the cellar of the proposed building will contain a large multi-purpose room utilized for women's prayer services and religious instruction on weekends and the first through third floors of the proposed building will contain male prayer halls with vestibules outside for congregants to remove their shoes and socialize immediately prior to prayer services; offices are also provided on each floor for use by the congregation's imam, clerical staff and for one-on-one religious instruction; and

WHEREAS, the applicant submits that, pursuant to Islamic tradition, while men and women may enter a house of worship through the same entrances, they must pray in separate prayer halls and that the provision of additional prayer hall space will alleviate the need to utilize the sidewalks and area outside of the existing building for congregant overflow; and

WHEREAS, the applicant submits that each of the

prayer halls located on the first through third floors will have a maximum capacity of 75 persons and the cellar level multi-purpose room will accommodate a maximum of 99 persons, for a total occupancy capacity for the proposed building of 324 persons, sufficient to meet the current needs of the congregation; and

WHEREAS, in response to questions from the Board, the applicant affirmed that the roof of the proposed building will not be used for any purposes aside from building maintenance and submitted copies of Zoning Resolution and Construction Code Determinations from DOB approving, respectively, two minarets and one ornamental dome on the proposed building as permitted obstructions in accordance with ZR § 24-51 and the calculation of prayer space occupancy in the proposed building at a rate of 15 square feet of net floor area per occupant; and

WHEREAS, the applicant submits that the existing building was originally designed and constructed for residential occupancy and, thus, lacks adequate internal circulation space, space for congregant assembly, prayer and multi-purpose rooms for vital religious services, i.e. weddings or funerals, and, further, cannot meet modern accessibility standards; additionally, the applicant submits that the narrowness of the zoning lot poses practical difficulty or unnecessary hardship in strictly complying with the bulk provisions of the Zoning Resolution, specifically, the application of applicable front and side yard requirements would result in a building having a floorplate of only 990 square feet, a maximum width of 15 feet and assembly spaces with a maximum width of between 12 and 13 feet, a size that would accommodate prayer halls on the first through third floors with a maximum capacity of 11 persons each and would require the elimination of offices and programmatically required vestibules outside of the prayer halls on the second and third floors; and

WHEREAS, in addition, the applicant notes and the Board recognizes that the ICJH, as a religious institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance application; specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), an educational or religious institution's zoning application is to be granted unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of a neighborhood are sufficient grounds for the denial of such application; and

WHEREAS, based on the above, the Board finds that the applicant is entitled to deference on this application and satisfaction of the (a) finding is not required; and

WHEREAS, additionally, because the ICJH is a non-profit religious organization and the variance is needed to further its not-for-profit mission, the finding set forth in ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that, pursuant to ZR § 72-21(c), the variance, if granted, will not alter the character of the neighborhood, impair the appropriate use or

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development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, specifically, the applicant submits that the proposed community facility is permitted in the underlying zoning district as-of-right; that the proposed Use Group 4 house of worship complies with bulk regulations applicable in the district relating to floor area, floor area ratio, lot coverage, and height and setback, among others; that the majority of corner lots located within 400 feet of the subject site have non-compliant front yards, including all three other sites located at the subject intersection of 31st Avenue and 78th Street, which all have two foot front yards fronting 78th Street; and

WHEREAS, in addition, the applicants submits that construction of the proposed building will allay noise and pedestrian congestion that presently results from the overcrowding of the existing building and need for congregants to gather outside; the new building will also incorporate sound attenuation measures in the window and wall construction to further mitigate noise from the site; and

WHEREAS, with regards to parking, the applicant submits that approximately 92 percent of its congregants live within a half mile of the subject site and are, thus, unlikely to arrive to the site by car; the applicant also provided an affidavit from a representative of the ICJH attesting to the fact that only 30 percent of congregant households located beyond a half mile of the site typically drive to the site and the remainder utilize public transportation; further, the applicant completed a survey of parking available on the surrounding streets on Friday afternoons, the time at which religious services are most heavily attended, identifying 19 on-street parking spaces, which the applicant submits, are sufficient to accommodate members who drive to the site; and

WHEREAS, the applicant notes that a waiver of parking for locally oriented houses of worship is available by certification from the Chairperson of the City Planning Commission provided that, *inter alia*, seventy-five percent or more of the congregants reside within a three-quarter mile radius; and

WHEREAS, the applicant also proposed to provide two parking monitors during peak hours—one along 78th Street and another along 31st Avenue—to ensure that neighbor's driveways are not blocked by members of the congregation and that congregants do not double park in front of the site; and

WHEREAS, with regards to the handling of refuse at the site, the applicant notes that there is no preparation of food onsite, but that all refuse will be stored in a trash room proposed in the cellar of the proposed building and travel by elevator to the ground floor and out to the northern property line fronting 31st Avenue for pickup; and

WHEREAS, in light of the foregoing, the Board finds that the proposal will not alter the essential character of the surrounding neighborhood, nor impair the use or development of adjacent properties, and not be detrimental to the public welfare; and

WHEREAS, the applicant submits and the Board finds

that the practical difficulties herein complained of were not created by the owner or a predecessor in title; and

WHEREAS, consistent with ZR § 72-21(e), the applicant state that the requested yard waivers are the minimum necessary to accommodate its program at the site and, in support of that contention, submitted a lesser variance scenario in which the proposed site provides two 10 foot front yards and one 8 foot side yard, which results in a building having a maximum width of 20 feet and, because of the need to accommodate interior stairs and elevator core, prayer spaces that are too small to accommodate the applicant's existing congregation; and

WHEREAS, the Board finds that this proposal is the minimum necessary to allow the applicant to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 16BSA112Q, dated April 21, 2016; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site located within an R4 zoning district, the construction of a Use Group 4 house of worship that does not comply with the front yard and side yard regulations set forth in ZR §§ 24-34 and 24-35; *on condition* that all work will substantially conform to drawings filed with this application marked "Received September 19, 2017"- Six (6) sheets and "Received October 3, 2017"- Nine (9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a front yard with a minimum depth of 10 feet fronting 31st Avenue, a front yard with a minimum depth of 5 feet fronting 78th Street and side yards with minimum depths of 0 feet and 5 feet;

THAT no speaker or amplified sound system shall be permitted outside of the building;

THAT people shall not be permitted to congregate in the front yards of the site before or after services;

THAT site managers and/or parking monitors shall be utilized to prevent congregating in the front yards of the site and prevent double parking at the site;

THAT the doors to the building shall remain closed during functions to protect surrounding neighbors from noise;

THAT the above conditions shall be listed on the Certificate of Occupancy;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a Certificate of Occupancy shall be obtained within four (4) years, by October 3, 2021;

# MINUTES

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 shall be considered approved only for the portion 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, October 3, 2017.

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## 2017-11-BZ

### CEQR #17-BSA-065X

APPLICANT – Sheldon Lobel, P.C., for MHA, LLC, owner.

SUBJECT – Application January 13, 2017 – Special Permit (§73-36) to operate a physical culture establishment (ILOVEKICKBOXING) within a portion of the ground floor of an existing one-story commercial building. C2-4/R7A zoning district.

PREMISES AFFECTED – 3261 Westchester Avenue, Block 4248, Lot 56, Borough of Bronx.

### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 26, 2017, acting on New Building Application No. 220220473, reads in pertinent part:

“The proposed physical culture establishment is contrary to ZR Section 32-10 and requires a special permit (73-36) from the Board of Standards and Appeals”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site partially in an R7-1 (C2-4) zoning district and partially in an R7-1 zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of a one-story, with cellar, commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 8, 2017, after due notice by publication in *The City Record*, and then to decision on October 3, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 10, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Westchester Avenue and Colonial

Avenue, partially in an R7-1 (C2-4) zoning district and partially in an R7-1 zoning district, in the Bronx; and

WHEREAS, the site has approximately 78 feet of frontage along Westchester Avenue, 104 feet of frontage along Colonial Avenue, 9,446 square feet of lot area and is occupied by a one-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a



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# MINUTES

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special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 2,588 square feet of floor area on the first floor, including a training area, locker rooms with bathrooms, a break room and storage; and

WHEREAS, the PCE has been in operation as iLoveKickboxing.com since April 2017 with the following hours of operation: Monday through Saturday, 6:00 a.m. to 10:00 p.m., and Sunday, 6:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will not impair the essential character or the future use or development of the surrounding area, that the subject site is located directly adjacent to an elevated rail line on a heavily traveled thoroughfare with a vibrant mix of uses, including retailing stores, eating and drinking establishments, pharmacies and commercial offices; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including sound-reducing drywall, have been provided within the space so as to not disturb other tenants in the building; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides facilities for classes, instruction and programs relating to physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in

the entire PCE space; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-065X, dated January 13, 2017; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *legalize*, on a site partially in an R7-1 (C2-4) zoning district and partially in an R7-1 zoning district, the operation of a physical culture establishment on a portion of the first floor of a one-story, with cellar, commercial building, contrary to ZR § 32-10; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Received September 14, 2017” – Four (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring April 1, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be maintained in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the

# MINUTES

certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by October 3, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 3, 2017.

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## **215-14-BZ/214-14-A**

APPLICANT – Sheldon Lobel, P.C., for Fernando Fernandez, owner.

SUBJECT – Application September 3, 2014 – Variance (§72-21) to permit four-three-story three family semi-detached residential building at the existing premises in an R5 zoning district, also building in the bed of mapped street pursuant to GCL 35. R5 zoning district.

PREMISES AFFECTED – 50-11 & 50-15 103<sup>rd</sup> Street, 103-10 & 103-16 Alstyn Avenue, Block 1930, Lot 50, Borough of Queens.

## **COMMUNITY BOARD #4Q**

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for adjourned hearing.

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## **263-14-BZ**

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application October 24, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141(b)); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 1601 Oriental Boulevard, Block 8757, Lot 23, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for adjourned hearing.

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## **20-15-BZ**

APPLICANT – Alexander Levkovich, for Steven Israel, owner; Mishkan Yerushalayim, lessee.

SUBJECT – Application February 5, 2015 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship community facility at the premises contrary to floor area ratio, open space, lot coverage, wall height, front yard, side yards, rear yard, sky exposure plane, and parking regulations. R4 (OP) zoning district.

PREMISES AFFECTED – 461 Avenue X, Block 7180, Lot 75, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for adjourned hearing.

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## **22-15-BZ**

APPLICANT – Simons & Wright LLC, for 219 26<sup>th</sup> Street, LLC, owner.

SUBJECT – Application February 5, 2015 – Variance (72-21) to proposed to construct a residential building on a small lot at premises, located in an M1-1D zoning district, contrary to (Section 42-00) not permitted as of right.

PREMISES AFFECTED – 219 26<sup>th</sup> Street, Block 655, Lot 55, Borough of Brooklyn.

## **COMMUNITY BOARD #7BK**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M. for decision, hearing closed.

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## **234-15-BZ**

APPLICANT – Sarah Tadros Awad, for Nawal Tosson, owner.

SUBJECT – Application October 7, 2015 – Special Permit (§73-622) to permit the legalization of an enlargement and the conversion to a two family home of an existing single-family, semi-detached residential building contrary to floor area ZR 23-141 and perimeter wall height 23-631(b). R4-1 zoning district.

PREMISES AFFECTED – 1223 67<sup>th</sup> Street, Block 5760, Lot 70, Borough of Brooklyn.

## **COMMUNITY BOARD #10BK**

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.

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## **2016-4271-BZ**

APPLICANT – Eric Palatnik, P.C., for 93 Amherst Street LLC, owner.

SUBJECT – Application October 21, 2016 – Special Permit (§73-622) for the enlargement of an existing one family home contrary to floor area, open space and lot coverage (ZR 23-141) and side yard (ZR 23-461). R3-1 zoning district.

PREMISES AFFECTED – 201 Hampton Avenue, Block 8727, Lot 30, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.

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# MINUTES

## 2016-4340-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Flushing Point Holding, LLC, owner.

SUBJECT – Application November 23, 2016 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C4-2 zoning district.

PREMISES AFFECTED – 131-02 40<sup>th</sup> Road, Block 5066, Lot(s) 110-150, Borough of Queens.

### COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M. for decision, hearing closed.

## REGULAR MEETING

TUESDAY AFTERNOON, OCTOBER 3, 2017

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown.

## ZONING CALENDAR

### 111-15-BZ

APPLICANT – Eric Palatnik, P.C., for 98 Third Avenue Realty LLC c/o Bill Wolf Petroleum Corporation, owner.

SUBJECT – Application October 3, 2017 – Variance (§72-21) to permit a six-story mixed use building with ground floor commercial space and residential space on the upper floors a contrary to ZR section 42-00. M1-2 zoning district.

PREMISES AFFECTED – 98 Third Avenue, Block 388, Lot 31, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for continued hearing.

### 2016-4295-BZ

APPLICANT – Law Office of Lyra J. Altman, for Beverly Paneth and Michael Paneth, owners.

SUBJECT – Application November 1, 2016 – Special Permit (73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yard requirements (ZR 23-461 & ZR 23-48) and less than the minimum rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1074 East 24<sup>th</sup> Street, Block 7605, Lot 76, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for continued hearing.

### 2016-4333-BZ

APPLICANT – Slater & Beckerman P.C., for Grant Development Associates, L.P., owner.

SUBJECT – Application November 18, 2016 – Special Permit (§73-433) to permit the reduction of 35 accessory off-street parking spaces required for 78 existing income-restricted housing units. R7D zoning district.

PREMISES AFFECTED – 1350 Bedford Avenue, Block 1205, Lot 28, Borough of Brooklyn.

### COMMUNITY BOARD #8BK

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.

### 2017-67-BZ

APPLICANT – Salim Abraham Jr., for Safanaya Matatov, owner.

SUBJECT – Application March 21, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-141); perimeter wall height (ZR §23-631) and side yards (ZR §23-461). R3-2 zoning district.

PREMISES AFFECTED – 2714 Avenue R, Block 6833, Lot 7, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for continued hearing.

*Carlo Costanza, Acting Executive Director*

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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 102, Nos. 42-43

October 25, 2017

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

VACANT

*Commissioners*

Carlo Costanza, *Executive Director*

Loreal Monroe, *Counsel*

---

<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>

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# DOCKETS

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New Case Filed Up to October 17, 2017

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**2017-276-A**

96 Industrial Loop, , Block 07206, Lot(s) 176, Borough of **Staten Island, Community Board: 3**. Proposed construction of a commercial building not fronting on a legally mapped street, contrary to General City Law 36. M3-1 zoning district district.

-----

**2017-277-BZ**

1022 East 23rd Street, West Side of East 23rd Street between Avenue J and Avenue K, Block 07604, Lot(s) 0052, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single-family residence contrary to ZR §23-141 (Floor Area Ratio and Open Space); and ZR §23-47 (Rear Yard). R2 zoning district. R2 district.

-----

**2017-278-BZ**

400 Fifth Avenue, South east corner of 5th Avenue and West 36th Street, Block 00838, Lot(s) 7501, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the legalization of a physical culture establishment (Chuan Body & Soul Spa) on the fourth floor of a 59-story building. C5-3 (MID) zoning district. C5-3 district.

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**2017-279-BZ**

97 N. 10th Street, Lot is East side of Wythe Avenue between N. 10th and 11th Space is along N 10th Frontage, Block 02296, Lot(s) 4, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to allow the legalization of a physical culture establishment (The Bar Method) on a portion of the second floor of an existing building contrary to ZR §42-10 . M1-2 zoning district. M1-2 district.

-----

**2017-280-BZ**

33 Bond Street, East Side of Bond Street between Schermerhorn Street and Livingston Street, Block 00166, Lot(s) 0001, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to allow the legalization of a physical culture establishment (Chelsea Piers) to be located on the cellar and first floor levels of a new building contrary to ZR §32-10. C6-4 Special Downtown Brooklyn purpose district. C6-4 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  
NOVEMBER 21, 2017, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, November 21, 2017, 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**

**499-29-BZ**

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum, owner.

SUBJECT – Application September 9, 2016 – Extension of Term and Waiver (11-411) to extend the term of the previously granted variance allowing the operation n Automotive Service Station (UG 16B) which expired on March 23, 2016; Waiver of the Rules. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 248-70 Horace Harding Expressway, Block 8276, Lot 660, Borough of Queens.

**COMMUNITY BOARD #11Q**

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**418-50-BZ**

APPLICANT – Law Office of Stuart Klein, for WOTC Tenants’ Corp., owner.

SUBJECT – Application September 12, 2017 – Compliance Hearing.

PREMISES AFFECTED – 73-69 217<sup>th</sup> Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74<sup>th</sup> Avenue (Block 7754, Lot 3); 73-10 220<sup>th</sup> Street (Block 7755, Lot 3), Borough of Queens.

**COMMUNITY BOARD #11Q**

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**111-01-BZ**

APPLICANT – Eric Palatnik, P.C., for Barge Realty LLC, owner; Briad Wenco, LLC, lessee.

SUBJECT – Application February 10, 2017 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive-thru facility at an eating and drinking establishment (Wendy's) which expired February 1, 2016; Amendment for minor modification to previous approved plans; Waiver of the Rules. C1-2 (R5) zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, Block 8108, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #17BK**

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**256-02-BZ**

APPLICANT – Friedman & Gotbaum LLP by Shelly S. Friedman, Esq., for Red Hook 160 LLC, owner.

SUBJECT – Application May 27, 2016 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the re-use of a vacant six story manufacturing building, and the addition of three floors, for residential (UG2) use, which expired on May 1, 2016. M2-1 zoning district.

PREMISES AFFECTED – 160 Imlay Street, Block 515, Lot 75, Borough of Brooklyn.

**COMMUNITY BOARD #6BK**

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**189-09-BZ**

APPLICANT – Eric Palatnik, P.C., for Noor Al Islam Society, owner.

SUBJECT – Application June 10, 2015 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the legalization of an existing mosque and Sunday school (Nor Al-Islam Society), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street, which expired on May 10, 2015; Amendment to permit minor changes to the interior layout. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Avenue, Block 01208, Lot 0001, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

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**42-10-BZ**

APPLICANT – Akerman, LLP, for 2170 Mill Avenue, owner.

SUBJECT – Application April 18, 2017 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations which expires on May 7, 2017.

C2-2/R3-1 & R3-1 zoning district.

PREMISES AFFECTED – 2170 Mill Avenue, Block 8470, Lot 1150, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

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# CALENDAR

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## REGULAR MEETING NOVEMBER 21, 2017, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 21, 2017, 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

#### 17-15-BZ

APPLICANT – Law Office of Lyra J. Altman, for Beach Front Estates LLC, owner.

SUBJECT – Application January 26, 2015 – Variance (72-21) to allow the construction of a four story residential building at the premises, located within an R4A zoning district.

PREMISES AFFECTED – 133 Beach 5<sup>th</sup> Street, Block 15609, Lot Tentative 40, Borough of Queens.

**COMMUNITY BOARD #14Q**

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#### 2016-4171-BZ

APPLICANT – Sheldon Lobel, P.C., for Jisel Cruz, owner.

SUBJECT – Application April 15, 2016 – Variance (§72-21) to permit the development of a three-story plus penthouse residential building (UG 2) contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 823 Kent Avenue, Block 1898, Lot 23, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

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#### 2016-4241-BZ

APPLICANT – Eric Palatnik, P.C., for Ocher Realty LLC, owner.

SUBJECT – Application August 19, 2016 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility and Use Group 6 offices. C8-2 zoning district.

PREMISES AFFECTED – 1 Maspeth Avenue aka 378 Humboldt Street, Block 2892, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

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#### 2017-100-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly S. Friedman, Esq., for Trustees of the Spence School, Inc., owner.

SUBJECT – Application April 4, 2017 – Special Permit (§73-19) to allow for a Use Group 3 school use (*The Spence School*) contrary to ZR §32-31 (Use Regulations); Variance (§72-21) to permit the development of the building contrary to ZR §33-292 (Proposed building extends 30 ft. into the required open area) and ZR §33-26 (Proposed building extends 20 ft. into the required rear yard. C8-4 zoning

district.

PREMISES AFFECTED – 412 East 90<sup>th</sup> Street, Block 1569, Lot 35, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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#### 2017-151-BZ

APPLICANT – Law Office of Jay Goldstein, for AC Bowery Owner LLC, owner; Grand Unicorn Experiment, lessee.

SUBJECT – Application May 18, 2017 – Special Permit (§73-36) to permit the legalization of physical culture establishment (*Grand Unicorn Experiment*) on the cellar and first floors of an existing commercial building contrary to ZR §32-10. C6-1G zoning district.

PREMISES AFFECTED – 161 Bowery, Block 424, Lot 6, Borough of Manhattan.

**COMMUNITY BOARD #3M**

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#### 2017-203-BZ

APPLICANT – Francis R. Angelino, Esq., for Tahor 26 Owner, LLC, owner; EBF NY 1, LLC, lessee.

SUBJECT – Application June 7, 2017 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Every Body Fights*) in a portion of the cellar of an existing commercial building contrary to ZR §32-10. C5-3 (MID) zoning district.

PREMISES AFFECTED – 295 Madison Avenue, Block 1275, Lot 50, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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*Carlo Costanza, Executive Director*



# MINUTES

## REGULAR MEETING TUESDAY MORNING, OCTOBER 17, 2017 10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown and Commissioner Sheta.

### SPECIAL ORDER CALENDAR

#### 4-98-BZ

APPLICANT – Eric Palatnik, P.C., for Madison Queens & Guy Brewer, LLC, owner.

SUBJECT – Application July 24, 2015 – Amendment of a previously approved variance (72-21) which permitted the operation of a drug store (UG 6) contrary to uses regulations. The amendment seeks to eliminate the term of the variance and reflect non-compliance with respect to bulk. C1-3/R3X zoning district.

PREMISES AFFECTED – 127-04 Guy Brewer Boulevard, corner of Guy Brewer Boulevard and Baisley Boulevard, Block 12269, Lot 29, Borough of Queens.

#### COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta. ....1

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 15, 2015, acting on Alteration Application No. 421181269, reads in pertinent part:

“The instant application is contrary to BSA Calendar Number 4-98-BZ, as the March 30, 2011 rezoning creates non compliances with respect to: ZR 33-291 – Minimum side yard,” “ZR 37-94 – Trash Enclosure,” “ZR 39-921 – Landscape Buffer,” “ZR 36-58 – Drive Aisle” and “ZR 37-921 – Street Trees”; and

WHEREAS, this is an application for an amendment to a variance, previously granted by the Board under ZR § 72-21, to eliminate the term of the variance and to allow certain non-compliances with respect to bulk regulations for side yards, trash enclosures, landscape buffers, drive aisles and street trees, contrary to ZR §§ 33-291, 37-94, 39-921, 36-58 and 37-921; and

WHEREAS, a public hearing was held on this application on March 22, 2016, after due notice by publication in *The City Record*, with continued hearings on June 14, 2016, and June 27, 2017, and then to decision on October 17, 2017; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, Queens,

recommends approval of this application; and

WHEREAS, Councilmember Ruben Wills submitted testimony in support of this application; and

WHEREAS, the subject site is located on the west side of Guy Brewer Boulevard, between Baisley Boulevard and 128th Avenue, in an R3X (C1-3) zoning district, in Queens; and

WHEREAS, the site has approximately 156 feet of frontage along Guy Brewer Boulevard, 244 feet of frontage along Baisley Boulevard, 211 feet of frontage along 128th Avenue, 35,822 square feet of lot area and is occupied by a one-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 11, 1998, when, under the subject calendar number, the Board granted a variance to permit the demolition of a non-conforming automotive service station and two abutting frame residential buildings and allow the construction and operation of a drug store in Use Group 6 with an accessory open parking lot for a term of twenty-five (25) years, expiring August 11, 2023, on condition that on-site accessory parking spaces and loading areas be maintained in accordance with the Board-approved plans and be secured when the store is not in operation, that lighting be positioned down and away from nearby residential uses, that screening and fencing be maintained in accordance with the Board-approved plans, that landscaping be maintained in accordance with the Board-approved plans, that trash pick-up occur between the hours of 8:00 a.m. and 10:00 p.m. only, that the following conditions set forth in the conditional negative declaration, adopted by reference therein, be complied with—The Applicant shall submit a sampling protocol for soil gas and soil/groundwater testing on Block 12269, Tentative Lot 29, to DEP’s Bureau of Air, Noise and Hazardous Materials (“BANHM”) for review and approval. The applicant is also required to complete any remedial actions determined by DEP to be appropriate based on the sampling. In addition, no sampling, site grading, excavation, demolition or building construction and/or remediation can begin until DEP/BANHM provides written approval of the sampling protocol—and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the applicant now seeks to eliminate the term of the variance and to allow certain non-compliances with respect to bulk; and

WHEREAS, the applicant represents that, on March 30, 2011, the subject site was rezoned from an R3-2 zoning district to an R3X (C1-3) zoning district; and

WHEREAS, under ZR § 32-15, drug stores in Use Group 6 are permitted as-of-right in C1-3 zoning districts; and

WHEREAS, because the use of the subject site as a drug store is now permitted as-of-right, the applicant submits that a term is no longer a necessary safeguard and accordingly requests an elimination of term of the variance; and

WHEREAS, the applicant notes that the surrounding area is characterized by a vibrant mix of commercial uses, including a shopping center nearby, along with automobile

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service stations, residences and local retail establishments;  
and

WHEREAS, however, with respect to bulk, the applicant also states that rezoning of the subject site in 2011 created a number of non-compliances with bulk regulations, namely restrictions on side yards, trash enclosures, landscape buffers, drive aisles and street trees; and

WHEREAS, at hearing, the Board questioned the presence of debris at the site, landscaping, signage, street trees, a “pod” container and the location of the trash enclosure; and

WHEREAS, in response, the applicant spruced up the site, revised the drawings, added plantings, submitted sign calculations and removed the “pod” container; and

WHEREAS, the Board also notes that, in 1997, a sign apparently existed at the subject site, which the Board presumes was permitted by calculations based on three frontages of measurement, not by variance; and

WHEREAS, by letter dated July 9, 1999, the New York State Department of Environmental Conservation Division of Environmental Remediation states that no further action is required; and

WHEREAS, based upon its review of the record, the Board finds that an amendment to eliminate the term of the variance and to allow certain non-compliances with respect to bulk is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated August 11, 1998, so that as amended this portion of the resolution shall read: “to *eliminate* the term of the variance and to *permit* certain non-compliances with respect to restrictions on side yards, trash enclosures, landscape buffers, drive aisles and street trees, contrary to ZR §§ 33-291, 37-94, 39-921, 36-58 and 37-921; *on condition that* all work and site conditions shall comply with drawings filed with this application marked ‘Received September 28, 2017’-Seven (7) sheets; and *on further condition*:

THAT the term of the variance shall be eliminated;

THAT on-site accessory parking spaces and loading areas shall be maintained in accordance with the Board-approved plans and shall be secured when the store is not in operation;

THAT lighting shall be positioned down and away from the nearby residential uses;

THAT screening and fencing shall be maintained in accordance with the Board-approved plans;

THAT landscaping shall be maintained in accordance with the Board-approved plans;

THAT trash pick-up shall occur between the hours of 8:00 a.m. and 10:00 p.m. daily;

THAT truck deliveries shall be limited to the hours of 7:00 a.m. to 10:00 p.m. daily;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 17, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 17, 2017.

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## 182-02-BZ

APPLICANT – Eric Palatnik, P.C., for Gaseteria Oil Corporation, owner.

SUBJECT – Application July 22, 2014 – Extension of Term of a previously approved (§72-21) permitting the operation of an Automotive Service Station (UG 16B) with an accessory convenience store which expired January 7, 2013; Waiver of the Rules. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 2990 Victory Boulevard, Block 2072, Lot 42, Borough of Staten Island.

## COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a variance, previously granted by the Board under ZR § 72-21, which expired January 7, 2013; and

WHEREAS, a public hearing was held on this application on October 18, 2016, after due notice by publication in *The City Record*, with a continued hearing on March 21, 2017, and then to decision on October 17, 2017; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Victory Boulevard and Richmond Avenue, in an R3-1 (C2-2) zoning district, on Staten Island; and

WHEREAS, the site has approximately 178 feet of frontage along Richmond Avenue, 126 feet of frontage along Victory Boulevard, 22,616 square feet of lot area and is occupied by an automotive service station with a one-story accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over

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the subject site since July 25, 1957, when, under BSA Calendar Number 32-57-BZ, the Board granted a variance to permit the reconstruction and extension of an existing gasoline service station on condition that all buildings and uses not proposed to be retained in their present condition be removed and the premises be reconstructed and arranged as indicated on the Board-approved plans, that an approved diner might be constructed on the site in the location shown, that the accessory building be of the design and arrangement as shown and faced with face brick on all sides, that there be no cellar under such building, that pumps be of a low approved type constructed where shown, facing Victory Boulevard and Richmond Avenue, that the number of gasoline storage tanks not exceed twelve 550-gallon approved tanks, that pending the taking by the City of a portion of the site for street widening the site might be arranged as indicated and as proposed, that when the site is taken, as proposed, by the City for such street widening the equipment then proposed to be located within the area so to be taken be moved back to a relative position from the new building line, that such portable fire-fighting appliances be maintained as the Fire Department directs, that there might be minor repairing with hand tools only for adjustment maintained solely within the accessory building, that there might be parking and storage of motor vehicles on spaces where such parking and storage would not interfere with the servicing of the station, that the site where not occupied by accessory building and pumps and the diner be paved with concrete or asphaltic pavement, that signs be restricted to permanent signs attached to the façade of the accessory building and to the illuminated globes of the pumps, excluding all roof signs and temporary signs but permitting the construction to the east and south, where shown, of a post standard, at each location, each for supporting a sign, which might be illuminated, and permitting such sign to extend beyond the building line for a distance of not more than four (4) feet and that at such location at the intersection, there be constructed a block of concrete not less than 12 inches in height and extending for a distance of not less than five feet in either direction; and

WHEREAS, on February 11, 1958, under BSA Calendar Number 32-57-BZ, the Board amended the variance so that applicant might be permitted to omit the installation of the diner, that the applicant might also be permitted to install a brick enclosure 9'-4" by 9'-4" by 4'-4" in height as a rubbish screen, that the area at the rear of the accessory building and for a distance of 60 feet from the south lot line might be paved with crushed stone and that the curb cut to Richmond Avenue might be rearranged; and

WHEREAS, on September 11, 1990, under BSA Calendar Number 32-57-BZ, the Board amended the variance to change the design and arrangement of the existing automotive service station and to construct a new metal canopy over four (4) new gasoline pump islands with new "MPD" self-serve pumps and to construct a new 8' by 15' kiosk and to construct a new 30-foot curb cut on Victory Boulevard on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian

or vehicular traffic; and

WHEREAS, the variance granted under BSA Calendar Number 32-57-BZ subsequently lapsed; and

WHEREAS, on January 7, 2003, under the subject calendar number, the Board granted a variance to permit the construction of a new automotive service station, with an accessory convenience store, in Use Group 16B for a term of ten (10) years, expiring January 7, 2013, on condition that the term be noted on the certificate of occupancy; and

WHEREAS, on June 7, 2005, under the subject calendar number, the Board amended the variance to allow a redesign of the gasoline service station, including a relocation and reduction of floor area of the convenience store, relocation of the fuel dispenser islands and canopy, increase in the number of curb cuts from three to five and to modify landscaping; and

WHEREAS, the Board notes that the Board-approved drawings from 2005 under the subject calendar number were not available; however, the applicant submitted copies of drawings approved by the Department of Buildings in 2005, which the Board has relied on in its consideration of this application; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term for ten (10) years; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing for an extension of term less than two (2) years after the expiration of the term; and

WHEREAS, the applicant has demonstrated that the use has been continuous since the expiration of term and that substantial prejudice would result without such a waiver; and

WHEREAS, at hearing, the Board questioned the location of air stations and parking spaces as well as maintenance of the site, including landscaping, litter and the fence's disrepair; and

WHEREAS, in response, the applicant revised the drawings to clarify landscaping, location of the air stations and parking spaces and also submitted evidence that the site had been cleaned up with replaced fencing and new plantings; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated January 7, 2003, as amended through June 7, 2005, so that this portion of the resolution shall read: "to *grant* an extension of term of the variance for ten (10) years, expiring January 7, 2023; *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received March 2, 2017'- Six (6) sheets; and *on further condition*:

THAT the term of the variance shall be limited to ten (10) years, expiring January 7, 2023;

THAT the above condition shall appear on the

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certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 17, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2017.

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## **218-03-BZ**

APPLICANT – Akerman, LLP, for 19-80 Steinway LLC, owner.

SUBJECT – Application December 17, 2017 – Amendment of a previously approved Variance (§72-21) which permitted a nine-story mixed use building with residential, commercial and community facility uses contrary to Z.R. §42-00, §23-141 and §23-631. The amendment seeks to permit a reduction in the number of accessory parking spaces provided in the existing building's accessory garage from 219 spaces to 135 spaces. M1-1 zoning district.

PREMISES AFFECTED – 19-73 38<sup>th</sup> Street, Block 811, Lot 1, Borough of Queens.

## **COMMUNITY BOARD #1Q**

**ACTION OF THE BOARD** – Application granted on condition.

### **THE VOTE TO GRANT –**

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

### **THE RESOLUTION –**

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 28, 2016, acting on New Building Application No. 401444923, reads in pertinent part:

“Proposed reduction in the number of parking spaces is contrary to BSA Cal. No. 218-03-BZ. Refer to BSA for approval”; and

WHEREAS, this is an application under ZR §§ 72-01 and 72-22 for an amendment of a variance previously granted by the Board to permit a reduction in the number of accessory parking spaces in a mixed-use development from 219 parking spaces to 135 parking spaces; and

WHEREAS, a public hearing was held on this application on October 17, 2017, after due notice by publication in *The City Record*, and then to decision on that

same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Queens, recommends approval of this application on condition that the variance be reopened should a future need for additional parking arise; and

WHEREAS, Council Member Costa Constantinides submitted testimony in support of this application, citing the expense of car lifts for the mixed-use development at the site, part of which includes 100-percent affordable housing; and

WHEREAS, the subject site is located on the north side of 20th Avenue, between 38th Street and Steinway Street, in an M1-1 zoning district, in Queens; and

WHEREAS, the site has approximately 300 feet of frontage along 38th Street, 200 feet of frontage along 20th Avenue, 300 feet of frontage along Steinway Street, 60,016 square feet of lot area and is occupied by a four-story, with cellar, mixed-use building with residential, commercial and community-facility uses; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 12, 2005, when, under the subject calendar number, the Board granted a variance to permit the development of a four-story mixed-used building with residential, commercial and community-facility uses and accessory parking, contrary to use regulations, on condition that the bulk parameters of the proposed building be 1.65 Floor Area Ratio total (99,258 square feet maximum total floor area, maximum residential floor area of 76,986 square feet, maximum community facility floor area of 2,521 square feet) with a maximum building height of 53 feet, that there be a maximum of 84 units, that a maximum of 219 parking spaces be provided in the accessory parking levels and that the interior layout, parking layout and all exiting requirements be as reviewed and approved by the Department of Buildings; and

WHEREAS, by letter dated September 20, 2006, under the subject calendar number, the Board allowed minor modifications to the Board-approved plans, including elimination of the cellar parking area, addition of approximately 74 parking stackers on the first floor, reconfiguration of the residential entrance and lobby, elimination of one store, reconfiguration of the elevator and stair plans and reduction of the number of dwelling units from 84 to 66; and

WHEREAS, by letter dated February 20, 2007, under the subject calendar number, the Board allowed minor modifications to the Board-approved plans, including reconfiguration of the vehicle entrance to the center of the building to provide vehicle access to the residential lobby and the parking garage, reduction of the number of curb cuts from six to two, reconfiguration of the elevator, stairs and corridors in order to divide the floors into two wings, reconfiguration of the cellar space and redesign of the façade; and

WHEREAS, by letter dated April 18, 2008, under the subject calendar number, the Board allowed minor

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modifications to the Board-approved plans, including increasing the number of dwelling units from 66 to 72; and

WHEREAS, by letter dated June 4, 2013, under the subject calendar number, the Board allowed minor modifications to the Board-approved plans, including an increase back to the originally approved 84 dwelling units with total residential floor area of 76,986 square feet, as originally approved; and

WHEREAS, the applicant now seeks to amend the variance to permit a reduction in the number of accessory parking spaces in the mixed-use development from 219 parking spaces to 135 parking spaces; and

WHEREAS, at hearing, in response to the concerns of Community Board 1, Queens, the Board noted that the proposal to reopen the variance should parking needs in the community change presents administrative difficulties with monitoring; however, the Board finds that a condition restricting the term of the requested parking reduction to the life of the regulatory agreement submitted with this application—with the income mix presented or equivalent parking spaces—is an appropriate safeguard to address community concerns about future parking conditions, which are speculative at this time; and

WHEREAS, on February 4, 2016, the New York City Office of Environmental Remediation issued a notice of completion for the subject site stating that remediation requirements have been achieved; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence in support of this application and that an amendment is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated July 12, 2005, so that as amended this portion of the resolution shall read: “to *permit* a reduction in the number of accessory parking spaces in the mixed-use development from 219 parking spaces to 135 parking spaces; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked ‘Received August 24, 2017’-Ten (10) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: a total Floor Area Ratio of 1.65 (99,258 square feet maximum total floor area); maximum residential floor area of 76,986 square feet; maximum community-facility floor area of 2,517; maximum commercial floor area of 19,632 square feet; and a maximum building height of 53 feet;

THAT there shall be a maximum of 84 dwelling units;

THAT a maximum of 135 parking spaces shall be provided at the subject site;

THAT the term of this grant shall be limited to the life of the regulatory agreement submitted with this application with the income mix presented to the Board or the equivalent in parking spaces;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained

within four (4) years, by October 17, 2021;

THAT the interior layout, parking layout and all exiting requirements shall be as reviewed and approved by the Department of Buildings;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 17, 2017.

## 7-57-BZ

APPLICANT – Edward Lauria, for Ruth Peres, owner.

SUBJECT – Application December 17, 2015 – Extension of Term (§11-411) of a previously granted variance for a gasoline service station and maintenance which expired September 20, 2015; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 2317 Ralph Avenue aka 2317-27 Ralph Avenue, Block 8364, Lot 34, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

## 374-71-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 205-11 Northern Boulevard LLC, owner.

SUBJECT – Application May 7, 2014 – Extension of Term of a previously granted Variance (72-21) for the continued operation of an automobile showroom with open display of new and used cars (UG16) with accessory customer and employee parking in a previously unused vacant portion of the premises which expired on July 18, 2011. C2-2 (R3-2) zoning district.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 06269, Lot 20, Borough of Queens.

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative: .....0

**ACTION OF THE BOARD** – Laid over to December 12, 2017, at 10 A.M., for decision, hearing closed.

# MINUTES

## 168-98-BZ

APPLICANT – Robert J. Stahl for Herbert D. Freeman, 238 Street Holding, LLC, owner.

SUBJECT – Application April 10, 2015 – Extension of Term (§ 11-411) of a previously approved variance which permitted a parking lot for more than five motor vehicles (Use Group 8) which expired on March 23, 2009; Waiver of the Rules. R6/R4A zoning district.

PREMISES AFFECTED – 3050 Bailey Avenue, Block 3261, Lot 12, Borough of Bronx.

### COMMUNITY BOARD #8BX

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for adjourned hearing.

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## 235-01-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2009 Mermaid, LLC, owner.

SUBJECT – Application May 11, 2016 – Extension of Term of a previously approved Special Permit (§73-27) permitting the operation of funeral establishment (UG 7) which expired on May 12, 2014; Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 2009 Mermaid Avenue, Block 7018, Lot 42, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

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## 97-08-BZ

APPLICANT – Eric Palatnik P.C., for Yismach Moshe of Williamsburgh, Inc., owner.

SUBJECT – Potential compliance hearing notice to public. PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 01736, Lot 0014, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for continued hearing.

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## 46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application November 5, 2015– Extension of Time to Complete Construction of an offsite parking lot to accommodate the required parking, which expires, November 15, 2015, located within a C4-2 zoning district. PREMISES AFFECTED – 1401 Sheepshead Bay Road, Block 7459, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 31, 2018, at 10 A.M., for adjourned hearing.

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## APPEALS CALENDAR

### 166-12-A & 107-13-A

APPLICANT – (Cal. No. 166-12-A) – NYC Department of Buildings.

OWNER – Sky East LLC c/o Magnum Real Estate Group, owner.

APPLICANT – (Cal. No. 107-13-A) – Law Office of Marvin B. Mitzner LLC, for Sky East LLC, owner.

SUBJECT – Application June 4, 2012, April 18, 2013 – Application to of two appeals before the Board: (1) an application filed by the First Deputy Commissioner of the New York City Department of Buildings (“DOB”), dated June 4, 2012, pursuant to New York City Charter §§ 645(b)(3)(e) and 666(6)(a) to revoke Certificate of Occupancy No. 103703226F issued for the site (the “CO Revocation Appeal”) and (2) an application seeking a determination that the owner of the premises (the “Appellant”) obtained the right to complete construction of the one-story plus mezzanine building present at the site under the common law doctrine of vested rights (the “Vested Right Application,” collectively, the “Appeals”).

PREMISES AFFECTED – 638 East 11<sup>th</sup> Street, south side of East 11th Street, between Avenue B and Avenue C, Block 393, Lot 25, 26 & 27, Borough of Manhattan.

### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Application for Common Law Vested Right Denied (BSA Cal. No. 107-13-A) and Application for Revocation of Certificate of Occupancy Granted in Part (BSA Cal. No. 166-12-A).

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this site is the subject of two appeals before the Board: (1) an application filed by the First Deputy Commissioner of the New York City Department of Buildings (“DOB”), dated June 4, 2012, pursuant to New York City Charter §§ 645(b)(3)(e) and 666(6)(a) to revoke Certificate of Occupancy No. 103703226F issued for the site (the “CO Revocation Appeal”) and (2) an application seeking a determination that the owner of the premises (the “Appellant”) obtained the right to complete construction of the one-story plus mezzanine building present at the site under the common law doctrine of vested rights (the “Vested Right Application,” collectively, the “Appeals”); and

WHEREAS, a public hearing was first held on the Appeals on November 26, 2013, after due notice by publication in *The City Record*, with continued hearings on January 28, 2014, March 31, 2015, November 15, 2016, January 31, 2017, and June 20, 2017, and then to decision on October 17, 2017; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and the surrounding neighborhood; and

WHEREAS, the subject site is located on the south side

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of East 11th Street, between Avenue B and Avenue C, in an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 75 feet of frontage along East 11th Street, a depth of 95 feet and 7,109 square feet of lot area; and

WHEREAS, Certificate of Occupancy No. 103703226F and associated DOB-approved plans represent that the site is occupied by a seven-story mixed-use community facility and residential building (the "Front Building") and a one-story community facility building located in the Front Building's required rear yard (the "Rear Building," together, the "Development"); and

WHEREAS, the Appellant submits that the site was previously comprised of tax lots 25, 26 and 27 ("Former Tax Lot 25", "Former Tax Lot 26" and "Former Tax Lot 27") located at 636, 638 and 640 East 11th Street, respectively; and

WHEREAS, Former Tax Lot 25 was previously occupied by a one-story residential building in the rear yard; Former Lot 26 was previously occupied by a five-story residential building and a three-story residential building in the rear yard; and Former Tax Lot 27 was previously occupied by a five-story residential building; and

## FACTS

WHEREAS, on March 23, 2004, DOB issued an Alteration Type 2 ("Alt 2") permit (the "Demolition Alt 2 Permit") for work at the site described as follows:

DEMOLISH EXISTING FLOOR SLABS,  
PARTITIONS CEILING AND DOORS REMOVE  
EXISTING STAIRS REMOVE REAR PORTION  
OF BUILDING. INSTALL NEW OPENING IN  
PANTRY WALL. REMOVE EXTERIOR SIDE  
WALL TO THE 2ND FLOOR

existing party walls as shown on drawings filed herewith. No change in use o [*sic*]

occupancy. Egress filed under Alt I #; and

WHEREAS, on March 30, 2004, an Alt 2 permit was issued for "Removal of building structures in [the] rear yard" of the site and additionally noted, "Main buildings to remain" (the "Rear Yard Alt 2 Permit"); and

WHEREAS, on April 21, 2004, an Alt 2 permit was issued to permit the installation of new foundations and footings for a new enlargement at the site (the "Foundation Permit") and on May 21, 2004, DOB issued an Alteration Type I permit for a use identified as "J-2 Residential Apartment House" with a Schedule A indicating Use Group ("UG") 4 "medical offices" (Permit No. 103703226, the "Alt 1 Permit"); and

WHEREAS, at the time that the Alt 1 Permit was issued, ZR § 24-33(b) permitted a building or portion of a building used for community facility use at the subject site to be located within a required rear yard, provided that its height did not exceed one story or, in any event, 23 feet above curb level;

1 Per ZR § 12-10, a "community facility" use is any use listed in Use Group 3 or 4. As further described in ZR § 22-14 (Use Group 4), Use Group 4 includes ambulatory diagnostic or treatment health care facilities, common referred to as "medical offices."

and

WHEREAS, on May 27, 2004, a zoning lot description describing the metes and bounds of the subject zoning lot (consisting of Former Tax Lot 25, Former Tax Lot 26 and Former Tax Lot 27) was recorded with the Office of the City Register; and

WHEREAS, on June 21, 2004, DOB issued a stop work order (ECB Violation No. 34440904N) for work contrary to approved plans filed under the Rear Yard Alt 2 Permit (the "Stop Work Order"); and

WHEREAS, on the same date, DOB issued a violation citing a failure to maintain an exterior building wall (ECB Violation No. 34440903L, the "Hazardous Conditions Violation") and a preemptory vacate order for 640 East 11th Street, which stated:

Due to construction operations, the party wall foundation is cracked and separating from rear exterior wall. Rear masonry wall is bulging, cracked, and defective from the second story to roof.

West exterior wall of adjacent property (638 East 11th Street) is bulging at the 5th story to roof which is creating a hazardous condition; and

WHEREAS, by letter dated July 20, 2004, DOB partially lifted the Stop Work Order to allow work to resume in accordance with the approved plans at 636 and 638 East 11th Street, but continued to prohibit any demolition, alteration or renovation at 640 East 11th Street; and

WHEREAS, on August 16, 2004, two violations were issued for an alleged failure to comply with the Stop Work Order and for work contrary to the plans filed under the Rear Yard Alt 2 Permit (ECB Violation No. 34451354L and ECB Violation No. 34451352H); and

WHEREAS, on September 1, 2004, DOB lifted the Stop Work Order as to 640 East 11th Street, allowing work to proceed as recommended in a letter from the structural engineer of record for the subject site, dated August 26, 2004, which included, among the list of items proposed to cure hazardous site conditions, work pursuant to the Foundation Permit, specifically, the pouring of "foundation walls on the east side of 636 vacant lot according to plan" and the completion of "foundation work in 638 and 640 according to approved plan, and continue foundation on 636 lot" (the "2004 Structural Engineer Letter"); and

WHEREAS, on September 9, 2004 (the "Effective Date"), an amendment to the Zoning Resolution was adopted that, among other things, modified the definition of permitted obstructions under ZR § 24-33 (the "ZR Amendment"), in relevant part, as follows:

(b) In any rear yard or rear yard equivalent:

[...]

Any building or portion of a building used for community facility uses, provided that the height of such building shall not exceed one story, nor in any event 23 feet above curb level.

However, the following shall not be permitted obstructions:

(1) in all residence districts, any portion of a building containing rooms used for living

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or sleeping purposes, other than a room in a hospital used for the care or treatment of patients;

- (2) in R1, R2, R3A, R3X, R3-1, R4A, R4B or R4-1 Districts, any portion of a *building* used for any *community facility use*;
- (3) in all *residence districts* not listed in paragraph (b)(2) of this Section, beyond one hundred feet of a *wide street*, any portion of a *building* used for a *community facility use* other than a *school*, house of worship, college or university, or hospital and related facilities;  
[...]; and

WHEREAS, the subject site is located beyond one hundred feet of a “wide street,” which, per ZR § 12-10, “is any *street* 75 feet or more in width”; and

WHEREAS, Appellant did not file an application with the Board, within 30 days of the Effective Date, seeking recognition of a statutory right, pursuant to ZR § 11-331 to complete construction under the Alt 1 permit; and

WHEREAS, a Certificate of Correction, dated December 7, 2004, reporting the completion of all work to cure the Hazardous Conditions Violation was submitted to DOB and approved on December 15, 2004; and

WHEREAS, on July 26, 2005, the Alt 1 Permit was signed off and Final Certificate of Occupancy No. 103703226F was issued for the subject premises under the Alt 1 Permit on July 15, 2008, indicating a total of 36 dwelling units in a seven-story building and UG 4 medical offices in the cellar, mezzanine and first floor levels (the “CO”); and

WHEREAS, on December 31, 2008, DOB issued violations to the premises for (1) occupancy contrary to that allowed by the CO, specifically citing the conversion of 26 medical offices at the first floor and cellar levels into Class A apartments (ECB Violation No. 34758244R); (2) illegal use in a residential district, noting that, at the first floor and cellar levels, the residential floor area and lot coverage of the Development exceeded the maximum allowable in the zoning district and ordering the discontinuance of the illegal use (ECB Violation No. 34758243P); (3) the conversion of 14 medical offices at the first floor and 12 medical offices at the cellar level to Class A apartments (ECB Violation No. 34758241L); and (4) work without a permit, specifically the installation of showers in the medical offices located on the first floor and cellar levels (ECB Violation No. 34758242N); and

WHEREAS, on August 26, 2010, DOB again issued violations for (1) occupancy contrary to the CO, indicating that, based on the affidavit of New York City Councilwoman Rosie Mendez, medical offices at the first floor and cellar levels had been converted into Class A apartments (ECB Violation No. 34808444Y) and (2) illegal conversion of the first floor and cellar levels and illegal use in a residential district (ECB Violation No. 34808445X); and

WHEREAS, on June 4, 2012, DOB filed the CO Revocation Appeal, BSA Cal. No. 166-12-A, alleging that the CO should not have been issued because the Alt 1 Permit, to which the CO is related, lapsed as a matter of law when

foundations at the site were not completed by September 9, 2004, and the permit was not thereafter renewed by the Board pursuant to ZR § 11-331; and

WHEREAS, the Vested Right Application was filed on April 18, 2013; and

WHEREAS, the Appeals were first heard, in tandem, on November 26, 2013, and a continued hearing was scheduled by the Board for January 28, 2014; and

WHEREAS, in response to testimony given at the hearing held on November 26, 2013, that illegal conditions cited in the 2008 and 2010 ECB violations issued to the property remained outstanding, DOB conducted inspections of the premises on December 2, 5 and 9, 2013, and issued additional violations; and

WHEREAS, on December 2, 2013, DOB issued violations to the premises for (1) failure to comply with an order to correct conditions pursuant to a previous violation relating to the installation of showers in medical offices at the site (ECB Violation No. 35032322R, relating back to ECB Violation No. 34758242N); (2) occupancy contrary to that allowed by the CO and DOB records, specifically, a temporary certificate of occupancy indicated medical offices at the cellar, first and second floors<sup>2</sup> of the Rear Building, but the inspector observed exclusively residential occupancy with 14 Class A apartments, four of which had mezzanines (ECB Violation No. 35033408M); (3) failure to provide an unobstructed exit passageway, specifically, a second means of egress from the Rear Building, which, the inspector observed, is a three-level building with residential occupancy (ECB Violation No. 35033409Y); and (4) work without permits, indicating that 100 percent of the work had been completed, but noting approximately 14 residential, Class A apartments, four with mezzanines, in three-level Rear Building and that respondent has history of non-compliance (ECB Violation No. 35032321P); and

WHEREAS, on December 5, 2013, DOB issued a violation to premises for failure to maintain the Development, noting non-compliances with regards to fire safety (ECB Violation No. 35033407K) and on December 9, 2013, four violations were issued for additional non-compliances of the Development with the New York City Fire Code (ECB Violation Nos. 35008848L, 35008849N, 35008847J and 35008925X); and

WHEREAS, the hearing scheduled for January 28, 2014, as well as the next seven hearings, were adjourned at the Appellant’s and/or DOB’s request in order to permit the parties to resolve outstanding DOB objections relating to the premises and conclude the Appeals; and

WHEREAS, at the hearing held on March 31, 2015, DOB stated that the Appellant had made progress in addressing the outstanding objections, specifically, the Appellant had submitted revised plans for the Development showing the

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<sup>2</sup> DOB avers that, pursuant to ZR § 12-10, which defines a “story” as “that part of a building between the surface of a floor (whether or not counted for purposes of computing floor area ratio) and the ceiling immediately above,” the mezzanine in the Rear Building constitutes a second “story.”



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removal of the mezzanine from the Rear Building as well as two means of egress, two issues DOB considered to be major objections; and

WHEREAS, on March 31, 2015, the Board removed the Appeals from the Board's hearing calendar to allow the Appellant to resolve all outstanding issues with DOB such that DOB would withdraw the CO Revocation Appeal; and

WHEREAS, by letter dated May 4, 2016, DOB requested that the CO Revocation Appeal be returned to the Board's calendar because of the Appellant's seven-month delay in providing revised plans to address the final remaining DOB objection; DOB averred that to date, it had been unable to determine that the Alt 1 Permit had been validly issued; and

WHEREAS, by letter dated June 30, 2016, in response to DOB's request to return the CO Revocation Appeal to the Board's calendar, Appellant stated that the objection remained outstanding because of a missing planning sheet, which the Appellant provided on May 9, 2016, and the DOB plan examiner subsequently removed this final objection; accordingly, the Appellant requested that the Appeals remain off-calendar; and

WHEREAS, by letter dated July 12, 2016, DOB reported that an audit of the plans filed in connection with the Development prior to September 9, 2004, (the "2012 Audit") had been completed, advised the Board that the Alt 1 Permit was, indeed, validly issued and requested that the Vested Right Application alone be returned to the Board's calendar to determine if Appellant had obtained a vested right under the common law; DOB maintained its position, however, that the foundation was not complete prior to September 9, 2004, and requested that if the Appellant failed to further pursue the Vested Right Application, or if the Board denied it, the CO Revocation Appeal be returned to the Board's hearing calendar; and

WHEREAS, the Appeals were re-calendared for a continued hearing on September 20, 2016, but that hearing date was adjourned at the Appellant's request due to a scheduling conflict; continued hearings were subsequently held on November 15, 2016, January 31, 2017, June 20, 2017, and October 17, 2017, and both cases were then decided on that same date; and

WHEREAS, at the November 15 hearing, DOB stated that plans presented by the Appellant curing DOB's objections had been approved, enabling the 2012 Audit to be closed, but acknowledged that permits could not be issued and the construction to cure undertaken unless and until the Board recognized that the Appellant had acquired a common law vested right to complete the Rear Building in the first instance; and

WHEREAS, at that hearing, the Board requested that the Appellant correct those violations that did not require DOB permits, namely, remove the residential uses from the areas of the Development indicated as medical office on the CO; and

WHEREAS, at the January 31 hearing, the Appellant informed the Board that four non-conforming residential occupancies remained in the Rear Building, that ownership was engaged with discussions with those tenants to work out relocation, but that such relocation may take a number of

months; and

WHEREAS, on April 20, 2017, Board Commissioners and staff visited the site with DOB and the Appellant's representatives to inspect the premises; and

WHEREAS, a hearing scheduled for May 2, 2017, was adjourned at the Appellant's request to allow time to comply with requests made by the Board in prior hearings, but at the May 1 Executive Session, the Chair stated that, at the April site inspection, the Board observed that two of the units in the Rear Building remained occupied by residential tenants; that it was clear from observing window treatments and domestic furnishings that the first floor at the rear of the Front Building had been occupied by residential tenants contrary to DOB-approved plans; that areas in the Front Building indicated on plans as an accessory lounge, fitness room and medical office were each occupied by residential tenants; and that kitchens and bathrooms had been constructed in the Rear Building contrary to DOB-approved plans; and

WHEREAS, the Chair requested that all of the spaces illegally occupied by residential tenants at the site be vacant by the next hearing and for the submission of an affidavit from the architect indicated on the title block of drawings approved by DOB attesting to whether they were hired to and indeed did conduct field observations of the site during the period of construction of the Development and whether the architect inspected the site prior to sign off and observed that the Development—particularly the areas on the cellar and first floor levels indicated as medical office—had been constructed pursuant to plans approved by DOB; and

WHEREAS, the architect instead provided a letter without a professional seal stating that the architect "recalled" that the Development was built according to DOB approved plans; and

WHEREAS, New York City Council Member Rosie Mendez submitted a letter and testified at hearings held on November 15, January 31, and June 20 in opposition to the Vested Right Application, stating that spaces indicated as UG 4 medical office on the CO at the site had been illegally occupied by residential tenants since at least January 2006 and that the premises never displayed signage indicating the presence of medical offices; and

WHEREAS, additionally, the Greenwich Village Society for Historic Preservation submitted letters and oral testimony in opposition to the Vested Right Appeal, stating that the Development has never been occupied fully in conformance with the CO; and

WHEREAS, DOB inspected the premises on June 15, 2017, and observed that all units in the Rear Building and one duplex unit in the Front Building were unoccupied, but that two duplex units in the Front Building remained occupied; and

WHEREAS, on an October 12, 2017, inspection, DOB observed that all six units in the cellar and all six units on the first floor of the Rear Building, were unoccupied, as were the three duplex units in the Front Building; and

WHEREAS, by letter dated October 13, 2017, the Appellant reported to the Board that the appliances and fixtures had been removed from all of the units inspected by DOB on October 12; and

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## COMMON LAW VESTED RIGHTS DOCTRINE

WHEREAS, when a restrictive amendment to the Zoning Resolution is enacted, a vested right can be acquired when, pursuant to a lawfully-issued permit, a property owner demonstrates a commitment to the purpose for which the permit was granted; and

WHEREAS, pursuant to ZR § 11-331, a property owner may continue construction subsequent to an applicable zoning change pursuant to a lawfully-issued building permit if, in the case of a “minor development,” all work on foundations had been completed prior to such effective date or, in the case of a “major development,” the foundations for at least one building has been completed prior to such effective date; and

WHEREAS, if the required foundation work has been commenced, but not completed, prior to the effective date of the amendment to the Zoning Resolution that rendered the project non-conforming or non-complying, the building permit will automatically lapse on the effective date and the right to continue construction will terminate; and

WHEREAS, however, the building permit may be renewed if an application is made to the Board to recognize the statutory right to continue construction pursuant to ZR § 11-331 within 30 days of the automatic lapse of the permit and the Board may grant such application upon finding that, at the date the building permit lapsed, excavation at the site had been completed and substantial progress on foundations had been made; and

WHEREAS, more than 30 days after the automatic lapse of a building permit due to an applicable zoning change, a property owner may apply to the Board seeking the recognition of a common law vested right to continue construction pursuant to a permit lawfully-issued prior to that applicable zoning change, and the Board may grant such application, if: (1) the owner has undertaken substantial construction; (2) the owner has made substantial expenditures; and (3) serious loss will result if the owner is denied the right to proceed under the prior zoning; and

WHEREAS, specifically, as held in Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (2d Dept. 1976), where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance”; and

WHEREAS, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163 A.D.2d 308, 309 (2d Dept. 1990),

[T]here is no fixed formula which measures the content of all the circumstances whereby a party is said to possess ‘a vested right’. Rather, it is a term which sums up a determination that the facts of the case render it inequitable that the State impede the individual from taking certain action; and

WHEREAS, however, even if the Board recognizes a common law vested right, there may be instances in which circumstances may have changed such that the City’s interest

in present zoning outweighs the property owner’s vested right; and

WHEREAS, Putnam holds that the following factors are relevant in determining whether a common law vested right has lapsed: (1) abandonment, including the intent to abandon and an overt act, or some failure to act, implying that the owner neither claims nor retains any interest in the subject matter of the abandonment; (2) recoupment by the owner of all or part of his financial expenditures on the property without completing construction; or (3) the extent to which considerations of public safety, health and welfare indicate that enforcement of present zoning regulations would provide an overriding benefit to the public; and

## APPELLANT’S POSITION

WHEREAS, the Appellant acknowledges that the ZR Amendment prohibited the community facility use in the Rear Building, but that neither the owner of the premises nor DOB noticed this change and that it was not until receipt of a letter from DOB, dated February 3, 2012—alleging that the Alt 1 Permit lapsed by operation of law on September 9, 2004—that Appellant was on notice that the Rear Building was contrary to applicable zoning regulations; and

WHEREAS, the Appellant states that the foundation of the Rear Building was 100 percent complete by the Effective Date and, in support of this contention, submitted into the record a survey said to depict the extent of the work completed at the premises as of September 9, 2004 (the “Survey”); and

WHEREAS, accordingly, the Appellant submits that their right to complete construction at the site pursuant to the Alt 1 Permit vested by operation of law, specifically ZR § 11-331(b), which states that, in the case of a major development, a statutory right to complete construction vests if the foundations for at least one building has been completed prior to the effective date of the applicable amendment; and

WHEREAS, the Appellant states that the development of the subject site is considered a “major development”<sup>3</sup> for purposes of ZR § 11-331(b) because it includes two or more “buildings,” as that term was defined by the Zoning Resolution at the time of the Alt 1 Permit; therefore, because the foundations for the Rear Building were complete as of the Effective Date, the Appellant’s right to complete all construction on the site under the Alt 1 Permit vested pursuant to statute; and

WHEREAS, in the alternative, if the Board does not agree that the work under the Alt 1 Permit constitutes a “major development,” the Appellant suggests that the facts nevertheless support a finding that the Appellant instead acquired a vested right to complete construction under the common law; and

WHEREAS, with regards to substantial construction, the Appellant directs the Board’s attention to the permits issued for the site between March 24 and April 21, 2004, as well as the

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<sup>3</sup> Zoning Resolution Section 11-31(c)(2) includes, among the definition of “major development” for purposes of statutory vesting, “construction of two or more *buildings* on a single *zoning lot* which will be *non-complying* under the provisions of any applicable amendment to this Resolution.”

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Survey; re-alleges that the foundations of the Rear Building were 100 percent complete by September 9, 2004, and additionally submits into the record (1) an Affidavit from a concrete contractor, contracted to remove old foundations at the site and install rebar and concrete for the new foundation, stating that the foundation for the Rear Building was completed “by the end of June 2004” and that all foundation work at the property, that is, including that for the Front Building, was completed “[b]y September 2004”; (2) a letter from Metropolis Group stating that the foundation work at the premises “was completed well before September 2004 since the project was in superstructure in September 2004 and could not have been in that phase of construction unless the foundations were complete” and that not obtaining sign-offs on the foundation work until after the Effective Date has no bearing on when the foundation work was actually completed by the Effective Date; (3) a letter, dated February 23, 2012, from a surveyor stating that when they visited the site on August 3, 2004, to mark out a proposed elevator shaft, their crew installed a mark “on the newly installed foundation of the building at the rear of the property” and, thus, the Rear Building was “installed and completed as of August 4, 2004”; (4) photos from the site taken May 6, May 21, June 2 and June 15, 2004, showing the progress of the Rear Building foundation; (6) a letter, dated January 11, 2017, from the structural engineer of record for the Development stating that, based on the Surveyor Letter and the structural engineer’s own observation “that the foundations existed on or before August 26, 2004,” the foundations for the Rear Building were completed prior to the Effective Date; and (7) a letter, dated September 25, 2017, from the architect of the site from 2003 to 2005 interpreting the 2004 Structural Engineer Letter’s observation that “there presently are timber braces from the first floor rear wall to the new foundation of the rear addition” to indicate that the new foundation of the Rear Building was already built as of August 24, 2004, two days before the 2004 Structural Engineer’s Letter, and stating that the recommendations made in the 2004 Structural Engineer’s Letter regarding completion of foundations related to the Front Building only; and

WHEREAS, with regards to substantial expenditures, the Appellant avers that approximately \$1.25 million was spent on demolition, construction and restoration of the Front Building and Rear Building prior to September 9, 2004, including approximately \$691,000 spent on the Rear Building alone, out of a total estimated cost of \$6.7 million (19 percent); and

WHEREAS, the Appellant submits that substantial loss would result if no common law vested right was recognized by the Board because such a determination would require not only the complete demolition of the Rear Building, but the “perpetual annual loss of income from the 12 medical offices of lost space estimated at \$296,808 for the first year”; and

WHEREAS, with regards to allegations that the Rear Building was occupied contrary to the CO with residential tenants, the Appellant, by submission dated June 7, 2017, reported that residential tenants had been completely vacated from the Rear Building and the rear units of the Front Building and reiterated that they believed that they had previously submitted evidence sufficient to support their argument that the

foundation of the Rear Building had been completed by September 9, 2004; and

WHEREAS, finally, Appellant requested that the CO Revocation Appeal be dismissed because DOB had not yet met their burden and proven that the Alt 1 Permit did not vest; a request to revoke the CO based on objections from an audit performed nine years after the issuance of the Alt 1 Permit and five years after the issuance of the CO was not properly before the Board because, *inter alia*, DOB failed to allow Appellant the opportunity to address and cure objections prior to the filing of the appeal; DOB’s argument that certain objections were curable and others were not was arbitrary and such objections were issued in error; and DOB’s issuance of the CO was further proof that construction vested under the Alt 1 Permit; and

## DOB’S POSITION

WHEREAS, DOB initially asserted that the Alt 1 Permit “was not validly issued,” and, therefore, the Appellant could not have attained a vested right to complete construction after September 9, 2004 (See *Vi. Of Asharokan v. Pitassy*, 119 A.D.2d 404, 417 (N.Y. App. Div. 2nd Dep’t 1986; see also *Jayne Estates, Inc. v. Raynor*, 22 N.Y.2d 417, 422 (1968))); and

WHEREAS, DOB additionally submitted that the 2012 Audit revealed substantial and incurable errors—including violations of the Zoning Resolution and the Building Code—affecting life and safety that would require a substantial redesign of the Development for compliance; in particular, DOB identified the elevated exterior walkways on the Rear Building as contrary to ZR §§ 23-44 and 24-33, the second story of the Rear Building as an obstruction contrary to ZR § 24-33 and the absence of a second means of egress from both the Front Building and the Rear Building as contrary to Sections 27-362 and 27-366 of the 1968 Building Code; and

WHEREAS, DOB additionally identified other objections discovered in the course of the 2012 Audit as potentially curable, but alleged that when all of the objections are considered in their totality, the objections render the Alt 1 Permit invalid; and

WHEREAS, therefore, DOB considered the question of whether foundations were complete prior to September 9, 2004, as irrelevant because a vested right cannot accrue where the construction upon which such right relies was completed pursuant to invalid permits; and

WHEREAS, upon completion of the 2012 Audit, DOB concluded that the Alt 1 Permit was, in fact, validly issued, but contested that foundations at the site had not been completed and, thus, the Alt 1 Permit lapsed by operation of law on the Effective Date, citing, among other things, the facts that (1) the Stop Work Order issued for the site was not lifted in its entirety until September 1, 2004, eight days before the Effective Date; (2) the Alt 1 Permit was not signed off until July 26, 2005; (3) a Post-Approval Amendment for the Demolition Alt 2 Permit was not filed until on or about October 5, 2004; and (4) the Foundation Permit was renewed on March 10, 2005; and

WHEREAS, in support of their contention that the foundation was not complete by September 9, 2004, DOB identifies the following pieces of evidence: (1) the 2004 Structural Engineer Letter advising the owner that, among

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other things, foundation work at 638 and 640 East 11th Street be completed and foundation work at 636 East 11th Street should be continued; (2) the renewal of the Foundation Permit on March 10, 2005, six months after the Effective Date, and its ultimate signoff on July 26, 2005, ten months after the Effective Date; (3) the filing of a Post Approval Amendment to the Demolition Alt 2 Permit on October 5, 2004, with notations that had not previously appeared on drawings previously submitted with the Demolition Alt 2 Permit approved prior to the Effective Date stating “Existing foundation wall to be removed and replaced with new structural concrete wall...”, “Underpin existing walls as req’d...”, and “New struct. Walls as req’d...”, suggesting that a month after the Effective Date, foundation walls still needed to be removed and new concrete walls constructed in their place; and (4) the Survey submitted by the Appellant reflecting conditions at the site on April 25, 2005, outlining the buildings under construction and a proposed elevator shaft, suggesting that the foundations of the Front Building at 638 and 640 East 11th Street may have been complete, but providing no evidence of the rear foundation walls for any portion of the site; and

WHEREAS, DOB notes that the Stop Work Order was active at the premises at the time of the 2004 Structural Engineer’s Letter, was lifted at 636 and 638 East 11th Street on the same day, but was not lifted at 640 East 11<sup>th</sup> Street until September 1, 2004, eight days before the Effective Date, leaving the Appellant with insufficient time to complete foundations at the site by that time; and

## THE BOARD’S FINDINGS

WHEREAS, the Board accepts DOB’s conclusion that the Alt 1 Permit was validly issued; and

WHEREAS, the Board finds that foundation work for the Development had been commenced prior to the Effective Date, but that the question of whether the Development is a “major development” or a “minor development” is not properly before this Board and, in any event, neither the Rear Building foundation nor all work on foundations were completed at the site prior to the Effective Date and thus, the Alt 1 Permit lapsed pursuant to ZR § 11-331; and

WHEREAS, because the Appellant did not file an application to the Board within 30 days of the Effective Date to recognize a statutory right to continue construction at the site subsequent to the Effective Date, the Appellant did not obtain a statutory vested right to complete the construction of the Development; and

WHEREAS, however, the Board finds that the Appellant had undertaken substantial construction, made substantial expenditures in connection with the Alt 1 Permit and that serious loss would have resulted if the owner had been denied the right to proceed under the prior zoning; and

WHEREAS, thus, the Board recognizes that the Appellant had, indeed, acquired a common law vested right to complete the construction of the Development subsequent to the Effective Date; and

WHEREAS, the 2004 amendment to ZR § 24-33 exempted from the definition of “permitted obstruction,” “any portion of a building” located in a residence district other than R1, R2, R3A, R3X, R3-1, R4A, R4B or R4-1, beyond 100 feet

of a wide street “used for community facility use other than a school, house of worship, college or university, or hospital and related facilities;” and

WHEREAS, therefore, as of the Effective Date, the Rear Building was rendered non-complying because its bulk was not permitted in the rear yard of a residential building as a permitted obstruction; and

WHEREAS, the Board finds, based on the substantial evidence in the record, that neither the Rear Building nor the first floor and cellar of the Front Building have been occupied by UG 4 medical offices since on or around December 31, 2008, the date of the first violations issued to the premises by DOB for occupancy contrary to the CO; and

WHEREAS, even assuming that the Appellant was not on notice that residential occupancy of the Rear Building and the first and cellar floor levels of the Front Building were contrary to both the CO and the Zoning Resolution until a February 2012 letter from DOB, residential occupancy of these areas of the Development continued until mid-2017, another five years; and

WHEREAS, viewed in the most generous light and supposing that the medical office areas of the Development were, in fact, occupied by medical offices at some time prior to 2012, pursuant to ZR § 52-61, if a non-conforming use is considered abandoned once it is discontinued in a building for a continuous period of two years, that building must thereafter be used only for conforming use; and

WHEREAS, the Board finds that ten years have lapsed since the time of the construction of the Development and circumstances have changed such that the City’s interest in present zoning, to wit, legal occupancy of the premises, outweighs the property owner’s vested right; and

WHEREAS, the Board finds that the failure to occupy the UG 4 medical office space in the Rear Building with UG 4 medical office in the face of multiple years of attempted enforcement by DOB, both in the issuing of violations and the filing and prosecution of the CO Revocation Appeal to be an overt act sufficient to constitute abandonment as contemplated in Putnam; and

WHEREAS, the Board notes that the Zoning Amendment specifically rendered UG 4 medical office use in the Rear Building non-complying; and

WHEREAS, accordingly, the Board finds that the Appellant abandoned its right to occupy the Rear Building with UG 4 medical offices; and

*Therefore it is Resolved*, that the application to revoke Certificate of Occupancy No. 103703226F, filed under BSA Cal. No. 166-12-A, is *granted in part* with regards to the UG 4 medical office occupancies indicated on the cellar, first floor and mezzanine levels of the Rear Building and the application to recognize a common law vested right to complete construction under Permit No. 103703226, filed under BSA Cal. No. 107-13-A, is *denied*.

Adopted by the Board of Standards and Appeals, October 17, 2017.

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# MINUTES

## 232-15-A

APPLICANT – Sheldon Lobel, P.C., for Thor 840 West End Avenue LLC, owner.

SUBJECT – Application October 1, 2015 – Proposed vertical enlargement of an existing six story building to allow for a new penthouse floor and roof above the sixth floor which requires a waiver of the Multiple Dwelling Law and Building Code. R8 zoning district.

PREMISES AFFECTED – 840 West End Avenue aka 259 West 101 Street, Block 1873, Lot 01, Borough of Manhattan.

### COMMUNITY BOARD #7M

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta. ....4

Negative: .....0

Adopted by the Board of Standards and Appeals, October 17, 2017.

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## 2016-4263-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for R.A. Properties, LLC, owner.

SUBJECT – Application October 3, 2016 – Proposed development of a two-story building with warehouse use on the first floor (UG 16B) and office use on the second floor (UG 6) not fronting on a mapped street contrary to General City Law 36. M3-1(SRD)

PREMISES AFFECTED – 235 Industrial Loop, Block 7206, Lot 314, Borough of Staten Island.

### COMMUNITY BOARD #3SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 1, 2016, acting on New Building Application No. 520229208, reads in pertinent part:

“The street giving access to proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law.
- B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to section 502.1 of the 2014 NYC Building Code”; and

WHEREAS, this is an appeal to permit, in an M3-1 zoning district and Special South Richmond Development District, the development of a two-story building that does

not front on a mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this appeal on June 6, 2017, after due notice by publication in *The City Record*, with a continued hearing on August 8, 2017, and then to decision on October 17, 2017; and

WHEREAS, former Commissioner Montanez performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this appeal; and

WHEREAS, the subject site is located on the east side of Industrial Loop, north of Arthur Kill Road, in an M3-1 zoning district and Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 104 feet of frontage along Industrial Loop, 150 feet of depth, 16,866 square feet of lot area and is unimproved and used as a storage yard with two trailers; and

WHEREAS, the applicant proposes the develop the subject site with a two-story building used as a warehouse and office that complies with all zoning requirements applicable in the subject zoning district; and

WHEREAS, GCL § 36 provides that no certificate of occupancy shall be issued for any building unless a street or highway giving access to such structure has been officially mapped and adequately improved in respect to the public health, safety and general welfare; and

WHEREAS, said statute empowers the Board to vary this requirement where there is practical difficulty or unnecessary hardship; and

WHEREAS, because the subject site is only accessible from Industrial Loop, which is not a street duly placed on the official map of the City of New York, the applicant seeks the relief sought herein; and

WHEREAS, Industrial Loop is built to a width of 37 feet immediately west of the subject site and connects to Arthur Kill Road, a street appearing on the official map of the City of New York, approximately 1,798 feet to the south of the subject site; and

WHEREAS, the applicant submits that a restrictive declaration, dated January 26, 1995, has been placed on the subject site by Arthur Kill Association, Ltd., in order to provide for the maintenance of Industrial Loop, including paving, repairing, surfacing, re-surfacing, snow removal, clearance of all debris and all work otherwise necessary to maintain Industrial Loop for ingress and egress and to keep Industrial Loop open for the use of the subject site and adjoining sites; additionally, the restrictive declaration further provides for the maintenance of fire hydrants, fire alarm system, the storm drainage system, electricity, telephone, natural gas and water lines; and

WHEREAS, at hearing, the Board questioned the presence of parking in the fire lane and requested that landscaping be shown on the drawings; and

WHEREAS, by letter dated June 5, 2017, the Fire Department states that fire hydrants must be located within 100 feet of a Siamese connection, that a designated access

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# MINUTES

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road at least 34 feet in width must lead to the frontage space and that a frontage space with 30 feet in both dimensions must be located in front of and adjoining the proposed building's main front entrance; and

WHEREAS, in response, the applicant notes that the proposed building will be fully sprinklered and amended the drawings with respect to fire hydrants, "no parking" signage and relevant dimensions; and

WHEREAS, accordingly, the Board finds that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved*, the decision of the Department of Buildings, dated September 1, 2016, acting on New Building Application No. 520229208, be and it hereby is *modified* under the powers vested in the Board of Standards and Appeals by General City Law § 36, and that this appeal be and it hereby is *granted*, limited to the objection noted, *on condition* that all construction shall substantially conform to drawings filed with this appeal marked, "Received October 17, 2017"-One (1) sheet; and *on further condition*:

THAT a certificate of occupancy shall be obtained within four (4) years, by October 17, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2017.

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## 2017-189-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Dongan 222 LLC, owner.

SUBJECT – Application May 24, 2017– Proposed three-story, two-family dwelling located within the bed of a mapped street contrary to Article III, Section 35 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 222 Dongan Hills Avenue, Block 3549, Lot 16, Borough of Staten Island.

### COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated April 24, 2017, acting on New Building Application No. 520289642, reads in pertinent

part:

"GCL 35 Proposed construction within the bed of a mapped street is contrary to Article III, Section 35 of the General City Law. Therefore, refer to the Board of Standards and Appeals for review.

"ZR 24-00 Proposed new building has bulk non-compliances resulting from the location of such mapped street. Obtain Board of Standards and Appeals waiver pursuant to ZR 72-01(g)"; and

WHEREAS, this is an appeal to permit, in an R3X zoning district, the development of a building in the bed of a mapped street, contrary to General City Law ("GCL") § 35 and ZR § 24-00; and

WHEREAS, a public hearing was held on this appeal on October 17, 2017, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this appeal; and

WHEREAS, the subject site is located on the south side of Dongan Hills Avenue, between Vera Street and Hylan Boulevard, in an R3X zoning district and a Lower Density Growth Management Area, on Staten Island; and

WHEREAS, the site has approximately 60 feet of frontage along Dongan Hills Avenue, 74 feet of depth, 4,466 square feet of lot area and is occupied by a two-story residence and one-story accessory garage; and

WHEREAS, the applicant proposes to demolish the existing buildings and develop a three-story, two-family residence partially within the bed of Joyce Street, an unimproved mapped street; and

WHEREAS, additionally, the applicant represents that the proposed building will comply with applicable provisions of the Zoning Resolution but that certain bulk waivers pertaining to measuring yards from lot lines, rather than street lines, is necessary to address non-compliance resulting from the location of the proposed building within and outside the unimproved street; and

WHEREAS, the applicant further submits that the zoning lot will comply to the maximum extent feasible with all applicable zoning regulations as if such unimproved street were not mapped; and

WHEREAS, by letter dated June 28, 2017, the New York City Department of Transportation ("DOT") states that Joyce Street at this location is mapped for 60 feet, that the City does not have title and that Joyce Street at this location is not currently included in DOT's Capital Improvement Program; and

WHEREAS, by letter dated June 28, 2017, the New York City Department of Environmental Protection ("DEP") states that DEP has reviewed this appeal and has no objection; and

WHEREAS, the Fire Department represents that it has no objection to this appeal; and

WHEREAS, at hearing, the applicant clarified that this appeal pertains only to Joyce Street, not Dongan Hills Avenue, and that the proposed building complies with the unimproved, mapped portion of Dongan Hills Avenue within the subject lot; and

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WHEREAS, in response to questions from the Board, the applicant revised the drawings to reflect setback distances; and

WHEREAS, accordingly, the Board finds that the evidence in the record supports the findings required to be made and that the applicant has substantiated a basis to warrant exercise of discretion to grant under GCL § 35 and ZR § 72-01(g).

Therefore it is Resolved, that the decision of the Department of Buildings, dated April 24, 2017, acting on New Building Application No. 520289642, be and it hereby is *modified* under the powers vested in the Board of Standards and Appeals by General City Law § 35 and ZR § 72-01(g), and that this appeal be and it hereby is *granted*, limited to the objection noted, *on condition* that all construction shall substantially conform to drawings filed with this appeal marked “Received July 28, 2017”-One (1) sheet; and *on further condition*:

THAT a certificate of occupancy shall be obtained within four (4) years, by October 17, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2017.

## 205-15-A thru 214-15-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atid Development LLC, owner.

SUBJECT – Application August 31, 2015 – Proposed development of two-story, one family dwelling with accessory parking space that are proposed to be located within the bed of mapped but unbuilt 129th Avenue & Hook Creek Boulevard, contrary to Article 3 of the General City Law, Section 35 located within an R2 zoning district.

PREMISES AFFECTED – 128-60 to 128-76 Hook Creek Boulevard and 128-63 to 128-75 Fortune Way, Block 12887, Lot(s) 129, 130,131, 132, 133,134, 135,136, 137, 138, Borough of Queens.

## COMMUNITY BOARD #12Q

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

## ZONING CALENDAR

### 30-14-BZ

#### CEQR #14-BSA-116K

APPLICANT – Eli Katz of Binyan Expediting, for Cong. Machine Chaim, owner; Yeshiva Bais Sorah, lessee.

SUBJECT – Application February 11, 2014 – Variance (§72-21) proposed enlargement to an existing school (Use Group 3) is contrary to §§42-00 & 43-43. M1-1 zoning district.

PREMISES AFFECTED – 6101 16<sup>th</sup> Avenue aka 1602 61<sup>st</sup> Street aka 1601 62<sup>nd</sup> Street, north east corner of 62nd Street and south east side of 16th Avenue, Block 5524, Lot 1, Borough of Brooklyn.

#### COMMUNITY BOARD #11BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3  
Negative: .....0  
Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 20, 2015, acting on DOB Application No. 320515313 reads in pertinent part:

1. ZR 42-00: Proposed extension of use group 3 is prohibited per approved BSA plans under 138-04-BZ;
2. ZR 43-12: Proposed floor area exceed maximum permitted, contrary to ZR 43-12;
3. ZR 43-12: Use Group 3 school is not permitted as of right, contrary to ZR 43-12;
4. ZR 43-43: Proposed enlargement exceeds height limitations contrary to ZR 43-43;
5. ZR 43-26: Proposed enlargement is prohibited in required rear yard
6. [ . . . ];
7. ZR 43-31: Proposed enlargement requires rear yard beyond 100’ for thru lot portion;
8. ZR 43-28: Provide rear yard equivalent for thru lot beyond 100’ of corner; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located within an M1-1 zoning district, the enlargement of an existing Use Group (“UG”) 3 school that does not comply with the zoning regulations regarding use, floor area ratio, rear yards, rear yard equivalents and front wall height and setbacks, contrary to ZR §§ 42-00, 43-12, 43-26, 43-28, 43-31 and 43-43; and

WHEREAS, this application is filed on behalf of Congregation Machne Chaim, the owner of the premises, and Yeshiva Bais Sorah (the “Yeshiva”), the occupier of the premises; and

WHEREAS, a public hearing was held on this application on April 21, 2015, after due notice by publication in *The City Record*, with continued hearings on October 20, 2015, December 15, 2015, March 22, 2016, May 17, 2016 and July 19, 2016, and then to decision on

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October 17, 2017; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and the surrounding neighborhood; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application on condition that an enclosed area be provided on site for the storage of garbage; and

WHEREAS, New York City Council Member David G. Greenfield submitted a letter, dated June 12, 2014, in support of this application; and

WHEREAS, the subject site is bound by 16th Avenue to the west, 61st Street to the north, 62nd Street to the south, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 200 feet of frontage along 16th Avenue, 190 feet of frontage along 61st Street, 110 feet of frontage along 62nd Street, 30,000 square feet of lot area and is occupied by a three-story not-for-profit UG 3 girls yeshiva; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 14, 2005, when, under BSA Cal. No. 138-04-BZ, the Board granted a special permit, pursuant to ZR § 73-19 and 73-03, for a UG 3 school at the premises; and

WHEREAS, the existing building has approximately 59,959 square feet of floor area, a floor area ratio ("FAR") of 2.0 and houses a pre-school through high school student population (students aged 2 through 17 years) within 38 classrooms accommodating a total of 1,191 students; and

WHEREAS, the applicant submits that the existing building lacks sufficient space to accommodate younger students as they progress in their education (i.e. while there are four classes of fourth graders, there is only sufficient classroom space for three classes of fifth through sixth graders, two classes of seventh and eighth graders and one class of each of the ninth through twelfth graders) and the Yeshiva is in need of additional classroom space; and

WHEREAS, the applicant originally proposed a three-story enlargement of the existing building and five-story plus cellar enlargement within the interior lot portion of the site fronting 61st Street, resulting in a building with 159,240 square feet of floor area, 5.31 FAR with a front wall height of 84'-3" with no setbacks, a mikveh in the cellar and a new seminary for 120 post-high school adult students on the sixth floor and a rooftop play area; and

WHEREAS, in the course of hearings, the Board expressed concerns regarding the adequate isolation of the adult seminary from children in the enlarged building and, in lieu of providing a separate entrance for seminary students on a separate floor, the applicant revised the proposal to remove the seminary program and sixth floor from the proposed enlargement; and

WHEREAS, the applicant now proposes to enlarge the school by adding a fourth and fifth story to the existing building and five-story plus cellar enlargement within the interior lot portion of the site fronting 61st Street, resulting in a building with 140,815 square feet of floor area, 4.69

FAR, rising to a front wall height of 70.8 feet with no setbacks, a 7'-10" rear yard equivalent and a rooftop play area; and

WHEREAS, at the subject site, a UG 3 school is not permitted pursuant to ZR §§ 42-00 and 43-12; the maximum floor area ratio permitted is 2.4 FAR pursuant to ZR 43-122; a maximum front wall height of 30 feet is permitted before a setback consistent with the sky exposure plane is required pursuant to ZR § 43-43; a 15 foot setback from 16th Avenue, a wide street, and 20 feet setbacks from both 61st and 62nd Streets, narrow streets, are required pursuant to ZR § 43-43; a rear yard at least 20 feet in depth is required for the portion of the lot located beyond 100 feet of the corner and fronting 61st Street pursuant to ZR §§ 43-26 and 43-31; and a rear yard equivalent of either (a) an open area with a minimum lot depth of 40 feet midway between the street lines of 61st Street and 62nd Street, (b) two open areas, each adjoining and extending along the full length of the lot lines fronting 61st Street and 62nd Street, each with a minimum depth of 20 feet from each street line or (c) an open area adjoining and extending along the full length of each side lot line with a minimum width of 20 feet measured from each side lot line is required for the through lot portion of the site pursuant to ZR § 43-28; and

WHEREAS, accordingly, the applicant seeks the subject relief; and

WHEREAS, the Yeshiva submits that the waivers sought are necessary in order to meet its programmatic needs, specifically, to accommodate its existing student body as they graduate to higher grade levels, allow opportunity for modest growth and provide sufficient classroom and multi-purpose spaces to accommodate all of their existing course offerings; and

WHEREAS, the enlarged building will provide an additional 25 classrooms accommodating a total of approximately 1,662 students (students aged 6 months to 17 years), new lunchrooms, indoor play areas, gymnasias, computer rooms, libraries, science labs, music and art rooms and a mikveh in the cellar of the enlarged portion of the building for use by the female students post-graduation and for use by the general community; and

WHEREAS, the applicant submits that the mikveh is an integral part of the Yeshiva's mission of being an essential part of its female students' lives throughout their lives and creating an environment in which they can not only receive an education consisting of both Judaic studies and secular studies, but one to which they can return for spiritual and developmental guidance in preparation for significant life events such as marriage; and

WHEREAS, the Board requires, and the Yeshiva agrees, that there be no access from the mikveh directly to or from the school—it is accessible from an entrance located on 62st Street, egress is made to 61st Street and the ADA access to the mikveh cannot be used to access school areas—and that stranger, non-school staff adults will be kept separate from children at all times; and

WHEREAS, in response to a request from the Board, the applicant indicated that the mikveh will be available



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only after sundown and during evening hours and that school hours will never overlap with the mikveh's hours; and

WHEREAS, the remainder of the enlargement will provide the following additional spaces: a lunchroom, kitchen and indoor play area for day care and pre-nursery school students on the first floor; four classrooms for five-year old Pre-1A students and two classrooms for four-year old kindergarten students on the second floor; a dining area, warming kitchen and gym for first through third grade students and other elementary students, as required, on the third floor; 20 classrooms for grades four through eight (permitting four classes per grade), offices, and tutoring spaces on the fourth floor; and eight classrooms for grades nine through twelve (permitting two classes per grade), a cafeteria for high school students, offices, two computer rooms, two computer labs, a science lab, a home economics classroom, a craft room and a library that will be available to all students in the building on the fifth floor; and

WHEREAS, the roof of the enlarged building will additionally provide a rooftop play area surrounded by a 9'-8" tall fence; and

WHEREAS, the applicant states that an as-of-right enlargement of the existing building would only permit its enlargement by 12,040 square feet—less than one story—which would be insufficient to accommodate its existing elementary and middle school students as they progress in their education and, thus, the requested waivers are required for the Yeshiva to meet its programmatic need to eliminate classroom overcrowding and provide adequate educational facilities for its students and curriculum; and

WHEREAS, specifically, the applicant submits that the requested use waiver is required to enable an extension of the UG 3 school, which is not permitted at the subject site as-of-right and only exists because of a special permit granted to the site by the Board in 2005; that an expansion compliant with the maximum permitted FAR would be insufficient to adequately accommodate its current and future projected student body; and that compliance with the maximum front wall height, setback, rear yard and rear yard equivalent regulations would result in smaller floorplates for the five-story enlargement as well on the additional fourth and fifth floors (which would need to be set back from three sides), would require the relocating of staircases on those floors and the installation of transfer beams and new columns and ultimately result in not only the loss of necessary classroom and accessory spaces but increased construction costs; and

WHEREAS, the Board acknowledges that the Yeshiva, as an educational institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance application; specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), an educational or religious institution's application is to be granted unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of the

neighborhood are insufficient grounds for the denial of such applications; and

WHEREAS, based on the above, the Board finds that the Yeshiva's programmatic needs create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

WHEREAS, the Yeshiva is a not-for-profit institution and because the variance is needed to further its not-for-profit mission, the finding set forth in ZR § 72-21(b) need not be made in order to grant the variance requested in this application; and

WHEREAS, the applicant represents that, pursuant to ZR § 72-21(c), the variance, if granted, will not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, or be detrimental to the public welfare; and

WHEREAS, specifically, the Yeshiva notes that resulting enlarged building will be shorter than two public schools located in the area—P.S. 227, located three block west, which rises to 74 feet tall, and P.S. 180, located four blocks, which stands at 84 feet high; and

WHEREAS, with regards to transportation to and from the site, the applicant submits that bus arrivals and departures are currently staggered, with 629 first through sixth graders arriving at the site on approximately 10 buses between 8:30 a.m. and 8:50 a.m., 294 pre-school students arriving at the site on approximately 5 buses between 9:15 a.m. and 9:45 a.m., pre-school students are dismissed at 3 p.m. and elementary school students are dismissed at 4:15 p.m.; and

WHEREAS, the applicant represents that the buses are equipped with GPS devices and that school staff meet the buses at arrival and departure times to ensure that students are loaded and unloaded from the buses safely and efficiently; in addition, No Parking Signs are located at each of the Yeshiva's three frontages, effective from 7 a.m. to 6 p.m. on all school days, and the buses are parked off-site; and

WHEREAS, the applicant represents that the remaining students (approximately 268 in grades seven through twelve) travel to and from the Yeshiva on foot or via mass transit; seventh and eighth grade students arrive at the premises between 8:30 a.m. and 8:50 a.m. and are dismissed at 4:15 p.m. while high school students arrive at the premises between 8:15 a.m. and 8:45 a.m. and are dismissed at 4:40 p.m.; and

WHEREAS, the applicant submits that, at full capacity, there will be 280 high school students and 240 seventh and eighth grade students arriving to the Yeshiva by foot or public and 1,142 students in pre-nursery through sixth grade arriving on the same staggered schedule as currently devised and the total number required will increase by one to 11; and

WHEREAS, in addition, the applicant submitted letters from the Girls School of Bobov, dated March 1, 2016, and April 18, 2016, indicating a commitment to sign a lease with the Yeshiva to provide parking spaces for all 11 of these buses at 1454 62nd Street when they are not in use; and

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WHEREAS, an arrival and dismissal operational plan consistent with the foregoing was presented to the Board and has been incorporated as a condition to this grant; and

WHEREAS, the Board finds that the proposal will not alter the essential character of the surrounding neighborhood, nor impair the use or development of adjacent properties, and not be detrimental to the public welfare; and

WHEREAS, the applicant states, and the Board finds, that the practical difficulties herein are inherent to its unique programming needs and were not caused by the owner of the site or a predecessor in title; and

WHEREAS, the applicant represents that, consistent with ZR § 72-21(e), the proposal is the minimum necessary to accommodate its programmatic needs; and

WHEREAS, in light of the revisions to the proposal over the course of hearings, the Board finds that this proposal is the minimum necessary to allow the Yeshiva to fulfill its programmatic needs; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, this project is classified as an Unlisted Action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) Short Form CEQR No. 14-BSA-116K, dated October 17, 2017; and

WHEREAS, the EAS documents that the project as proposed would not have significant impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, the New York City Department of Environmental Protection (“DEP”) reviewed the subject proposal for air quality, noise and hazardous materials; and

WHEREAS, by letter dated March 25, 2015, DEP states that it reviewed the February 2015 Phase II Environmental Site Assessment Investigation (Phase II) for the subject proposal and makes the following comments, which have been incorporated as a condition to this grant: (1) submission of a Remedial Action Plan (“RAP”) for the proposed construction project, delineating that contaminated soils should be properly disposed of in accordance with the applicable NYSDEC regulations, to DEP for the review and approval; (2) submission of a site-specific Construction Health and Safety Plan (“CHASP”) on the basis of workers exposure to contaminants for the proposed construction project to DEP for review and written approval prior to any soil disturbance; (3) incorporation of a vapor barrier into the design plan with manufacturer’s specifications of the

proposed vapor barrier submitted to DEP for review and approval; (4) for all areas which will either be landscaped or covered with grass (not capped), a minimum of two feet of clean fill/top soil must be imported from an approved facility/source and graded across all landscaped/grass covered areas of the site not capped with concrete asphalt and the clean fill/top soil must be segregated at the source/facility, have qualified environmental personnel collect representative samples at a frequency of one sample for every 250 cubic yards, analyze the samples for TCL VOCs, SVOCs, pesticides, PCBs, and TAL metals by a New York State Department of Health Environmental Laboratory Approval Program certified laboratory, compared to NYSDEC Part 375 Environmental Remediation Programs; (5) excavated soils, which are temporarily stockpiled on site, must be covered with polyethylene sheeting while disposal options are determined and excavated soils should not be reused for grading purposes; (6) if any petroleum-impacted soils (which display petroleum odors and/or staining) are encountered during the excavation/grading activities, the impacted soils should be removed and properly disposed of in accordance with all NYSDEC regulations; (7) dust suppression must be maintained by the contractor during the excavating and grading activities at the site; (8) all known or found underground storage tanks and aboveground storage tanks (including dispensers, piping, and fill-ports) must be properly removed/closed in accordance with all applicable NYSDEC regulations; and (9) if de-watering into New York City storm/sewer drains will occur during the propose construction, a New York City Department of Environmental Protection Sewer Discharge Permit must be obtained prior to the start of any dewatering activities at the site; and

WHEREAS, by letter dated July 22, 2015, DEP states that it reviewed and approved the June 2015 RAP and CHASP submitted by the applicant, and additionally requested that, upon the completion of the project, a Professional Engineer-certified Remedial Closure Report indicating that all remedial requirements have been properly implemented (i.e. proof of installation of vapor barrier; transportation/disposal manifests and certificates from impacted soils removed and disposed of in accordance with all NYSDEC regulations; and two feet of certified clean fill/top soil capping requirements in all landscaped/grass covered areas not capped with concrete/asphalt, etc.) be submitted to DEP for review and approval; and

WHEREAS, by letter dated May 15, 2015, DEP states that it reviewed the Noise Analysis prepared in connection with the subject application and makes the following comments, which have been incorporated as a condition to this grant: (1) composite window/wall noise attenuation of 28 dBA is required for the 16th Avenue frontage of the proposed building in order to attain an indoor noise level of 45 dBA within the proposed development and (2) an alternate means of ventilation shall be incorporated into the building design and construction; and

WHEREAS, by letter dated September 12, 2017, DEP states that it reviewed the revised Air Quality analysis dated

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July 2017 in connection with the subject proposal and concluded that the proposed project would not result in any significant adverse air quality impact; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore, it is Resolved,* that the Board of Standards and Appeals issues a Negative Declaration 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 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to grant, on a site located in an M1-1 zoning district, the enlargement of an existing Use Group 3 school that does not comply with the zoning regulations regarding use, floor area ratio, rear yards, rear yard equivalents and front wall height and setbacks, contrary to ZR §§ 42-00, 43-12, 43-26, 43-28, 43-31 and 43-43; *on condition* that all work will substantially conform to drawings filed with this application marked "Received October 17, 2017"- Fourteen (14) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum of 4.69 FAR (140,815 square feet of floor area), a maximum front wall height of 70.8 feet, a minimum of 0 feet setback from all street frontages above a front wall height of 30 feet; a rear yard equivalent of at least 7'-10" on the through lot portion of the site; and a rear yard of at least 0 feet on the portion of the lot located beyond 100 feet of the corner and fronting 61st Street;

THAT buses shall be parked during off hours at 1454 62nd Street, Brooklyn; and

THAT bus drop off and pick up shall be conducted according to the following operational schedule:

The school will utilize all three frontages, which have no parking signs from 7 a.m. to 6 p.m. school days, to accommodate the students as they arrive and depart the building to ensure that the students enter and exit the building as quickly as possible without impacting the surrounding uses or traffic.

Each bus will have at least one staff member on it. At arrival and dismissal there are teachers and staff at each entrance to meet the buses and ensure the students safely load and unload the buses. The buses are equipped with GPS devices that are monitored by a staff member in the premises to ensure their respective routes are being followed.

The first floor will have an auditorium that will be used daily for bus line up for the children. The students are arranged for dismissal by buses. Each bus is assigned a color and each student that is on that bus will be gathered for dismissal with that color group. This system ensures an efficient

dismissal schedule to avoid any impact on traffic. At capacity, there will be

- 280 high school students that walk to and from the school, arriving between 8:15 a.m. and 8:45 a.m. and leaving upon dismissal at 4:40 p.m.;
- 240 students in seventh and eighth grades that walk to and from school, arriving between 8:30 a.m. and 8:50 a.m. and leaving upon dismissal at 4:15 p.m.;
- 720 students in the first through sixth grades arriving on approximately 11 buses (each carrying approximately 65 students) between 8:30 a.m. and 8:50 a.m. and leaving by bus upon dismissal at 4:15 p.m.; and
- 422 students in preschool arriving on approximately 8 buses (each carrying approximately 55 students) between 9:15 a.m. and 9:45 p.m. and leaving by bus upon dismissal at 3 p.m.; and

THAT the subject approval does not include facilities for a seminary;

THAT the hours of the mikveh located in the cellar shall not overlap with the hours of the Use Group 3 school;

THAT a vapor barrier be incorporated into the design plan with manufacturer's specifications of the proposed vapor barrier submitted to DEP for review and approval;

THAT, for all areas which will either be landscaped or covered with grass (not capped), a minimum of two feet of clean fill/top soil must be imported from an approved facility/source and graded across all landscaped/grass covered areas of the site not capped with concrete asphalt and the clean fill/top soil must be segregated at the source/facility, have qualified environmental personnel collect representative samples at a frequency of one sample for every 250 cubic yards, analyze the samples for TCL VOCs, SVOCs, pesticides, PCBs, and TAL metals by a New York State Department of Health Environmental Laboratory Approval Program certified laboratory, compared to NYSDEC Part 375 Environmental Remediation Programs;

THAT excavated soils, which are temporarily stockpiled on site, must be covered with polyethylene sheeting while disposal options are determined and excavated soils should not be reused for grading purposes;

THAT if any petroleum-impacted soils (which display petroleum odors and/or staining) are encountered during the excavation/grading activities, the impacted soils should be removed and properly disposed of in accordance with all NYSDEC regulations;

THAT dust suppression must be maintained by the contractor during the excavating and grading activities at the site;

THAT all known or found underground storage tanks and aboveground storage tanks (including dispensers, piping, and fill-ports) must be properly removed/closed in accordance with all applicable NYSDEC regulations;

THAT if de-watering into New York City storm/sewer drains will occur during the propose construction, a New

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York City Department of Environmental Protection Sewer Discharge Permit must be obtained prior to the start of any dewatering activities at the site;

THAT upon the completion of the project, a Professional Engineer-certified Remedial Closure Report indicating that all remedial requirements have been properly implemented (i.e. proof of installation of vapor barrier; transportation/disposal manifests and certificates from impacted soils removed and disposed of in accordance with all NYSDEC regulations; and two feet of certified clean fill/top soil capping requirements in all landscaped/grass covered areas not capped with concrete/asphalt, etc.) be submitted to DEP for review and approval;

THAT composite window/wall noise attenuation of 28 dBA is required for the 16th Avenue frontage of the proposed building in order to attain an indoor noise level of 45 dBA within the proposed development;

THAT an alternate means of ventilation shall be incorporated into the building design and construction;

THAT the above conditions shall be listed on the Certificate of Occupancy;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a Certificate of Occupancy shall be obtained within four (4) years, by October 17, 2021;

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 shall be considered approved only for the portion 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, October 17, 2017.

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## 205-14-BZ

### CEQR #15-BSA-050Q

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 100-02 Rockaway Blvd 26 LLC, owner; Warrior Fitness Queens Inc., lessee.

SUBJECT – Application August 27, 2014 – Special Permit (§73-36) to allow for a physical culture establishment (*Warrior Fitness*) within a portion of an existing commercial building. M1-1 zoning district.

PREMISES AFFECTED – 100-02 Rockaway Boulevard, Block 9539, Lot 1, Borough of Queens.

### COMMUNITY BOARD #10Q

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 12, 2017, acting on Alteration Application No. 421549408, reads in pertinent part:

“As per ZR 42-31, proposed physical culture or health establishment in an M1 zoning district requires a special permit from the Board of Standards and Appeals”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an M1-1 zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the second floor of a two-story, with cellar, commercial building; and

WHEREAS, a public hearing was held on this application on August 27, 2014, after due notice by publication in *The City Record*, and then to decision on October 17, 2017; and

WHEREAS, the subject site is located on the south side of Rockaway Boulevard, between 100th Street and 101st Street, in an M1-1 zoning district, in Queens; and

WHEREAS, the site has approximately 233 feet of frontage along Rockaway Boulevard, 328 feet of frontage along 100th Street, 55 feet of frontage along 101st Street, 38,286 square feet of lot area and is occupied by a two-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or

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health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 proposed PCE will occupy a total of 7,514 square feet of floor area on the second floor, including a reception area, yoga area, aerobics space, cardiovascular equipment, weight training, a boxing ring, juice bar and restrooms; and

WHEREAS, the PCE will operate as Tapout Fitness with the following hours of operation: Monday to Saturday, 5:30 a.m. to 11:00 p.m., and Sunday, 6:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will not impair the essential character or the future use or development of the surrounding area because it is entirely contained within an existing commercial building and surrounded by other commercial uses in a manufacturing district; and

WHEREAS, in addition, the applicant submits that sound attenuation measures—including sound-attenuation

panels on all exterior walls and tenant-separation walls—will be provided within the space to ensure that the sound level in the other portions of the building do not exceed a maximum interior noise level of 45 dBA, including sound emanating from any sound system, if installed; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to the use of the premises, the applicant states that the PCE provides facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant represents that the PCE will be fully sprinklered and that an approved interior fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection to an FDNY-approved central station—will be installed in the entire PCE space; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No.15BSA050Q, dated August 27, 2014; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, in an M1-1 zoning district, the operation of a physical culture on a portion of the second floor of a two-story, with cellar, commercial building; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Received September 26, 2017” – Three (3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years,

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expiring October 17, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 17, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2017.

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## 172-15-BZ

### CEQR #16-BSA-012Q

APPLICANT – Eric Palatnik, P.C., for 146-45 22<sup>nd</sup> Avenue LLC, owner.

SUBJECT – Application July 31, 2015 – Variance (§72-21) to permit the development of a 1,796 square foot two-story with cellar two (2) family dwelling contrary to underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 146-45 22<sup>nd</sup> Avenue, Block 4637, Lot 47, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of

Buildings (“DOB”), dated July 1, 2015, acting on New Building Application No. 421143863, reads in pertinent part:

“The proposed front yard . . . is less tha[n] the required . . . and therefore contrary to ZR Section 23-45(a)”;

WHEREAS, this is an application under ZR § 72-21 to permit, in an R3A zoning district, the development of a two-story, with cellar, two-family residence that does not comply with zoning requirements for front yards, contrary to ZR § 23-45(a); and

WHEREAS, a public hearing was held on this application on December 6, 2016, after due notice by publication in *The City Record*, with continued hearings on February 28, 2017, May 16, 2017, and August 8, 2017, and then to decision on October 17, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 7, Queens, recommends disapproval of this application, citing concerns with neighborhood character, the potential effect of a front-yard reduction on the streetscape and whether the floor area request was minimal; and

WHEREAS, Queens Borough President Melinda Katz submitted testimony in opposition to this application, citing concerns regarding the requested waivers for floor area and dwelling unit size; and

WHEREAS, Council Member Paul A. Vallone submitted testimony in opposition to this application, citing concerns with neighborhood character and potential deleterious effects on adjacent properties; and

WHEREAS, New York State Senator Tony Avella submitted testimony regarding the presence of debris at the site, construction violations and alignment of the proposed building with adjacent residences; and

WHEREAS, the subject site is located on the northwest corner of 22nd Avenue and 147th Street, in an R3A zoning district, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage along 147th Street, 100 feet of frontage along 22nd Avenue, 2,500 square feet of lot area and is vacant; and

WHEREAS, initially the applicant proposed to develop a two-story residence that would not comply with zoning requirements for floor area, front yards and dwelling unit size; and

WHEREAS, in response to skepticism from the Board about the original proposal’s ability to meet the required findings and in response to community concerns, the applicant modified this application to eliminate certain waivers; and

WHEREAS, the applicant now seeks a variance to permit the development of a two-story, with cellar, two-family residence with a 19’-5” front yard along 147th Street and a 7’-0” front yard along 22nd Avenue, which is less than the required front yards of 10 feet or at least as deep as adjacent front yards, contrary to ZR § 23-45(a); and

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WHEREAS, the applicant represents, consistent with ZR § 72-21(a), the narrowness of the subject lot is a unique physical condition that creates practical difficulties or unnecessary hardship in complying with the zoning requirements for front yards; and

WHEREAS, in support of this contention, the applicant surveyed adjacent properties and submitted a study evidencing that only one other property within the surrounding area is a vacant corner lot with a width of 25 feet or less that is not improved with a lawful non-complying residence; and

WHEREAS, the applicant represents that a conforming residence on the subject site that complies with front yard requirements in an R3A zoning district would have a width of 15 feet and that such with would create unnecessary hardship; and

WHEREAS, the applicant further studied the width of nearby residences and found that no residences within the surveyed area had a width of 15 feet and that said residences range in width from 16 feet to 22 feet with an average width of 18 feet; and

WHEREAS, based upon the foregoing, the Board finds that the narrowness of the subject lot create practical difficulties or unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant represents that, under ZR § 72-21(b), because of the size of the lot and the aforementioned minimum front-yard requirements applicable to the subject site, an as-of-right development is unbuildable and, accordingly, there is no reasonable possibility that development of the zoning lot in strict conformity with the Zoning Resolution will bring a reasonable return; and

WHEREAS, the Board finds that there is no reasonable possibility that a development in strict compliance with applicable zoning requirements would be feasible because the site's unique physical conditions; and

WHEREAS, under ZR § 72-21(c), the applicant states that the proposed development will not alter the essential character of the neighborhood or district in which the subject lot is located; and

WHEREAS, in response to requests from the Board and concerns from the community, the applicant submitted a front-yard study of corner lots within the surrounding area demonstrating that 42 percent have non-complying front yards and that, for corner lots with less than 30 feet in width, all of the improved corner lots have non-complying front yards; and

WHEREAS, the applicant further notes that, along 147th Street, the majority of the existing residences have front yards between 9 and 15 feet in depth and that the average front yard depth along 147th Street is 12 feet; and

WHEREAS, the applicant also submits that, on 22nd Avenue, front yards range from 6 to 20 feet in depth, similar to the proposed front yard with a depth of 7 feet; and

WHEREAS, based upon the evidence in the record, the Board finds that the proposal will not alter the essential character of the neighborhood nor impair the use or

development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, consistent with ZR § 72-21(d), the applicant states that the practical difficulties or unnecessary hardship claimed have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant submitted evidence that the subject site has not been in common ownership with adjacent tracts of land; and

WHEREAS, the Board finds that the practical difficulties or unnecessary hardship claimed have not been created by the owner or by a predecessor in title; and

WHEREAS, under ZR § 72-21(e), the applicant represents that the variance is the minimum necessary to afford relief to allow for reasonable and productive use of the site for a habitable two-family residence; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 16-BSA-012Q, dated July 31, 2015; and

WHEREAS, accordingly, the Board finds that the evidence in the record supports the findings required to be made under ZR § 72-21 and that the applicant has substantiated a basis to warrant exercise in discretion to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to *permit*, in an R3A zoning district, the development of a two-story, with cellar, two-family residence that does not comply with zoning requirements for front yards, contrary to ZR § 23-45(a); *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked 'Received October 17, 2017'-Six (6) sheets; and *on further condition*:

THAT the front yard of the two-family residence along 22nd Avenue shall have a minimum depth of 7 feet, and the front yard of the detached one-car garage may have a minimum depth of 5'-10", as illustrated on the Board-approved plans;

THAT the above condition shall be noted on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 17, \*2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2017.

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## 2016-4259-BZ

### CEQR #17-BSA-022K

APPLICANT – Eric Palatnik, P.C., for Ed Houry and Irene Kokossion, owners.

SUBJECT – Application September 23, 2016 – Special Permit (73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yard requirements (ZR 23-461) and less than the minimum rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 8033 Shore Road, Block 5975, Lot 181, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 10, 2016, acting on Alteration Application No. 321305912, reads in pertinent part:

“The proposed enlargement of the existing one family residence . . .

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.
2. Creates non-compliance with respect to the open space and is contrary to section[] 23-141 of the Zoning Resolution”; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03 to permit, in an R2 zoning district and the Special Bay Ridge District, the enlargement of a building containing residential uses that does not comply with bulk regulations for floor area ratio and open space ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on July 25, 2017, after due notice by publication in *The City Record*, and then to decision on October 17, 2017; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side

of Shore Road, between 80th Street and 82nd Street, in an R2 zoning district and the Special Bay Ridge District, in Brooklyn; and

WHEREAS, the site has approximately 70 feet of frontage along Shore Road, between 126 and 141 feet of depth, 9,438 square feet of lot area and is occupied by a two-story, with cellar, residential building; and

WHEREAS, the applicant now seeks a modification of bulk regulations to permit the enlargement of the subject building to increase the Floor Area Ratio (“FAR”) from 0.45 FAR (4,283 square feet of floor area) to 0.51 FAR (4,809 square feet of floor area) and decrease the Open Space Ratio (“OSR”) from 170 percent (7,621 square feet of open space) to 138 percent (6,648 square feet of open space); and

WHEREAS, as a preliminary matter, the applicant represents that the subject building existed on December 15, 1961; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 4,719 square feet (0.50 FAR) under ZR 23-141, and a minimum of 7,079 square feet of open space (150 percent OSR) is required under ZR § 23-141; and

WHEREAS, under ZR § 73-621, the Board may modify bulk regulations for enlargements of buildings containing residential uses to permit a maximum FAR that does not exceed the maximum FAR permitted by more than 10 percent and to permit an OSR that is not less than 90 percent of the required OSR; and

WHEREAS, as to FAR, the Board confirms that the proposed FAR of 0.51 does not exceed the maximum FAR permitted of 0.50 by more than 10 percent; and

WHEREAS, as to OSR, the Board confirms that the proposed OSR of 138 percent is not less than 90 percent of the required OSR of 150 percent; and

WHEREAS, additionally, the enlargement of a building containing a residential use pursuant to ZR § 73-621 shall not create any new non-compliance or increase the amount or degree of any existing non-compliance; and

WHEREAS, the applicant represents that the proposed enlargement does not create any new non-compliance or increase the amount or degree of any existing non-compliance, including with respect to the side yards of the subject building; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargements satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, the applicant submits that the proposed modification of bulk requirements will have no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, in support of this contention, the applicant provided an FAR study of the surrounding area illustrating 24 residential buildings with 0.50 FAR or greater, 22 of which have FARs exceeding 0.51, similar to the proposed FAR of 0.51; and

WHEREAS, the applicant further submitted a streetscape study displaying the proposed building in context as well as a height diagram demonstrating that the



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proposed enlargement will result in a building lower than surrounding residences; and

WHEREAS, at hearing, the Board questioned the height and massing of the proposed building as well as the lawfulness of the existing side yards; and

WHEREAS, in response, the applicant amended the drawings to lower the building height and to note that the attic shall not be occupied and also submitted additional information regarding the side yards of the subject building; 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 modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-022K, dated September 23, 2016; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-621 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes and each and every one of the required findings under ZR §§ 73-621 and 73-03 to *permit*, in an R2 zoning district and the Special Bay Ridge District, the enlargement of a building containing residential uses that does not comply with bulk regulations for floor area ratio and open space ratio, contrary to ZR § 23-141; *on condition* that all work and site conditions shall substantially conform to the drawings filed with this application marked “Received October 11, 2017”- Sixteen (16) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 4,809 square feet of floor area (0.51 Floor Area Ratio) and a minimum of 6,648 square feet of open space (Open Space Ratio of 138 percent), as illustrated on the Board-approved plans;

THAT there shall be no occupancy of the attic level for sleeping purposes;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 17, 2021;

THAT all existing exterior walls and wall joists

indicated to remain undisturbed on the Board-approved plans shall remain or this grant is void;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2017.

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## 2016-4270-BZ

### CEQR #17-BSA-028K

APPLICANT – Sheldon Lobel, P.C., for 540 Fifth Avenue Corp., owner.

SUBJECT – Application October 12, 2016 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*iLoveKickboxing*) in the cellar and first floor of an existing building. C4-3A zoning district.

PREMISES AFFECTED – 540 5<sup>th</sup> Avenue, Block 1041, Lot 41, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 2, 2017, acting on Alteration Application No. 321400453, reads in pertinent part:

“Proposed physical culture establishment on first floor and cellar spaces is not as of right as per ZR 32-10 except by special permit as per ZR 73-36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, in a C4-3A zoning district, the operation of a physical culture establishment (“PCE”) in the cellar and on the first floor of a five-story, with cellar, mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 8, 2017, after due notice by publication in *The City Record*, and then to decision on October 17, 2017; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Brooklyn, waives

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its recommendation for this application; and

WHEREAS, the subject site is located on the west side of 5th Avenue, between 14th Street and 15th Street, in a C4-3A zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along 5th Avenue, 98 feet of depth, 2,447 square feet of lot area and is occupied by a five-story, with cellar, mixed-use residential and commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 3,873 square feet of floor space as follows: 2,000 square feet of floor area on the first floor, including a reception area, seating area, shop, restroom and mat area, and 1,874 square feet of floor space in the cellar, used for a lower lobby, locker rooms, coffee, restrooms and storage; and

WHEREAS, the PCE has operated as iLoveKickboxing.com since April 2017 with the following hours of operation: Monday through Friday, 6:00 a.m. to 9:00 p.m., Saturday, 9:00 a.m. to 2:00 p.m., and Sunday, 9:30 a.m. to 12:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will not impair the essential character or the future use or development of the surrounding area because the surrounding area consists of a vibrant mix of mixed-use buildings, characterized by retail stores and eating and drinking establishments, along a heavily traveled thoroughfare; and

WHEREAS, in addition, the applicant submits that sound attenuation measures—including a suspended ceiling with 3 inches of sound-attenuation blankets above the ceiling envelope, mats and rubber cushioning over the concrete floor slab, acoustic lay-in ceiling tiles and demising walls with fireproof gypsum board and sound-attenuation blankets—have been provided within the space so as to not disturb other tenants in the building; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides facilities for classes, instruction and programs relating to physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; and

WHEREAS, the Department of Investigation has

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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 applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-028K, dated May 10, 2017; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *legalize*, in a C4-3A zoning district, the operation of a physical culture establishment in the cellar and on the first floor of a five-story, with cellar, mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Received October 5, 2017” – Five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring April 1, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central

station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be maintained in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by October 17, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2017.

## 2016-4215-BZ

APPLICANT – Eric Palatnik, P.C., for Aleksandr S. Cherny, owner.

SUBJECT – Application June 8, 2016 – Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, open space and lot coverage and providing less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 262 Exeter Street, Block 8742, Lot 6, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for decision, hearing closed.

## 2016-4334-BZ

APPLICANT – Sheldon Lobel, P.C., for 431 Carroll Street LLC, owner.

SUBJECT – Application August 8, 2017 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1). M1-2 zoning district.

PREMISES AFFECTED – 341 Nevins Street, Block 447, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

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Negative:.....0  
**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for decision, hearing closed.  
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## 2017-24-BZ

**APPLICANT** – Walter T. Gorman, P.E.P.C., for Power Test Realty Company Limited Partnership, owner; Capitol Petroleum Group, lessee.

**SUBJECT** – Application January 25, 2017 – Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Mobile) with accessory uses which expired on March 19, 2004; Waiver of the Rules. R3A zoning district.

**PREMISES AFFECTED** – 1400 Bay Street aka 5 Fingerboard Road, Block 2864, Lot 57, Borough of Staten Island.

## COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for continued hearing.  
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## REGULAR MEETING

**TUESDAY AFTERNOON, OCTOBER 17, 2017**  
**1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown and Commissioner Sheta.

## ZONING CALENDAR

## 2017-274-A

**APPLICANT** – NYC Mayor’s Office of Housing Recovery Operations, for Elena Trama, owner.

**SUBJECT** – Application October 2, 2017 – Waiver of General City Law 36 for property destroyed by Hurricane Sandy that is enrolled in New York City’s Build It Back (BIB) program.

**PREMISES AFFECTED** – 31 Bogardus Street, Unmapped Street (Bogardus) and Emmons Avenue, Block 8815, Lot 412. Borough of Brooklyn.

## COMMUNITY BOARD #15M

**ACTION OF THE BOARD** – Application granted on condition.

## THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

## THE RESOLUTION –

WHEREAS, this is an application to allow for the elevation or reconstruction of a single family home that does not front on a mapped street, contrary to General City Law § 36 (“GCL § 36”), as well as a waiver of certain of the Board’s Rules of Practice and Procedure; and

WHEREAS, a public hearing was held on this

application on October 17, 2017, and then to decision on that same date; and

WHEREAS, in order to accept the application from HRO on behalf of the owner, and in furtherance of the City’s effort to rebuild homes impacted by Superstorm Sandy expeditiously and efficiently, the Board waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1- 06.1(a) (Appeal of Agency Final Determination), (2) 2 RCNY § 1-06.2 (A Form), (3) 2 RCNY § 1-06.3(b) (Filing Period), (4) 2 RCNY § 1-06.4(b) (Application Referral), (5) 2 RCNY § 1-06.5 (Hearing Notice), (6) 2 RCNY § 1-09.1 (Application Form), and (7) 2 RCNY § 1-09.4 (Owner’s Authorization); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Bogardus Street, south of Emmons Avenue, in an R5 (C2-2) zoning district and the Special Sheepshead Bay District, in Brooklyn; and

WHEREAS, the site has approximately 22 feet of frontage along Bogardus Street, 43 feet of depth, 953 square feet of lot area and is occupied by a two-story single-family detached residence; and

WHEREAS, it has been determined by HRO that the subject site is occupied by a building or other structure or was occupied by a building or other structure on October 28, 2012, which must be reconstructed or elevated and which does not front on a mapped street; and

WHEREAS, in support of this application, HRO has submitted the following documents to the Board: (1) a BSA application form; (2) a statement of facts which includes reference to HRO’s identification of the site as not fronting on a mapped street; and (3) maps of the subject property; and

WHEREAS, by letter dated September 27, 2017, the Fire Department states that it has no objection to the proposal provided that: (1) the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; (2) the building will be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; (3) the underside of the exterior of the building where the foundation is not completely closed shall have a floor assembly that provides a 2-hour fire resistance rating; and (4) the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet; and

WHEREAS, the Fire Department further stated, that in circumstances where the construction consists primarily of structural elevation and FDNY has determined that the home has been mostly repaired, Department of Buildings (“DOB”) may waive the requirement that the building has a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code upon notice from FDNY; and

WHEREAS, accordingly, the Board has determined

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that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* the above-referenced Rules of Practice and Procedure and *authorizes* a waiver of General City Law § 36, *on condition* that the proposed elevation or reconstruction will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the building shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the building where the foundation is not completely closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest window-sill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build it Back program;

THAT this approval is limited to proposals for elevation or reconstruction of previously existing structures; insofar as the applicant proposes, instead, to repair the building or other structure on subject lot, this waiver will be void as unnecessary;

THAT the applicant provide the Board with a full set of approved plans upon DOB's issuance of a Certificate of Occupancy for the subject building or structure; 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, October 17, 2017.

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## 2017-275-BZ

### CEQR #18-BSA-039K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations, for Elena Trama, owner.

SUBJECT – Application October 2, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R5 zoning district.

PREMISES AFFECTED – 31 Bogardus Street, Unmapped Street (Bogardus) and Emmons Avenue, Block 8815, Lot 412. Borough of Brooklyn.

### COMMUNITY BOARD #15M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R5 (C2-2) zoning district and the Special Sheepshead Bay District, the alteration of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, rear yards, side yards, lot coverage, open space ratio and distance between buildings, contrary to ZR § 23-45, 23-47, 23-46, 23-142, 94-095 and 23-461(c); and

WHEREAS, a public hearing was held on this application on October 17, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuild residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Bogardus Street, south of Emmons Avenue, in an R5 (C2-2) zoning district and the Special Sheepshead Bay District, in Brooklyn; and

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WHEREAS, the site has approximately 22 feet of frontage along Bogardus Street, 43 feet of depth, 953 square feet of lot area and is occupied by a two-story single-family detached residence; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the alteration of a single-family detached residence with existing non-compliances for front yards, side yards, rear yards, lot coverage, open space ratio and distance between buildings that will relocate the residence closer to the rear of the lot, thereby decreasing certain existing non-compliances and increasing others; and

WHEREAS, at the subject site, front yards must be at least 10 feet in depth under ZR § 23-45, rear yards must be at least 10 feet in depth under ZR § 23-52, side yards totaling 13 feet in width are required under ZR 23-46, lot coverage may not exceed 55 percent under ZR § 23-142, open space ratio must be at least 40.0 under ZR § 94-095 and at least 8 feet of distance is required between buildings under ZR § 23-461(c); and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments and enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the

surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to alter [KS1]the existing residence, which, as it exists, is non-compliant with regulations for front yards, side yards, rear yards, lot coverage, open space ratio and distance between buildings, creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards, rear yards, side yards, lot coverage, open space ratio and distance between buildings and that waiver of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; the applicant further states that the majority of residences within the surrounding neighborhood are similar detached residences; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA0039K, dated October 2, 2017.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure; *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review; and makes the required findings under ZR § 64-92 to *permit*, in an R5 (C2-2) zoning district and the Special Sheepshead Bay District, the alteration of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, rear yards, side yards, lot coverage, open space ratio and distance between buildings, contrary to ZR § 23-45, 23-47, 23-46, 23-142, 94-095 and 23-461(c); *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received October 2, 2017"- Five (5) sheets; and *on further condition*:

THAT there shall be a front yard at least 3 feet in depth, the rear yard shall be at least 2'6" feet in depth, there shall be side yards totaling 3'-8" feet in width with 0 feet of width at the north and 3'-8" at the south, lot coverage shall not exceed 70 percent, open space ratio must be at least 30.5 and distance between buildings shall be at least 3'-6" to the north and 4'-2" to the south, as illustrated on the Board-approved plans;

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THAT there shall be a fire sprinkler system installed in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by October 17, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 17, 2017.

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## 2016-4216-BZ

APPLICANT – Dennis D. Dell’Angelo, for Solomon Neiman, owner.

SUBJECT – Application June 10, 2016 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space ZR §23-141; side yards ZR §23-461 and rear yard ZR §23-47. R2 zoning district.

PREMISES AFFECTED – 1346 East 27<sup>th</sup> Street, for Block 7662, Lot 70, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for continued hearing.

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## 2016-4218-BZ

APPLICANT – Sheldon Lobel, P.C., for 79 Narrows LLC, owner.

SUBJECT – Application June 15, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to maximum permitted floor area (ZR 23-141), required open space (ZR 23141) and required side yards (23-48). R2 zoning district.

PREMISES AFFECTED – 66 79<sup>th</sup> Street, Block 5976, Lot 20, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

**ACTION OF THE BOARD** – Laid over to January 23,

2018, at 10 A.M., for continued hearing.

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## 2016-4255-BZ

APPLICANT – Eric Palatnik, P.C., for Mykhaylo Kadar, owner.

SUBJECT – Application September 16, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (ZR §23-141); side yard (ZR §23-461); and rear yard (ZR §23-47). R3-1 zoning district.

PREMISES AFFECTED – 4801 Ocean Avenue, Block 8744, Lot 51, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta. ....4  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to November 21, 2017, at 10 A.M., for decision, hearing closed.

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## 2016-4274-BZ

APPLICANT – Pryor Cashman LLP, for Ahron & Sons Realty LLC, owner; Bnos Zion of Bobov, lessee.

SUBJECT – Application October 27, 2016 – Special permit (§73-19) for a school (*Bnos Zion of Bobov*) (Use Group 3) to legalize its use on the first floor of an existing two-story building and to permit its use in the remainder of the existing two-story building and in the proposed enlargement contrary to use regulations (§42-00). Variance (§72-21) to enlarge the existing building by two additional stories contrary to rear yard requirements (§43-26). M1-2 zoning district.

PREMISES AFFECTED – 1411 39<sup>th</sup> Avenue, Block 5347, Lot(s) 13 & 71, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

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## 2016-4339-BZ

APPLICANT – Pryor Cashman LLP, for Bnos Zion of Bobov, owner.

SUBJECT – Application November 22, 2016 – Variance (§72-21) to permit construction of a school (Use Group 3) (*Bnos Zion of Bobov*) contrary to underlying bulk requirements. R6 zoning district.

PREMISES AFFECTED – 5018 14<sup>th</sup> Avenue, Block 5649, Lot(s) 44, 46, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

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# MINUTES

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**2017-60-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Premier 644 Greenwich LLC, owner; Bright Horizons Children’s Center LLC, lessee.

SUBJECT – Application March 9, 2017 – Special Permit (§73-19) to allow for a Day Care Center (UG 3) (*Bright Horizons Child Care Center*) to be located on the first (1st) floor of an existing building contrary to ZR §42-00. M1-5 zoning district.

PREMISES AFFECTED – 111 Barrow Street, Block 603, Lot 37, Borough of Manhattan.

**COMMUNITY BOARD #2M**

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta. ....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to October 31, 2017, at 10 A.M., for decision, hearing closed.

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*Carlo Costanza, Executive Director*



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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 102, Nos. 44-45

November 8, 2017

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### DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

VACANT

*Commissioners*

Carlo Costanza, *Executive Director*

Loreal Monroe, *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>
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2016-4467-BZ	69-25 Astoria Boulevard, Queens
2017-227-BZ	313-321 West 37 <sup>th</sup> Street, Manhattan

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# DOCKETS

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New Case Filed Up to October 31, 2017

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## 2017-281-BZ

23 Beacon Court, located on Beacon Court between Lois Ave and a deadend street., Block 08845, Lot(s) 2042, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district. R4 district.

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## 2017-282-A

148 Sprague, West Side of Sprague Avenue between George Street and Deppel Avenue, Block 07867, Lot(s) 0052, Borough of **Staten Island, Community Board: 3**. Proposed construction of three, two family detached buildings not fronting on a mapped street contrary to General City Law 36. R3X Special South Richmond District. R3X/SRD district.

-----

## 2017-283-BZ

289 Grand Street, North Side of Grand Street between Roebling Street and Havemeyer Street, Block 02383, Lot(s) 7502, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit the operation of the Physical Culture Establishment (F45) on the first floor and a portion of cellar level contrary to ZR §32-10. C2-4/R6B zoning district. R6B/C2-4 district.

-----

## 2017-284-BZ

605 Third Avenue, The Premises is bounded by E 40th Street, E 39th Street, 3rd Avenue and Tunnel Exit Street., Block 00920, Lot(s) 0012, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-36) to permit the operation of the Physical Culture Establishment (Oranetheory Fitness) on portions of the first floor and cellar level contrary to ZR §32-10. C5-3 & C1-9 zoning districts. C5-3 & C1-9 district.

-----

## 2017-285-A

200 Amsterdam Avenue, West Side of Amsterdam Avenue between W. 66th Street and W. 70th Street, Block 01158, Lot(s) 0133, Borough of **Manhattan, Community Board: 7**. Application pursuant to Section 666.7(a) of the New York City Charter and Section 1-06 of the Board of Standards and Appeals (the “Board” or “BSA”) Rules of Practice and Procedure, to request that the Board revoke building permit No. 122887224-01-NB (the “Permit”), issued by the New York City Department of Buildings (“DOB”) on September 27, 2017. The application seeks to

demonstrate that the permit is not a validly issued building permit because the purported “zoning lot” of which the Development Site is purported to be a part, does not comply with the requirements of the definition of a zoning lot in Zoning Resolution Section 12-10. R8/C2-5 district.

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## 2017-286-BZ

22-06 31st Street, Between Ditmars Boulevard and 23rd Avenue, Block 00844, Lot(s) 0040, Borough of **Queens, Community Board: 1**. Special Permit (§73-36) to permit the operation of the Physical Culture Establishment (The Rock Health & Fitness) to be located within the cellar level of a proposed three-story retail building contrary to ZR §32-10. C4-2A/R5D zoning district. C4-2A/R5D district.

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## 2017-287-BZ

113-03 Springfield Boulevard, Northeast corner of Springfield Boulevard and 113 Avenue, Block 11231, Lot(s) 0246, Borough of **Queens, Community Board: 13**. Special Permit (§73-36) to permit the operation of the Physical Culture Establishment (Retro Fitness) to be located within the cellar and first floor levels of an existing building contrary to ZR §32-10. C2-3/R3-2 zoning district. R3-2/C2-3 district.

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## 2017-288-BZ

17-10 Whitestone Expressway, located between the Whitestone Expressway west service road and 15th Avenue, Block 4127, Lot(s) 20 & 78, Borough of **Queens, Community Board: 19**. Special Permit (§73-49) to permit roof top parking on a new four-story accessory parking garage serving a four-story office building contrary to ZR §44-11. M1-1 College Point Special District. M1-1 CPSD district.

-----

## 2017-289-BZ

1761 Walton Avenue, Located on the west side of Walton Avenue between East 175th Street and East 176th Street, Block 02850, Lot(s) 34,38,63 & 160, Borough of **Bronx, Community Board: 5**. Special Permit (§73-623) to permit development of a new, fourteen-story building with a gymnasium for the Mount Hope Community Center and approximately 103 affordable housing units developed under the Extremely Low and Low-Income Affordability (“ELLA”) financing program administered by the Department of Housing Preservation and Development (“HPD”). The proposal is contrary to ZR §23-711 (distance of legally required windows) and ZR §23-622 (base and building heights). An associated application is filed for an amendment of a variance adopted by the Board of Standards and Appeals (“BSA” or the “Board”) on January 9, 2007

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# DOCKETS

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under BSA Cal. No. 252-06-BZ. R8 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 5, 2017, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 5, 2017, 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

#### 540-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Marbridge Realty Company Inc., owner.

SUBJECT – Application August 21, 2017 – Extension of Term (§11-41) of a previously approved variance which permitted a parking lot accessory to a commercial building contrary to use regulations which expired on June 1, 2015; Waiver of the Rules. C2-4/R3-1 & R3-1 zoning district.

PREMISES AFFECTED – 87-17 111<sup>th</sup> Street, Block 9301, Lot 124, Borough of Queens.

#### COMMUNITY BOARD #9Q

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#### 173-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 30 East 85<sup>th</sup> Street Company LLC, owner; Equinox Madison Avenue, Inc., lessee.

SUBJECT – Application July 12, 2017 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of Physical Culture Establishment (Equinox) which expired on August 15, 2015; Waiver of the Rules. C5-1/R8B Special Madison Avenue Preservation District.

PREMISES AFFECTED – 30 East 85<sup>th</sup> Street, Block 1496, Lot 7501, Borough of Manhattan.

#### COMMUNITY BOARD #8M

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#### 363-04-BZ

APPLICANT – Greenberg Traurig, LLP, for Fort Hamilton Group LLC, c/o Halcyon Management Group, owner.

SUBJECT – Application July 21, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the development of mixed residential and commercial retail building with accessory parking contrary to underlying use regulations. The amendment seeks to reduce the approved parking from 93 spaces to 58 spaces contrary to the Board's previous approvals. M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, Block 5715, Lot 7501, Borough of Brooklyn.

#### COMMUNITY BOARD #12BK

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#### 97-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Atlas Park LLC, owner; TSI Glendale, LLC dba New York Sports Club, lessee.

SUBJECT – Application April 13, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*New York Sports Club*) on the second floor of a two-story commercial building within a commercial mall complex which expired on December 31, 2016; Amendment to request a change in the hours of operation; Waiver of the Board's rules. M1-1 zoning district.

PREMISES AFFECTED – 80-16 Cooper Avenue, Block 3810, Lot 350, Borough of Queens.

#### COMMUNITY BOARD #5Q

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#### 143-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application December 28, 2016 – Extension of Time to complete construction of an approved variance (§72-21) to permit the construction of a three-story and cellar synagogue (*Chabad House of Canarsie*), which expired on December 4, 2016. R2 zoning district.

PREMISES AFFECTED – 6404 Strickland Avenue, Block 8633, Lot 1, Borough of Brooklyn.

#### COMMUNITY BOARD #18BK

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#### 97-08-BZ

APPLICANT – Eric Palatnik P.C., for Yismach Moshe of Williamsburgh, Inc., owner.

SUBJECT – Application March 10, 2015 – Compliance Hearing.

SUBJECT – Extension of Time to obtain a Certificate of Occupancy of a previously approved Special Permit (§73-19) permitting the legalization of an existing school (UG 3), which expired on March 16, 2012; Waiver of the Rules. M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 01736, Lot 0014, Borough of Brooklyn.

#### COMMUNITY BOARD #3BK

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#### 36-15-BZ

APPLICANT – Akerman, LLP, for CAC Atlantic, LLC, owner; 66 Boerum Place Fitness Group, LLC, lessee.

SUBJECT – Application June 7, 2017 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Planet Fitness) on portions of the cellar, first and second floors of a new building. The Amendment seeks to legalize the expansion of the facility by 555 square feet of floor area on the second floor. C6-2A (Special Downtown Brooklyn District) zoning district.

PREMISES AFFECTED – 241 Atlantic Avenue aka 66

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# CALENDAR

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Boerum Place, Brooklyn.  
**COMMUNITY BOARD #2BK**

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*Carlo Costanza, Executive Director*

**REGULAR MEETING  
DECEMBER 5, 2017, 1:00 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, December 5, 2017, 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**

**2016-4468-BZ**

APPLICANT – Bryan Cave LLP, for 27 East 61<sup>st</sup> Street, LLC, owner.

SUBJECT – Application December 19, 2016 – Variance (§72-21) to permit the conversion and horizontal enlargement of an existing six-story mixed use building into a six-story commercial (UG 6) building contrary to ZR §33-122 (Maximum Permitted Floor Area). C5-1 (Madison Avenue Preservation District).

PREMISES AFFECTED – 27 East 61<sup>st</sup> Street, Block 1376, Lot 24, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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**2017-297-BZ**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Kerry Timmins, owner.

SUBJECT – Application November 9, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district.

PREMISES AFFECTED – 19 Stanton Road, between Gunnison Court and Losee Terrace, Block 8800, Lot 94, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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**2017-302-BZ**

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Kenneth Rudden, owner.

SUBJECT – Application November 9, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 174A & 176A Beach 111<sup>th</sup> Street, Rockaway Park, westerly of intersection of Beach 111<sup>th</sup> Street and Ocean Promende, Block 16183, Lot 62, Borough of Queens.

**COMMUNITY BOARD #14BK**

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 31, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown, and Commissioner Sheta.

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**SPECIAL ORDER CALENDAR**

**531-86-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for FSP 787 Seventh LLC, owner; Athletic Club at the Equitable Center, lessee.

SUBJECT – Application December 5, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (Athletic & Swim Club) which expires on December 16, 2016. C6-6/C6-6.5 (MID) zoning district.

PREMISES AFFECTED – 787 Seventh Avenue, Block 1004, Lot 20, Borough of Manhattan.

**COMMUNITY BOARD #5M**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown .....

Abstain: Commissioner Sheta.....1

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application under ZR § 73-03 for an extension of term of a special permit, previously granted by the Board, which expired December 16, 2016; and

WHEREAS, a public hearing was held on this application on October 31, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 5, Manhattan, waives its recommendation for this application; and

WHEREAS, the subject site is located on the east side of Seventh Avenue, between West 51st Street and West 52nd Street, partially in a C6-6 zoning district and partially in a C6-5 zoning district, in the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 201 feet of frontage along Seventh Avenue, 400 feet of frontage along West 51st Street, 400 feet of frontage along West 52nd Street, 80,000 square feet of lot area and is occupied by a 51-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 16, 1986, when, under the subject calendar number, the Board granted a special permit to allow the operation of a physical culture establishment (“PCE”) in a portion of the concourse, mezzanine and sub-cellar levels of the subject building for a term of ten (10)

years, expiring December 16, 1996, on condition that the owner comply with the conditions set forth in the conditional negative declaration, that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that the hours of operation be limited to 6:30 a.m. to 9:00 p.m., Monday through Friday, 6:30 a.m. to 6:00 p.m., Saturday, and 12:00 p.m. to 6:00 p.m., Sunday and that the conditions appear on the certificate of occupancy; and

WHEREAS, on April 29, 1997, under the subject calendar number, the Board amended the special permit to remove the condition restricting the hours of operation and to reflect the change of ownership and control of the PCE and granted an extension of term for ten (10) years, expiring December 16, 2006, on condition that a new certificate of occupancy be obtained within one (1) year, by April 29, 1998; and

WHEREAS, on February 26, 2008, under the subject calendar number, the Board granted an extension of term for an additional ten (10) years, expiring December 16, 2016, on condition that there be no change in ownership or operating control of the PCE without prior approval from the Board, that the Board’s conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained within one (1) year, by February 26, 2008; and

WHEREAS, the term of the special permit having expired, the applicant now seeks an extension of term; and

WHEREAS, the PCE remains in operation as Athletic & Swim Club with the following hours of operation: 5:30 a.m. to 10:00 p.m., Monday through Thursday, 5:30 a.m. to 9:00 p.m., Friday, and 9:00 a.m. to 5:00 p.m., Saturday and Sunday; and

WHEREAS, in response to questions from the Board, the applicant clarified that the PCE occupies 18,171 square feet of floor space<sup>1</sup> with 11,123 square feet of floor area on the concourse level, 4,255 square feet of floor area on the mezzanine level and 2,793 square feet of floor space in the sub-cellar level, as previously approved by the Board; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03 subsections (d) and (g) are inapplicable to the subject application; and

WHEREAS, ZR § 73-36 mandates a term not to

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<sup>1</sup> The Board notes that its prior grant approved 28,350 square feet of floor space, though it appears that this figure may have counted double-height space twice.

# MINUTES

exceed ten (10) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to extend ten (10) years; and

WHEREAS, the applicant submitted evidence indicating that the PCE is fully sprinklered and that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, the applicant also submits that massages provided at the PCE are performed only by New York State licensed massage professionals; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated December 16, 1986, as amended through February 26, 2008, so that as amended this portion of the resolution shall read: “to *grant* an extension of term for ten (10) years, expiring December 16, 2026; *on condition* that the use and operation of the physical culture establishment shall substantially conform to drawings filed with this application marked “Received August 7, 2017”-four (4) sheets; and *on further condition*:

THAT the term of this grant shall expire December 16, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed only by New York State licensed massage professionals;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained within one (1) year, by October 31, 2018;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 31, 2017.

## 189-96-BZ

APPLICANT – John C. Chen, R.A., for Ping Yee, owner; Club Flamingo, lessee.

SUBJECT – Application October 24, 2016 – Extension of Term for a previously granted Special Permit (§73-244) of a UG12 Eating and Drinking establishment with entertainment and dancing (*Flamingos*) which expires on May 19, 2016; Waiver of the Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 85-10/12 Roosevelt Avenue, Block 1502, Lot 3, Borough of Queens.

## COMMUNITY BOARD #4Q

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown .....

3

Abstain: Commissioner Sheta.....1

Negative:.....0

**THE RESOLUTION** –

WHEREAS, this an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a special permit, previously granted by the Board, which expired May 19, 2015; and

WHEREAS, a public hearing was held on this application on April 25, 2017, after due notice by publication in *The City Record*, with a continued hearing on July 18, 2017, and then to decision on October 31, 2017; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 4, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of Roosevelt Avenue, between Forley Street and Elbertson Street, in an R6 (C2-3) zoning district, in Queens; and

WHEREAS, the site has approximately 40 feet of frontage along Roosevelt Avenue, 50 feet of frontage along Forley Street, between 46 and 76 feet of depth, 2,430 square feet of lot area and is occupied by a two-story, with cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 19, 1998, when, under the subject calendar number, the Board granted a special permit to permit the proposed change in use of an existing eating and drinking establishment in Use Group 6 to an eating and drinking establishment with entertainment and dancing in Use Group 12 for a term of three (3) years, expiring May 19, 2001, on condition that, in order to minimize the impacts on the nearby residential uses and ensure compliance with the New York City Noise Code, all windows and doors remain closed during the hours that entertainment and dancing is provided, that all roof-mounted HVAC equipment comply with the New York City Noise Code, that fire prevention measures be provided and maintained in accordance with the Board-approved plans, that patrons not be permitted to wait or congregate outside of the subject site, that garbage pick-up occur between the hours of 7:00 a.m. and 9:00 p.m. and



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# MINUTES

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that parking for a minimum of 35 cars continue to be reserved for patron parking at the parking garage at 86-10 Roosevelt Avenue; and

WHEREAS, on May 14, 2002, under the subject calendar number, the Board granted an extension of term of the special permit for three (3) years, expiring May 19, 2004, on condition that the site be kept clean of debris and graffiti, that all light be pointed away from residential dwellings, that there be no loitering or queuing of customers in front of the site, that there be parking for a minimum of 35 cars reserved for patron parking at the parking garage at 86-10 Roosevelt Avenue, that signs be maintained in accordance with the Board-approved plans, that the above conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained within one year, by May 14, 2003; and

WHEREAS, on June 7, 2005, under the subject calendar number, the Board granted an extension of term of the special permit for three (3) years, expiring May 19, 2007; and

WHEREAS, on July 17, 2007, under the subject calendar number, the Board granted an extension of term of the special permit for three (3) years, expiring June 7, 2011, on condition that the doors fronting on Forley Street be used for emergency egress only and be posted with appropriate signage and that a certificate of occupancy and public assembly permit be obtained within six (6) months, by January 17, 2008; and

WHEREAS, on July 27, 2010, under the subject calendar number, the Board granted an extension of term of the special permit for three (3) years, expiring May 19, 2013, on condition that the term be listed on the certificate of occupancy; and

WHEREAS, on October 22, 2013, under the subject calendar number, the Board granted an extension of term of the special permit for three (3) years, expiring May 19, 2016, on condition that the term be listed on the certificate of occupancy; and

WHEREAS, the term of the special permit having expired, the applicant now seeks an extension of term, and the applicant request a waiver of the Board's Rules and Practice and Procedure to permit the filing of this application; and

WHEREAS, at hearing, the Board questioned the use of the side door, sound attenuation of the windows, trash pickup, hours of operation and the noise output of the HVAC equipment on the roof, the presence of razor wire, dilapidation of the masonry wall and the unsightliness of equipment on the roof; and

WHEREAS, in response, the applicant provided a copy of a current place of assembly permit, proof of noise-reductions measures and evidence that the site has been cleaned up with the installation of a decorative opaque fence concealing equipment on the roof of the building and the removal of razor wire; and

WHEREAS, the Board agrees with the concerns of Community Board 4, Queens, that the doors fronting on Forley Street be used for emergency egress only; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03 subsections (d) and (g) are inapplicable to the subject application; and

WHEREAS, ZR § 73-244 mandates a term not to exceed three (3) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to exceed three (3) years; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that a three (3) year extension is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and appeals does hereby *waive* its Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated May 19, 1999, as amended through October 22, 2013, so that as amended this portion of the resolution shall read: "to *grant* an extension of term for three (3) years, expiring May 19, 2019; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received October 24, 2017"- Five (5) sheets; and *on further condition*:

THAT the term of this grant shall expire May 19, 2019;

THAT the doors fronting on Forley Street shall be used for emergency egress only and shall be posted with appropriate signage;

THAT the site shall be kept clean of debris and graffiti;

THAT all graffiti, if any occurs, shall be removed immediately;

THAT planting, fencing and masonry shall be maintained in good condition;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy and public assembly permit shall be obtained within one (1) year, by October 31, 2018;

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 objections cited and filed by the Department of Buildings;

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THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## 104-15-BZ

APPLICANT – Rosenberg & Estis, P.C./Frank E. Chaney, Esq., for 4452 Broadway Mazal LLC, owner.

SUBJECT – Application May 12, 2015 – Variance (§72-21) to permit the development of a mixed-use residential building with retail contrary to underlying bulk and use regulations. R7-2 zoning district with C2-4 overlay.

PREMISES AFFECTED – 4452 Broadway (aka 44-90 Fairview Avenue), Block 2170, Lot(s) 62, 400, Borough of Manhattan.

## COMMUNITY BOARD #12M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a rehearing, pursuant to Section 1-12.5 of the Board’s Rules of Practice and Procedure, of a variance application that the Board previously dismissed for lack of prosecution; and

WHEREAS, a public hearing was held on this application on October 31, 2017, after due notice by publication in *The City Record*, and then to decision on that date; and

WHEREAS, the subject site is located on the southeast corner of Broadway and Fairview Avenue, partially within an R7-2 (C2-4) zoning district and partially within an R7-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 75 feet of frontage along Broadway, 303 feet of frontage along Fairview Avenue and 24,280 square feet of lot area; and

WHEREAS, the applicant represents that Lot 62 is currently occupied by a one-story commercial building and Lot 400 is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject tax lots since December 6, 1960, when, under BSA Cal. No. 502-60-BZ, the Board granted a variance to permit the maintenance of a parking lot for the parking and storage of more than five motor vehicles for a term of five (5) years, expiring December 6, 1965; and

WHEREAS, on February 1, 1966, April 6, 1971, January 20, 1976, December 16, 1980, and May 20, 1986, under BSA Cal. No. 502-60-BZ, the Board granted five (5) year extensions of the term of the variance five (5) years, the latest of which

expired January 20, 1991; and

WHEREAS, on February 9, 1988, and June 19, 1990, under BSA Cal. No. 502-60-BZ, the Board granted one (1) year extensions of time to obtain a certificate of occupancy, the latest of which expired on May 20, 1988; and

WHEREAS, on January 28, 1992, and February 26, 2002, under BSA Cal. No. 502-60-BZ, the Board granted ten (10) year extensions of the variance, the latest of which expired January 20, 2011; and

WHEREAS, on May 12, 2015, an application was made under the subject calendar number for a variance pursuant to ZR § 72-21 permitting the construction of a 16-story mixed-use commercial and residential building contrary to ZR §§ 23-145 (maximum FAR for Quality Housing buildings), 23-22 (maximum number of dwelling units), 23-633 (street wall location and height and setback regulations), 25-23 (parking requirements where group parking facilities are provided), 32-421 (limitation on floors occupied by commercial uses), 35-24 (special street wall location and height and setback regulations in certain districts), 35-40 (applicability of density regulations) and 36-62 (required accessory off-street loading berths); and

WHEREAS, on July 25, 2017, the Board dismissed the application for lack of prosecution due to the repeated failure of the applicant and its representatives to appear at hearings and submit materials in support of the application, details of which are memorialized in the July 25, 2017, resolution issued under this calendar number; and

WHEREAS, Section 1-12.5 of the Board’s Rules of Practice and Procedure, which reads, in pertinent part:

The Board will not grant a request to rehear a case which was denied, dismissed, or withdrawn with prejudice unless: (1) substantial new evidence is submitted that was not available at the time of the initial hearing, (2) there is a material change in plans or circumstances, or (3) an application is filed under a different jurisdictional provision of the law; and

WHEREAS, accordingly, the applicant asserts that there has been a material change in plans since the Board’s dismissal of the variance application, to wit, the applicant now proposes a 14-story mixed-use commercial and residential building with rental residential units (in the former iteration, the residential units were condominium units) and 60 affordable housing units contrary to ZR §§ 23-153 (maximum FAR for Quality Housing buildings), 23-22 (maximum number of dwelling units), 23-662 (maximum height of buildings and setback regulations) and 25-23 (parking requirements where group parking facilities are provided); the applicant additionally provided a new engineering report in support of ZR § 72-21(a); and

WHEREAS, the Board has reviewed the record and determined that the applicant has provided sufficient evidence of a material change in plans or circumstances to justify a rehearing; and

*Therefore, it is Resolved*, that this application for rehearing of BSA Cal. No. 104-15-BZ is granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## APPEALS CALENDAR

### 2016-1186-A thru 2016-1207-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Airport Park LLC, owner.

SUBJECT – Application January 12, 2016 – Proposed construction of a two-story, two-family building, contrary to General City Law Section 35. R1-1 zoning district.

PREMISES AFFECTED – 145-25 to 147-21A Hook Creek Boulevard, Block 13633, Lot(s) 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, Borough of Queens.

### COMMUNITY BOARD #13Q

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for continued hearing.

### 2016-4268-A

APPLICANT – Tarter Krinsky & Drogin LLP, for Shurgard Storage Centers, Inc., owners.

SUBJECT – Application October 11, 2016 – Appeal from Department of Buildings determination that a sign is not entitled to con-conforming use status as advertising sign at the existing size and height.

PREMISES AFFECTED – 30 Prince Street aka 265-269 Gold Street, Block 122, Lot 10, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for adjourned hearing.

### 2016-4330-A & 2016-4331-A

APPLICANT – Eric Palatnik, P.C., for 1671 Hylan Blvd. LLC, owner.

SUBJECT – Application November 14, 2016 – To permit the proposed development of a one family home, contrary to Article 3 Section 36 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 16 & 19 Tuttle Street, Block 1481, Lot(s) 96 and 300, Borough of Staten Island

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for continued hearing.

### 2017-30-A

APPLICANT – Eric Palatnik, P.C., for 1671 Hylan Boulevard LLC, owner.

SUBJECT – Application January 27, 2017 – To permit the proposed development of a one family home, contrary to Article 3 Section 36 of the General City Law. R3X zoning district.

PREMISES AFFECTED – 16 Garage Tuttle Street, Block 1481, Lot 96, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for continued hearing.

### 2017-226-A

APPLICANT – Eric Palatnik, P.C., for 1671 Hylan Boulevard, LLC, owner.

SUBJECT – Application July 11, 2017 – Proposed construction of a one-family home not fronting a legally mapped street contrary to General City Law 36. R3X zoning district.

PREMISES AFFECTED – 18 Tuttle Street, Block 1481, Lot 92, Borough of Staten Island.

### COMMUNITY BOARD # 1SI

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for continued hearing.

## ZONING CALENDAR

### 317-14-BZ

#### CEQR #15-BSA-124K

APPLICANT – Brian Cave LLP, for Acadia 3780-3858 Nostrand Avenue LLC, owner.

SUBJECT – Application December 4, 2014 – Special Permit (§73-44): that would allow the reduction in the number of off street parking spaces for ambulatory diagnostic treatment facilities listed in use group 4 and Uses in Parking Requirement Category Br, located within and C2-2/R4 zoning district.

PREMISES AFFECTED – 3780-3860 Nostrand Avenue, Block 7445, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3  
Abstain: Commissioner Sheta.....1  
Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 24, 2014, acting on Alteration Application No. 320626961, reads in pertinent part:

“Proposed enlargement of an existing building Use Group 6 requires an increase in parking spaces as per ZR 36-20”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, on a site partially in an R4 (C2-2) zoning district and partially in an R4 zoning district, a reduction in the number of off-street accessory parking spaces for ambulatory diagnostic or treatment facilities listed in Use Group (“UG”) 4 and for uses in parking requirement category B1, contrary to ZR § 36-20; and

WHEREAS, a public hearing was held on this application on February 28, 2017, after due notice by publication in *The City Record*, with continued hearings on April 4, 2017, June 20, 2017, and August 22, 2017, and then

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to decision on October 31, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Nostrand Avenue, between Avenue Y and Avenue Z, partially in an R4 (C2-2) zoning district and partially in an R4 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 700 feet of frontage along Nostrand Avenue, 105 feet of frontage along Avenue Y, 121 feet of frontage along Avenue Z, 75,300 square feet of lot area and is occupied by five existing buildings used for commercial and community-facility uses; and

WHEREAS, this application concerns the two-story mixed-use building located at 3848–3850 Nostrand Avenue (“Building 2”) and the two-story, with cellar, mixed-use building located at 3806 Nostrand Avenue (“Building 4”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 8, 1986, when, under BSA Calendar Number 791-85-BZ, the Board granted a special permit to allow a physical culture establishment in Building 2 for a term of ten (10) years; however, the special permit has since expired, and the physical culture establishment is no longer in operation; and

WHEREAS, the applicant seeks a reduction in the number of off-street accessory parking spaces for Building 2 and Building 4, which have a total of 29,843 square feet of floor area used for UG 4 ambulatory diagnostic or treatment facilities and UG 6 and UG 9 commercial uses in parking requirement category B1; and

WHEREAS, the applicant represents that, under ZR § 36-21, 99 required parking spaces are eligible for reduction in Building 2 and Building 4, calculated at a rate of one space per 300 square feet of floor area; however, the applicant seeks to provide 50 parking spaces, 49 fewer spaces than required; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the

*building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
PARKING SPACES REQUIRED FOR  
AMBULATORY DIAGNOSTIC  
OR TREATMENT FACILITIES LISTED IN  
USE GROUP 4 AND  
COMMERCIAL USES IN PARKING  
REQUIREMENT CATEGORY B1

Parking Spaces Required Per Number of Square Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar space*, except *cellar space used* for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for UG 4 ambulatory diagnostic or treatment facilities and UG 6 and UG 9 commercial uses in parking requirement category B1 from one space per 300 square feet of floor area to one space per 600 square feet of floor area, provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant submitted evidence indicating that the owner is currently marketing vacant space in Building 2 and Building 4 for office use and that said buildings will be occupied by the proposed uses; and

WHEREAS, the applicant further represents that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the UG 4 ambulatory diagnostic or treatment facilities and UG 6 and UG 9 commercial uses in parking requirement category B1 are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Board finds the applicant’s representations credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed UG 4 ambulatory diagnostic or treatment facilities and UG 6 and UG 9 commercial uses at the site; and

WHEREAS, the Board notes that its determination is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed

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reduction in required accessory off-street parking spaces will impact the surrounding community; and

WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand for parking generated by the proposed UG 4 ambulatory diagnostic or treatment facilities and UG 6 and UG 9 commercial uses at the site will be 49 spaces during the peak hours of demand, weekdays from 10:00 a.m. to 11:00 a.m., and that such demand can be accommodated by the proposed on-site parking spaces available during peak demand; and

WHEREAS, the parking study also notes that the subject site will provide an additional 27 off-street parking spaces that are not the subject of this application, for a total of 77 parking spaces at the subject site, and presents an on-street parking survey finding that there are approximately 46 one-street parking spaces along Nostrand Avenue adjacent to the subject site; and

WHEREAS, at hearing, the Board questioned the prominence of on-site signage indicating parking availability, maintenance of the subject site at the rear and whether fees might affect off-street parking demand at the subject site; and

WHEREAS, in response, the applicant provided evidence of redesigned signage, power washing, repainting and tidying up of the site, amended the drawings to reflect fencing, a guardrail and landscaping to screen the subject site from adjacent residences and submits that one hour of on-site parking will be provided at no cost to visitors of the subject site; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of parking regulations is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the parking modification will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-44 and 73-03 have been met; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 15BSA124K, dated April 26, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by communication dated May 30, 2017, the New York City Department of City Planning (“DCP”) Waterfront and Open Space Division states that it completed review of the project for consistency with the policies and intent of the New York City Waterfront Revitalization Program (“WRP”) under WRP # 16-181 and finds that the action will not substantially hinder the achievement of any WRP policy and is consistent with the WRP policies; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings to be made under ZR §§ 73-44 and 73-03 and that the applicant had substantiated a basis to warrant exercise of discretion to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to *permit*, on a site partially in an R4 (C2-2) zoning district and partially in an R4 zoning district, a reduction in the number of off-street accessory parking spaces for ambulatory diagnostic or treatment facilities listed in Use Group 4 and for Use Group 6 and Use Group 9 commercial uses in parking requirement category B1, contrary to ZR § 36-20; *on condition* that all work and site conditions shall substantially conform to the drawings filed with this application marked “Received October 30, 2017”-Sixteen (16) sheets; and *on further condition*:

THAT one hour of parking shall be provided at no cost to patrons of the subject site;

THAT fencing, guardrails, asphalt, signage and buildings shall be maintained in good condition;

THAT no certificate of occupancy shall hereafter be issued if the ambulatory diagnostic or treatment facilities listed in Use Group 4 or uses in parking requirement category B1 are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT the above conditions shall be noted on the certificates of occupancy;

THAT certificates of occupancy shall be obtained within four (4) years, by October 31, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## 2016-4136-BZ

### CEQR #16-BSA-090Q

APPLICANT – Sheldon Lobel, P.C., for Astoria Warehouse Enterprises, Inc., owner.

SUBJECT – Application March 15, 2016 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. M1-1 zoning district.

PREMISES AFFECTED – 19-59 & 19-61 49<sup>th</sup> Street, Block 755, Lot(s) 5 and 6; Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Abstain: Commissioner Sheta.....1

Negative: .....0

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 12, 2016, acting on New Building Application No. 401702788, reads in pertinent part:

“Respectfully request to waive parking requirement for ambulatory diagnostic office contrary to ZR 44-21”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, in an M1-1 zoning district, a reduction in the number of off-street accessory parking spaces for ambulatory diagnostic or treatment facilities listed in Use Group (“UG”) 4 and for uses in parking requirement category B1, contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this application on January 24, 2017, after due notice by publication in *The City Record*, with continued hearings on June 6, 2017, and August 15, 2017, and then to decision on October 31, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Queens, recommends approval of this application on condition that the applicant attempt to occupy the building with a use that has a parking requirement lower than medical offices, that the applicant should install mechanical parking lifts where possible within the enclosed attendant parking area to increase the number of off-street spaces, that a term of five (5) years should be imposed if medical offices are approved, that the term should be limited to five (5) years to assess the development’s impact, that a patient parking fee should be

waived, that the applicant should request that the New York City Department of Transportation place angled parking along the west side of 49th Street, that the plans should be revised to meet accessibility requirements and that on-street parking spaces not be used for attended parking; and

WHEREAS, Council Member Costa Constantinides submitted testimony in support of this application, stating that there are many parking spaces available on the streets surrounding the subject site and that the minimum reduction of parking spaces will not have a negative impact on the community; and

WHEREAS, the subject site is located on the east side of 49th Street, between 19th Avenue and 20th Avenue, in an M1-1 zoning district, in Queens; and

WHEREAS, the site has approximately 50 feet of frontage along 49th Street, 100 feet of depth, 2,500 square feet of lot area and is occupied by a four-story community-facility building designed as a house of worship; and

WHEREAS, the applicant proposed to convert the subject building to UG 4 ambulatory diagnostic or treatment facilities, which became permitted uses in the subject zoning district in 2011 after construction of the subject building, and for UG 6 commercial uses in parking requirement category B1; and

WHEREAS, the applicant represents that, under ZR § 44-21, 38 parking spaces are required, calculated at a rate of one parking space per 300 square feet of floor area; however, the applicant seeks to provide 32 parking spaces, 6 fewer spaces than required; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
PARKING SPACES REQUIRED FOR  
AMBULATORY DIAGNOSTIC  
OR TREATMENT FACILITIES LISTED IN  
USE GROUP 4 AND

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## COMMERCIAL USES IN PARKING REQUIREMENT CATEGORY B1

Parking Spaces Required Per Number of Square Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar space*, except *cellar space used* for storage; and

WHEREAS, under ZR § 73-44, the Board may reduce the required parking for UG 4 ambulatory diagnostic or treatment facilities and UG 6 commercial uses in parking requirement category B1 from one space per 300 square feet of floor area to one space per 600 square feet of floor area, provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant submitted an affidavit indicating that the subject building would be limited to occupancy for UG 4 ambulatory diagnostic or treatment facilities and UG 6 commercial uses in parking requirement category B1; and

WHEREAS, the applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the UG 4 ambulatory diagnostic or treatment facilities and UG 6 commercial uses in parking requirement category B1 are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Board finds the affidavit submitted credible and finds that the applicant has submitted sufficient evidence of good faith in maintaining the proposed UG 4 ambulatory diagnostic or treatment facilities and UG 6 commercial uses in parking requirement category B1 at the site; and

WHEREAS, the Board notes that its determination is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces will impact the surrounding community; and

\* WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand for parking generated by the proposed UG 4 ambulatory diagnostic or treatment facilities and UG 6 commercial uses at the site will be 57 spaces during the peak hours of demand, weekdays from 10:00 a.m. to 11:00 a.m., and that such demand can be accommodated by the proposed on-site parking spaces available during peak demand and available

on-street parking spaces; and

WHEREAS, the applicant also surveyed the surrounding area and noted that, within a one-quarter mile radius (approximately a five-minute walking distance), there were a minimum of 364 parking spaces available on-street in the neighborhood between 8:00 a.m. and 6:00 p.m.; and

WHEREAS, in response to questions from the Board, the applicant provided additional information demonstrating that no additional parking spaces could be provided on-site given the building footprint and interior constraints and that angled parking would not be necessary because of the availability of on-street parking in the area and also amended the drawings to reflect accessibility; and

WHEREAS, the applicant also revised this application to reduce the requested parking reduction from 12 spaces to 6 parking spaces and added additional off-street parking; and

WHEREAS, the applicant also notes that, due to factors beyond the owner's control, the subject building could not be used by the house of worship it was originally designed to accommodate; and

WHEREAS, the Board finds no appropriate basis in the record to impose a term in light of the fact that the applicant is requesting a reduction of 6 spaces for the subject building and that the applicant proposes to install mechanical parking lifts where possible within the enclosed attendant parking area to increase the number of off-street spaces as much as feasible; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of parking regulations is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the parking modification will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-44 and 73-03 have been met; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16BSA090Q, dated July 25, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact

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Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings to be made under ZR §§ 73-44 and 73-03 and that the applicant had substantiated a basis to warrant exercise of discretion to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to *permit*, in an M1-1 zoning district, a reduction in the number of off-street accessory parking spaces for ambulatory diagnostic or treatment facilities listed in Use Group 4 and for Use Group 6 commercial uses in parking requirement category B1, contrary to ZR § 44-21; *on condition* that all work and site conditions shall substantially conform to the drawings filed with this application marked “Received July 26, 2017”-Ten (10) sheets; and *on further condition*:

THAT no certificate of occupancy shall hereafter be issued if the ambulatory diagnostic or treatment facilities listed in Use Group 4 or uses in parking requirement category B1 are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT the above conditions shall be noted on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 31, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## 2016-4137-BZ

### CEQR #16-BSA-090Q

APPLICANT – Sheldon Lobel, P.C., for Astoria Warehouse Enterprises, Inc., owner.

SUBJECT – Application March 15, 2016 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility. M1-1 zoning district.

PREMISES AFFECTED – 19-55 & 19-57 49<sup>th</sup> Street, Block 755, Lot(s) 7 & 8, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Abstain: Commissioner Sheta.....1

Negative: .....0

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 12, 2016, acting on New Building Application No. 401701583, reads in pertinent part:

“Respectfully request to waive parking requirement for ambulatory diagnostic office contrary to ZR 44-21”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, in an M1-1 zoning district, a reduction in the number of off-street accessory parking spaces for ambulatory diagnostic or treatment facilities listed in Use Group (“UG”) 4 and for uses in parking requirement category B1, contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this application on January 24, 2017, after due notice by publication in *The City Record*, with continued hearings on June 6, 2017, and August 15, 2017, and then to decision on October 31, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 1, Queens, recommends approval of this application on condition that the applicant attempt to occupy the building with a use that has a parking requirement lower than medical offices, that the applicant should install mechanical parking lifts where possible within the enclosed attendant parking area to increase the number of off-street spaces, that a term of five (5) years should be imposed if medical offices are approved, that the term should be limited to five (5) years to assess the development’s impact, that a patient parking fee should be waived, that the applicant should request that the New York City Department of Transportation place angled parking along the west side of 49th Street, that the plans should be revised to meet accessibility requirements and that on-street parking spaces not be used for attended parking; and

WHEREAS, Council Member Costa Constantinides submitted testimony in support of this application, stating that there are many parking spaces available on the streets



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surrounding the subject site and that the minimum reduction of parking spaces will not have a negative impact on the community; and

WHEREAS, the subject site is located on the east side of 49th Street, between 19th Avenue and 20th Avenue, in an M1-1 zoning district, in Queens; and

WHEREAS, the site has approximately 50 feet of frontage along 49th Street, 100 feet of depth, 2,500 square feet of lot area and is occupied by a four-story community-facility building designed as a house of worship; and

WHEREAS, the applicant proposed to convert the subject building to UG 4 ambulatory diagnostic or treatment facilities, which became permitted uses in the subject zoning district in 2011 after construction of the subject building, and for UG 6 commercial uses in parking requirement category B1; and

WHEREAS, the applicant represents that, under ZR § 44-21, 38 parking spaces are required, calculated at a rate of one parking space per 300 square feet of floor area; however, the applicant seeks to provide 32 parking spaces, 6 fewer spaces than required; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the *building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
PARKING SPACES REQUIRED FOR  
AMBULATORY DIAGNOSTIC  
OR TREATMENT FACILITIES LISTED IN  
USE GROUP 4 AND  
COMMERCIAL USES IN PARKING  
REQUIREMENT CATEGORY B1

Parking Spaces Required Per Number of Square Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3

M2-1 M2-2 M3-1  
1 per 800 C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar space*, except *cellar space used* for storage; and

WHEREAS, under ZR § 73-44, the Board may reduce the required parking for UG 4 ambulatory diagnostic or treatment facilities and UG 6 commercial uses in parking requirement category B1 from one space per 300 square feet of floor area to one space per 600 square feet of floor area, provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant submitted an affidavit indicating that the subject building would be limited to occupancy for UG 4 ambulatory diagnostic or treatment facilities and UG 6 commercial uses in parking requirement category B1; and

WHEREAS, the applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the UG 4 ambulatory diagnostic or treatment facilities and UG 6 commercial uses in parking requirement category B1 are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Board finds the affidavit submitted credible and finds that the applicant has submitted sufficient evidence of good faith in maintaining the proposed UG 4 ambulatory diagnostic or treatment facilities and UG 6 commercial uses in parking requirement category B1 at the site; and

WHEREAS, the Board notes that its determination is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces will impact the surrounding community; and

\* WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand for parking generated by the proposed UG 4 ambulatory diagnostic or treatment facilities and UG 6 commercial uses at the site will be 57 spaces during the peak hours of demand, weekdays from 10:00 a.m. to 11:00 a.m., and that such demand can be accommodated by the proposed on-site parking spaces available during peak demand and available on-street parking spaces; and

WHEREAS, the applicant also surveyed the surrounding area and noted that, within a one-quarter mile radius (approximately a five-minute walking distance), there were a minimum of 364 parking spaces available on-street in the neighborhood between 8:00 a.m. and 6:00 p.m.; and

WHEREAS, in response to questions from the Board, the applicant provided additional information demonstrating

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that no additional parking spaces could be provided on-site given the building footprint and interior constraints and that angled parking would not be necessary because of the availability of on-street parking in the area and also amended the drawings to reflect accessibility; and

WHEREAS, the applicant also revised this application to reduce the requested parking reduction from 12 spaces to 6 parking spaces and added additional off-street parking; and

WHEREAS, the applicant also notes that, due to factors beyond the owner's control, the subject building could not be used by the house of worship it was originally designed to accommodate; and

WHEREAS, the Board finds no appropriate basis in the record to impose a term in light of the fact that the applicant is requesting a reduction of 6 spaces for the subject building and that the applicant proposes to install mechanical parking lifts where possible within the enclosed attendant parking area to increase the number of off-street spaces as much as feasible; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of parking regulations is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the parking modification will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-44 and 73-03 have been met; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 16BSA090Q, dated July 25, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings to be made under ZR §§ 73-44 and 73-03 and that the applicant had substantiated a basis to warrant exercise of

discretion to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to *permit*, in an M1-1 zoning district, a reduction in the number of off-street accessory parking spaces for ambulatory diagnostic or treatment facilities listed in Use Group 4 and for Use Group 6 commercial uses in parking requirement category B1, contrary to ZR § 44-21; *on condition* that all work and site conditions shall substantially conform to the drawings filed with this application marked "Received July 26, 2017"-Ten (10) sheets; and *on further condition*:

THAT no certificate of occupancy shall hereafter be issued if the ambulatory diagnostic or treatment facilities listed in Use Group 4 or uses in parking requirement category B1 are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT the above conditions shall be noted on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 31, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## **2016-4334-BZ**

### **CEQR #17-BSA-042K**

APPLICANT – Sheldon Lobel, P.C., for 431 Carroll Street LLC, owner.

SUBJECT – Application August 8, 2017 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1). M1-2 zoning district.

PREMISES AFFECTED – 341 Nevins Street, Block 447, Lot 1, Borough of Brooklyn.

### **COMMUNITY BOARD #6BK**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and

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Commissioner Ottley-Brown.....3  
 Abstain: Commissioner Sheta.....1  
 Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 26, 2016, acting on New Building Application No. 321195764, reads in pertinent part:

“Proposed number of accessory parking spaces for the proposed building is less than required pursuant to ZR 44-21”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, in an M1-2 zoning district, a reduction in the number of accessory off-street parking spaces for offices in parking category B1 in Use Group (“UG”) 6, contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this application on August 8, 2017, after due notice by publication in *The City Record*, and then to decision on October 31, 2017; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Nevins Street and Carroll Street, in an M1-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 50 feet of frontage along Nevins Street, 82 feet of frontage along Carroll Street, 4,100 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to construct a two-story, with mezzanine and cellar, commercial building with 8,108 square feet of floor area to be used as UG 6 offices; and

WHEREAS, the applicant represents that, under ZR § 44-21, 27 parking spaces are required, calculated at a rate of one parking space per 300 square feet of floor area; however, the applicant seeks to provide 14 parking spaces, 13 fewer spaces than required; and

WHEREAS, ZR § 73-44 provides:

In the districts indicated, the Board of Standards and Appeals may permit a reduction in the number of *accessory* off-street parking spaces required by the provisions of Section 36-21 or 44-21 (General Provisions) for ambulatory diagnostic or treatment facilities listed in Use Group 4 and *uses* in parking requirement category B1 in Use Group 6, 7, 8, 9, 10, 11, 14 or 16 to the applicable number of spaces specified in the table set forth at the end of this Section, provided that the Board finds that occupancy by ambulatory diagnostic or treatment facilities listed in Use Group 4 or *uses* in parking category B1 is contemplated in good faith on the basis of evidence submitted by the applicant. In such a case the Board shall require that the certificate of occupancy issued for the

*building* within which such *use* is located shall state that no certificate of occupancy shall thereafter be issued if the *use* is changed to a *use* listed in parking category B unless additional *accessory* off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius.

REDUCED ACCESSORY OFF-STREET  
 PARKING SPACES REQUIRED FOR  
 AMBULATORY DIAGNOSTIC  
 OR TREATMENT FACILITIES LISTED IN  
 USE GROUP 4 AND  
 COMMERCIAL USES IN PARKING  
 REQUIREMENT CATEGORY B1

Parking Spaces Required Per Number of Square Feet on <i>Floor Area</i> *	Districts
1 per 400	C1-1 C2-1 C3 C4-1
1 per 600	C1-2 C2-2 C4-2 C8-1 M1-1 M1-2 M1-3 M2-1 M2-2 M3-1
1 per 800	C1-3 C2-3 C4-3 C7 C8-2

\* For ambulatory diagnostic or treatment facilities listed in Use Group 4, parking spaces required for number of square feet of *floor area* or *cellar space*, except *cellar space used* for storage; and

WHEREAS, under ZR § 73-44, the Board may reduce the required parking for UG 6 offices in parking category B1 from one space per 300 square feet of floor area to one space per 600 square feet of floor area, provided that the Board finds that such occupancy is contemplated in good faith; and

WHEREAS, the applicant represents that the building will be occupied by UG 6 offices; and

WHEREAS, the applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if the UG 6 offices are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius; and

WHEREAS, the Board finds the applicant’s statements credible and finds that the applicant has submitted sufficient evidence of good faith in maintaining the proposed UG 6 offices at the site; and

WHEREAS, the Board notes that its determination is also subject to and guided by, among other things, ZR §§ 73-01 through 73-04, inclusive; and

WHEREAS, the Board directed the applicant to demonstrate that the application satisfies ZR § 73-03(a), specifically, to provide information as to how the proposed reduction in required accessory off-street parking spaces will impact the surrounding community; and

WHEREAS, in response, the applicant submitted a parking study demonstrating that the maximum demand for parking generated by the proposed UG 6 offices at the site will be 11 spaces during the peak hours of demand,

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weekdays between 9:00 a.m. and 4:00 p.m., and that such demand can be accommodated by the proposed on-site parking spaces available during peak demand; and

WHEREAS, the parking study also presents an on-street parking survey concluding that, during periods of peak demand, there are 37 off-street spaces available within a one-quarter mile radius—a walking distance of approximately five minutes—for a utilization rate of 22 percent within the parking study area; and

WHEREAS, in response to questions from the Board at hearing, the applicant submitted an operational plan and verified compliance with accessibility requirements for people with disabilities; and

WHEREAS, accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of parking regulations is outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the parking modification will not interfere with any public improvement project; and

WHEREAS, based upon its review of the record, the Board concludes that the findings required under ZR §§ 73-44 and 73-03 have been met; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA042K, dated October 25, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, the Board referred this application to the New York City Landmarks Preservation Commission, which waived its recommendation; and

WHEREAS, by communication dated October 23, 2017 the New York City Department of City Planning (“DCP”) Waterfront and Open Space Division states that it completed review of the project for consistency with the policies and intent of the New York City Waterfront Revitalization Program (“WRP”) under WRP # 17-017 and finds that the action will not substantially hinder the achievement of any WRP policy and is consistent with the WRP policies; and

WHEREAS, the Board recommends that an (E) designation for hazardous materials be placed on the site as part of the approval; and

WHEREAS, the (E) designation requires an environmental review by the New York City Office of

Environmental Remediation (“OER”) which must be satisfied before DOB will issue building permits at the subject site; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings to be made under ZR §§ 73-44 and 73-03 and that the applicant had substantiated a basis to warrant exercise of discretion to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-44 and 73-03 to *permit*, a reduction in the number of accessory off-street parking spaces for offices in parking category B1 in Use Group 6 from 27 parking spaces to 14 parking spaces; *on condition* that all work and site conditions shall substantially conform to the drawings filed with this application marked ‘Received September 28, 2017’-Seventeen (17) sheets; and *on further condition*:

THAT no certificate of occupancy for the subject building shall hereafter be issued if the Use Group 6 offices in parking category B1 are changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-site radius;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 31, 2021;

THAT prior to DOB’s issuance of any building permit, OER shall issue a Notice to Proceed or a Notice of No Objection pursuant to the site’s (E) designation (E-453);

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 this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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**2016-4464-BZ**

**CEQR #17-BSA-051K**

APPLICANT – Law Office of Jay Goldstein, for Noah S. Smith, owner.

SUBJECT – Application December 8, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space ratio (ZR 23-141); side yard (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1350 East 28<sup>th</sup> Street, Block 7663, Lot 60, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Abstain: Commissioner Sheta.....1

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 23, 2016, acting on Alteration Application No. 321196950, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted 50%
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio (OSR) is less than the required 150%
3. Plans are contrary to ZR 23-461(a) in that the proposed side yards are less than the required 5’-0” and 8’-0”
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of a one-family, semi-detached residence that does not comply with bulk regulations for floor area ratio (“FAR”), open space ratio (“OSR”), side yards and rear yards, contrary to ZR §§ 23-141, 23-461(a) and 23-47; and

WHEREAS, a public hearing was held on this application on June 6, 2017, after due notice by publication in *The City Record*, with continued hearings on August 15, 2017, and then to decision on October 31, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former 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 west side of East 38th Street, between Avenue M and Avenue N, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 28 feet of frontage along East 28th Street, 100 feet of depth, 2,750 square feet of lot area and is occupied by a two-story, one-

family semi-detached residence; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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

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wall facing the *street*, measured at the lowest point before a setback or pitched roof begins.

Above such height, the setback regulations of Section 23-631, 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; and

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 semi-detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to add a second story and an attic, thereby increasing the floor area from 1,538 square feet (0.56 FAR) to 2,743 square feet (1.01 FAR), decrease OSR from 123 percent to 51 percent, maintain the existing side yards with widths of 0 feet at the south and 10'-6" and 8'-9" at the north and reduce the rear yard from 43'-3" to 20 feet at the first story and 26'-3" at the second story; and

WHEREAS, the applicant represents that, at the subject site, the maximum permitted floor area is 1,375 square feet (0.50 FAR), a minimum OSR of 150 percent is required, a rear yard with a minimum depth of 30 feet is required and side yards must total 13 feet in width with each at least 5 feet in width; and

WHEREAS, the Board finds that, because of existing non-complying side yards at the subject site, the proposed enlargement will 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; and

WHEREAS, the Board finds that the proposed enlargement is not located within 20 feet of the rear lot line; and

WHEREAS, the applicant represents that the proposed enlargement is consistent with the character of the neighborhood; and

WHEREAS, in support of that contention, the applicant submitted a FAR study concluding that, within 400 feet, there are 127 lots, 38 of which have FARs between 0.75 and 1.44; and

WHEREAS, the applicant further studied rear yards on the subject block, finding that of 46 lots 20 have rear yards between 16 feet and 29 feet in depth; and

WHEREAS, the applicant surveyed lot coverage in the surrounding area and found that 38 of 127 lots have lot coverage in excess of 40 percent; and

WHEREAS, the applicant also submitted a photographic streetscape study and three-dimensional rendering illustrating the proposed enlarged building in context with surrounding properties; and

WHEREAS, in response to questions from the Board about the massing of the proposed enlargement, the applicant reduced its request and revised the roofline to create a continuous slope from the adjoining structure; and

WHEREAS, based upon its review of the record and its inspections of the site and surrounding area, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA051K, dated November 30, 2016; and

WHEREAS, the Board finds that the evidence in the record supports the requisite findings under ZR §§ 73-622 and 73-03 and that the applicant had substantiated a basis to warrant exercise of discretion to grant with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR 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 and 73-03 to *permit*, in an R2 zoning district, the enlargement of a one-family, semi-detached residence that does not comply with bulk regulations for floor area ratio, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461(a) and 23-47; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 18, 2017" – Twelve (12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: maximum floor area of 2,743 square feet (1.01 floor area ratio), minimum open space ratio of 51 percent, side yards with widths of at least 0 feet at the south and 10'-6" and 8'-9" at the north and a rear yard with depths of 20 feet at the first story and 26'-3" at the second story, as illustrated on the Board-approved plans;

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans

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shall remain or the special permit is void;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 31, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## 2017-45-BZ

### CEQR #17-BSA-090M

APPLICANT – Deirdre A. Carson, Esq., Greenberg Traurig, LLP, for 3896 Tenth Avenue Associates, owner; Inwood Academy For Leadership Charter School, lessee.

SUBJECT – Application February 15, 2017 – Special Permit (§73-19) to allow for the operation of a school (Use Group 3) (*Inwood Academy*) contrary to ZR §32-12. C8-3 zoning district.

PREMISES AFFECTED – 3896 Tenth Avenue, Block 2223, Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #12M

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Abstain: Commissioner Sheta.....1

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 10, 2017, acting on Alteration Application No. 122972293, reads in pertinent part:

“The proposed Use Group 3A school is not permitted within a C8-3 Commercial District, contrary to Zoning Resolution Section 32-12”; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, in a C8-3 zoning district, the operation of a school, contrary to ZR § 32-12; and

WHEREAS, this application is brought on behalf of Inwood Academy for Leadership (the “School”), a public charter school; and

WHEREAS, a public hearing was held on this application on September 19, 2017, after due notice by publication in *The City Record*, and then to decision on October 31, 2017; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, Manhattan, recommends approval of this application; and

WHEREAS, Council Member Ydanis Rodriguez submitted testimony stating that the community and the applicant would be better served by including this project in the process for a potential neighborhood rezoning so that this project can be part of a comprehensive strategy regarding land use, education and infrastructure; and

WHEREAS, the subject site is located on the west side of Tenth Avenue, between Isham Street and Post Avenue, in an C8-3 zoning district, in Manhattan; and

WHEREAS, the site has approximately 159 feet of frontage along Tenth Avenue, 70 feet of frontage along Isham Street, 20 feet of frontage along Post Avenue, 18,082 square feet of lot area and is occupied by a two-story, with cellar, industrial building; and

WHEREAS, the applicant seeks a special permit to allow the operation of a high school (the “New School”) at the subject site; and

WHEREAS, as a preliminary matter, the applicant submits that the New School meets the “school” definition of ZR § 12-10 because it will provide “full-time day instruction and a course of study that meets the requirements of Sections 3204, 3205 and 3210 of the New York State Education Law”; and

WHEREAS, the applicant states that the New School will be operated by the School, which currently serves the community at other locations in the neighborhood with an existing middle school at 433 West 204th Street and an existing high school at 108 Cooper Street proposed to be relocated to the subject site, and provided a copy of the School’s charter; and

WHEREAS, based upon its review of the record, the Board finds that the New School meets the definition of “school” under ZR § 12-10; and

WHEREAS, ZR § 73-19(a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as of right; and

WHEREAS, the applicant submitted a report detailing the School’s site search indicating that the School has reviewed 87 potential sites within the neighborhood whose zoning districts would permit the New School as of right but that there was no practical possibility of obtaining a site of adequate size to accommodate the School’s programmatic needs; and

WHEREAS, the applicant also provided a programmatic needs analysis demonstrating that the School needs the New School to house approximately 500 students and 55 staff members with convenient access to public transportation and adequate space for classrooms, science labs and art space and that the subject site is uniquely situated to accommodate such needs; and

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WHEREAS, the Board finds that there is no practical possibility of obtaining a site of adequate size in a district where the New School could locate as of right; and

WHEREAS, ZR § 73-19(b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant represents that the subject site is approximately 50 feet from an R7-2 zoning district, where schools are permitted as of right; and

WHEREAS, the Board finds that the New School is located not more than 400 feet from the boundary of a district wherein the New School is permitted as of right; and

WHEREAS, ZR § 73-19(c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant represents that the New School's building will feature sound-attenuating exterior walls and windows in order to achieve an interior sound level of 45 dBA or less; and

WHEREAS, as to the surrounding area, the applicant notes that the New School will be located immediately adjacent to a residential building and that there is adequate separation from nearby non-residential uses, which include an eating and drinking establishment, stores, offices, an automotive service station and a train yard enclosed by a solid concrete wall and metal fence; and

WHEREAS, the Board finds that, under ZR § 73-19(c), there is adequate separation from noise, traffic and other potential adverse effects of the surrounding C8-3 zoning district; and

WHEREAS, ZR § 73-19(d) requires an applicant to demonstrate how the movement of traffic through the street on which the proposed school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that traffic moving through the streets adjacent to the subject site can be controlled in order to protect students going to and from the New School; and

WHEREAS, by letter dated April 6, 2017, the School Safety Engineering Office of the New York City Department of Transportation ("DOT") states that the New School should build a concrete curb extension on the northwest corner of Tenth Avenue and Post Street, on Post Street, which the Board finds to be an appropriate safeguard; and

WHEREAS, the applicant states that the New School will implement an arrival and dismissal procedure ensuring that arrivals and dismissals will take place within the subject building, be supervised by staff and will ensure that students enter and exit the New School through a single egress point on Tenth Avenue without congregating or occasion to wait on the street; and

WHEREAS, the applicant further states that the proposed curb extension suggested by DOT will provide additional reservoir space for pedestrians waiting to cross

the street while also serving to slow traffic; and

WHEREAS, the applicant notes that surrounding streets provide well-marked crosswalks and signaled intersections; and

WHEREAS, the Board finds that, under ZR § 73-19(d), the movement of traffic through the streets on which the New School is located can be controlled so as to protect children going to and from the New School; and

WHEREAS, as to ZR § 73-03(a), the Board acknowledges that the School, as an educational institution, is entitled to deference under the law of the State of New York as to zoning; specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), an educational institution's zoning application is to be granted 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 a denial; and

WHEREAS, as to concerns regarding potential rezoning of the surrounding area, the applicant notes that the Department of City Planning is currently engaging in a comprehensive neighborhood planning study in conjunction with New York City Economic Development Corporation for a potential rezoning that could change the zoning district of the subject site to an R8A (C4-4D) zoning district, where the New School would be allowed as of right; and

WHEREAS, in response to questions from the Board, the applicant provided further information about the School's physical education program, staff parking to be provided within the vicinity of the New School as well as security measures, including placement of security guards at the entrance of the subject building, employing staff monitors to supervise departures, a security desk at the entrance and employment of a buzz-in identification display with key-card access for staff; 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 finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-19 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA090M, dated September 29, 2017; 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; Open Space; Shadows;



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Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, the New York City Department of Environmental Protection (“DEP”) reviewed the proposed project with regard to air quality and noise; and

WHEREAS, by letter dated August 10, 2017, as revised September 20, 2017, DEP states that the proposed project would not result in any potential for significant adverse impacts from heating, ventilation and air-conditioning (HVAC) systems using natural gas as the type of fuel, that the mobile source impacts are below the screening threshold, that no manufacturing or processing facilities within air toxics concerns were identified within a 400-foot radius of the subject site, that in order to attain an indoor noise level of 45 dBA within the proposed development, a composite window-wall noise attenuation of 41 dBA is required for building facades on Isham Street, Tenth Avenue, and Post Avenue and that, to maintain a closed window condition, an alternate means of ventilation is required and should be incorporated into building design and construction; and

WHEREAS, by letter dated October 19, 2017, DOT states that the proposed project would generate fewer than 50 vehicle trip-ends during the weekday peak hour, that, as to pedestrian trips during the analysis peak hours, the pedestrian analysis indicates that all analyzed locations would continue to operate at LOS B or better in the future with-action condition, that, as to off-street parking, there would be sufficient parking available within a one-half mile walking distance from the subject site, that a detailed traffic analysis is not warranted and that the proposed project would not create significant adverse pedestrian and parking impacts; and

WHEREAS, the Board recommends that an (E) designation for hazardous materials be placed on the subject site as part of this approval; and

WHEREAS, the (E) designation requires an environmental review by the New York City Office of Environmental Remediation (“OER”) which must be satisfied before DOB will issue building permits at the subject site; and

WHEREAS, as part of the Remedial Action Work Plan submitted to OER for the proposed project, a restrictive declaration (the “Declaration of Covenants and Restrictions”) that includes a listing of engineering controls and institutional controls and a requirement that management of these controls must be in compliance with an approved Site Management Plan (“SMP”) shall be recorded against the subject site and shall provide that institutional controls shall include prohibition of the following: vegetable gardening and farming; use of groundwater without treatment rendering it safe for the intended use; disturbance of residual contaminated material unless it is conducted in accordance with the SMP; and

higher level of land usage without OER approval; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings to be made under ZR §§ 73-19 and 73-03 and that the applicant had substantiated a basis to warrant exercise of discretion to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* 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 1997, as amended, and makes each and every one of the required findings under ZR §§ 73-19 and 73-03 to *permit*, in a C8-3 zoning district, the operation of a school, contrary to ZR § 32-12; *on condition* that all work and site conditions shall substantially conform to the drawings filed with this application marked “Received July 31, 2017”-Ten (10) sheets and “Received September 22, 2017”-Two (2) sheets; and *on further condition*:

THAT a concrete curb extension shall be built on the northwest corner of Tenth Avenue and Post Street, on Post Street;

THAT parking spaces shall be reserved for the School’s staff at a nearby facility;

THAT a parking restricted zone shall be placed in front of the subject building during school hours;

THAT the School shall provide school crossing guards and security guards at the School’s entrance;

THAT the School shall employ a buzz-in identification display system and supply staff with key cards for building access;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 31, 2021;

THAT prior to DOB’s issuance of any building permit, OER shall issue a Notice to Proceed or a Notice of No Objection pursuant to the site’s (E) designation (E-452) and the Declaration of Covenants and Restrictions shall be recorded against the subject site;

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 this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

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Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## 2017-53-BZ

### CEQR #17-BSA-096M

APPLICANT – Francis R. Angelino, Esq., for Unizo Real Estate NY, owner; Mile High Run Club LLC, lessee.

SUBJECT – Application February 23, 2017 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (*Mile High*) located in the cellar and first floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 24 West 25<sup>th</sup> Street, Block 826, Lot 57, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Abstain: Commissioner Sheta.....1

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 26, 2017, acting on Alteration Application No. 122265146, reads in pertinent part:

“A Physical Cultural Establishment as defined in ZR 12-10 is proposed . . . and is not a permitted Use as-of-right . . . and is contrary to ZR 42-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an M1-6 zoning district, the legalization of a physical culture establishment (“PCE”) in the cellar and first floor of a 12-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on September 12, 2017, after due notice by publication in *The City Record*, and then to decision on October 31, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and  
WHEREAS, Community Board 5, Manhattan, waives its recommendation for this application; and

WHEREAS, the subject site is located on the south side of West 25th Street, between Sixth Avenue and Broadway, in an M1-6 zoning district, in Manhattan; and

WHEREAS, the site has approximately 100 feet of frontage along West 25th Street, 99 feet of depth, 9,875 square feet of lot area and is occupied by a 12-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such

special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property

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and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 5,256 square feet of floor space as follows: 3,131 square feet of floor area on the first floor, including an entryway, retail, a locker room with showers, restrooms, a workout area equipped with treadmills and closets, and 2,125 square feet of floor space in the cellar, used for a locker room with showers, laundry, storage and office space; and

WHEREAS, the PCE has been in operation as Mile High Run Club since January 2, 2016, [KS1] with the following hours of operation: 5:15 a.m. to 9:30 p.m., Monday through Friday, and 7:00 a.m. to 8:00 p.m., Saturday and Sunday; and

WHEREAS, the applicant represents that the PCE is located entirely within an existing commercial building, which is consistent with the surrounding area, characterized by compatible commercial uses; and

WHEREAS, with regard to sound attenuation, the applicant submits that the studio is located on a vibration isolated floor using acoustical pads, a concrete isolated slab, plywood and rubber flooring, that the isolated walls, consisting of metal stud framing, have been built on a rubber isolated wall mat, six inches of acoustical fiber insulation and three layers of sheetrock, and that the ceiling is supported by spring hangers to prevent vibration and sound from traveling throughout the building along with six inches of acoustical insulation and three layers of sheetrock; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE offers treadmill classes and running-focused strength training; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, the Board finds that, under the conditions

and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-096M, dated February 23, 2017; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the subject site without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 *to permit*, in an M1-6 zoning district, the legalization of a physical culture establishment in the cellar and first floor of a 12-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received February 23, 2017”-Five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring January 2, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by October 31, 2018;

THAT this approval is limited to the relief granted by

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the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## 174-14-BZ

APPLICANT – Jim Kusi, for Robert Calcano, owner.  
SUBJECT – Application July 23, 2014 – Re-instatement (§11-411) of a previously approved variance permitting the operation an Automotive Service Station (UG 16B) with accessory uses which expired November 6, 1994; Waiver of the Rules. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 820 East 182<sup>nd</sup> Street aka 2165-75 Southern Boulevard, Block 3111, Lot 59, Borough of Bronx.

### COMMUNITY BOARD #2BX

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

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## 302-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Stanfordville, LLC, owner.

SUBJECT – Application November 10, 2014 – Special Permit (§73-125) to allow proposed ambulatory diagnostic or treatment health care facility in excess of 1500 sq. ft. in a two-story mixed use building. R3X zoning district.

PREMISES AFFECTED – 45-05 Francis Lewis Boulevard, southeast corner of intersection of Francis Lewis Boulevard and 45<sup>th</sup> Avenue. Block 5538, Lot 30. Borough of Queens.

### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

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## 4-15-BZ

APPLICANT – Sheldon Lobel, P.C., for Bais Chaya Esther Inc., owner.

SUBJECT – Application January 9, 2015 – Variance (§72-21) to permit the conversion of the existing building at the premises from residential to community facility use.

PREMISES AFFECTED – 119 Webster Avenue, block 5416, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December

5, 2017, at 10 A.M., for decision, hearing closed.

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## 157-15-BZ

APPLICANT – Law Office of Lyra J. Altman, for Naomi Houllou and Albert Houllou, owners.

SUBJECT – Application July 13, 2015 – Special Permit (73-622) for the enlargement of an existing single family contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 3925 Bedford Avenue, Block 6831, Lot 76, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for adjourned hearing.

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## 2016-3-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seneca Clove Corp., owner.

SUBJECT – Application January 4, 2016 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store (UG 16B). C2-1/R2 zoning district.

PREMISES AFFECTED – 1212 Victory Boulevard, Block 651, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

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## 2016-4179-BZ

APPLICANT – Eric Palatnik, P.C., for Moses Steinberg, owner.

SUBJECT – Application April 27, 2016 – Special Permit (§73-19) to permit the legalization of a School (*Congregation Machna Shelva* (UG 3). Companion Variance (§72-21) (BSA Calendar Number: 246-15-BZ) to permit the creation of a mezzanine on the first floor M1-1 zoning district.

PREMISES AFFECTED – 1462 62<sup>nd</sup> Street, Block 5734, Lot 45, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

**ACTION OF THE BOARD** – Laid over to November 14, 2017, at 10 A.M., for adjourned hearing.

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## 2016-4181-BZ

APPLICANT – Law Office of Lyra J. Altman, for Alber Bukai and Subhi Bukai, owners.

SUBJECT – Application May 2, 2016 – Special Permit (§73-622) for the enlargement and conversion of an existing two family dwelling to a single family dwelling, contrary to side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R5 zoning district.

PREMISES AFFECTED – 1981 East 14<sup>th</sup> Street, Block 7293, Lot 54, Borough of Brooklyn.

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## COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 9,  
2018, at 10 A.M., for decision, hearing closed.

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## 2016-4208-BZ

APPLICANT – Sheldon Lobel, P.C., for USD 142 W 19  
LLC, owner.

SUBJECT – Application May 13, 2016 – Variance (§72-21)  
to permit the development of a 10-story residential building  
contrary to ZR §23-692. C6-3A zoning district.

PREMISES AFFECTED – 142 West 19<sup>th</sup> Street, Block 794,  
Lot 63, Borough of Manhattan.

## COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Laid over to January  
30, 2018, at 10 A.M., for continued hearing.

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## 2017-60-BZ

APPLICANT – Law Office of Fredrick A. Becker, for  
Premier 644 Greenwich LLC, owner; Bright Horizons  
Children’s Center LLC, lessee.

SUBJECT – Application March 9, 2017 – Special Permit  
(§73-19) to allow for a Day Care Center (UG 3) (*Bright  
Horizons Child Care Center*) to be located on the first (1st)  
floor of an existing building contrary to ZR §42-00. M1-5  
zoning district.

PREMISES AFFECTED – 111 Barrow Street, Block 603,  
Lot 37, Borough of Manhattan.

## COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to November  
14, 2017, at 10 A.M., for deferred decision.

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## 2017-188-BZ

APPLICANT – Law Office of Lyra J. Altman, for Charles  
Ishay and David Ishay, owners.

SUBJECT – Application May 22, 2017– Special Permit  
(§73-622) to permit the enlargement of an existing single  
family home, contrary to floor area (§23-142); side yard  
requirements (§§23-461) and less than the required rear yard  
(§23-47). R5 (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 1727 Ocean Parkway, Block  
6663, Lot(s) 82 & 83, Borough of Brooklyn.

## COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 9,  
2018, at 10 A.M., for continued hearing.

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## REGULAR MEETING

TUESDAY AFTERNOON, OCTOBER 31, 2017

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown, Commissioner Sheta.

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## ZONING CALENDAR

### 2016-4328-BZ

#### CEQR #17-BSA-041-M

APPLICANT – Sheldon Lobel, P.C., for JSM Associates I  
LLC, owner; OTF Studios, LLC, lessee.

SUBJECT – Application November 10, 2016 – Special  
Permit (§73-36) to permit the operation a Physical Cultural  
Establishment (*Orangetheory Fitness*) on the first and cellar  
floors of the existing building. C6-3 zoning district.

PREMISES AFFECTED – 51 Astor Place, Block 554, Lot  
35, Borough of Manhattan.

#### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Application granted on  
condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of  
Buildings (“DOB”), dated May 4, 2017, acting on New  
Building Application No. 120746826, reads in pertinent  
part:

“The proposed physical culture establishment is  
not permitted as of right in a C6-3 district as per  
ZR 32-10. BSA special permit per ZR 73-36 is  
required”; and

WHEREAS, this is an application under ZR §§ 73-36  
and 73-03 to permit, in a C6-3 zoning district, the  
legalization of a physical culture establishment (“PCE”) on  
the first and cellar floors of a 14-story mixed-use building,  
contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this  
application on October 31, 2017, after due notice by  
publication in *The City Record*, and then to decision on the  
same date; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown and former Commissioner  
Montanez performed inspections of the site and surrounding  
neighborhood; and

WHEREAS, Community Board 3, Manhattan, has no  
objection to this application; and

WHEREAS, the subject site is located on a block  
bounded by Astor Place, Fourth Avenue, East 9th Street and  
Third Avenue, in a C6-3 zoning district, in Manhattan; and

WHEREAS, the site has approximately 171 feet of  
frontage along Astor Place, 198 feet of frontage along  
Fourth Avenue, 231 feet of frontage along East 9th Street,

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166 feet of frontage along Third Avenue, 36,177 square feet of lot area and is occupied by a 14-story mixed-use commercial and community-facility building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the

foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 3,536 square feet of floor space as follows: 483 square feet of floor area on the first floor, including a reception area, and 3,053 square feet of floor area in the cellar, used for rowing machines, treadmills, dumbbells, suspension training, balance training, restrooms, showers and storage; and

WHEREAS, the PCE has been in operation as Orangetheory Fitness since January 12, 2017, with the following hours of operation: 5:00 a.m. to 9:00 p.m., Monday through Thursday, 5:00 a.m. to 8:00 p.m., Friday, 7:00 a.m. to 1:00 p.m., Saturday, and 8:00 a.m. to 2:00 p.m., Sunday; and

WHEREAS, the applicant represents that the PCE is located on the first and cellar floors of an existing commercial building, which is consistent with the surrounding area, characterized by a mix of compatible uses, including gymnasium spaces, offices, eating and drinking establishment and retail stores; and

WHEREAS, with regard to sound attenuation, the applicant submits that the PCE has installed a suspended, spring isolated gypsum acoustic ceiling and 2.5" thick rubber floor tiles in the workout area; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms

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and connection of the interior fire alarm to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-041-M, dated July 19, 2017; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the subject site without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, in a C6-3 zoning district, the legalization of a physical culture establishment on the first and cellar floors of a 14-story mixed-use building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received July 19, 2017”- Five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring January 12, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the

certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by October 31, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## 2017-97-BZ

### CEQR #17-BSA-109K

APPLICANT – Law Office of Fredrick A. Becker, for 55 Washington Street LLC, owner; Gleason’s Gym, lessee.

SUBJECT – Application March 29, 2017 – Special Permit (§73-36) to permit the legalization of physical culture establishment (*Gleason’s Gym*) on a portion of the first floor of an existing building. M1-2/R8A (Dumbo Historic District) zoning district.

PREMISES AFFECTED – 55 Washington Street, Block 38, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 3, 2017, acting on Alteration Application No. 301514127, reads in pertinent part:

“Proposed Physical Culture establishment is not permitted ‘As of Right’”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an M1-2/R8A zoning district and the Special Mixed Use District (MX-2), in the DUMBO Historic District, the legalization of a physical culture establishment (“PCE”) on the first floor of a nine-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 31, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Brooklyn,

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recommends approval of this application; and

WHEREAS, the subject site is located on a block bounded by Water Street, Adams Street, Front Street and Washington Street, in an M1-2/R8A zoning district and the Special Mixed Use District (MX-2), in the DUMBO Historic District, in Brooklyn; and

WHEREAS, the site has approximately 181 feet of frontage along Water Street, 212 feet of frontage along Adams Street, 232 feet of frontage along Front Street, 200 feet of frontage along Washington Street, 42,832 square feet of lot area and is occupied by a nine-story commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or

corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies a total of 9,667 square feet of floor area on the first floor, including a foyer, boxing rings, restrooms, showers, offices, concessions and storage; and

WHEREAS, the PCE has been in operation as Gleason's Gym since December 1, 2016, with the following hours of operation: 5:00 a.m. to 10:00 p.m., Monday through Sunday; and

WHEREAS, the applicant represents that the PCE is located entirely within an existing commercial building and is consistent with the mixed-use residential and commercial character of the surrounding area; and

WHEREAS, with regard to sound attenuation, the applicant submits that the PCE does not play music and houses limited, if any, group activity with no noise complaints from other commercial tenants within the subject building since the facility has been in operation; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE a boxing gym with five boxing rings and workout areas for patrons' physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant submitted evidence that the



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PCE is fully sprinklered and that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, the New York City Landmarks Preservation Commission (“LPC”) issued Certificate of No Effect No. CNE-19-09181 dated March 28, 2017, expiring March 28, 2021, for exterior alterations at the Water Street façade, including installing three new through-window louvers, finished to match the window framing, and interior alterations associated with this application; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA109K, dated March 29, 2017; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the subject site without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, in an M1-2/R8A zoning district and the Special Mixed Use District (MX-2), in the DUMBO Historic District, the legalization of a physical culture establishment on the first floor of a nine-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 16, 2017”-four (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring December 1, 2026;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—

including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by October 31, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## 2017-140-BZ

### CEQR #17-BSA-117K

APPLICANT – Law Office of Jay Goldstein, for 55 Prospect LLC, owner; Yoga Vida Dumbo LLC, lessee.

SUBJECT – Application April 28, 2017 – Special Permit (§73-36) to permit the legalization of physical culture establishment (*Yoga Vida Dumbo*) on a portion of the cellar and first floor of an existing building. M1-6 zoning district. PREMISES AFFECTED – 55 Prospect St, Block 63, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 26, 2017, acting on Alteration Application No. 321558765, reads in pertinent part:

“Propose[d] Physical Culture Establishment . . . is not permitted pursuant to ZR 42-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an M1-6 zoning district, the legalization of a physical culture establishment (“PCE”) on a portion of the cellar and first floor of a 10-story commercial building, contrary to ZR § 42-10; and

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WHEREAS, a public hearing was held on this application on October 31, 2017, after due notice by publication in *The City Record*, and then to decision on October 31, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Brooklyn, waives its recommendation for this application; and

WHEREAS, the subject site is located on the north side of Prospect Street, between Washington Street and Adams Street, in an M1-6 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 205 feet of frontage along Prospect Street, 101 feet of frontage along Washington Street, 100 feet of frontage along Adams Street, 20,704 square feet of lot area and is occupied by a 10-story, with cellar, commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application

to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and

- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies a total of 3,407 square feet of floor space as follows: 3,407 square feet of floor area on the first floor, used for a reception area, shoe cubbies and studios, and 2,056 square feet of floor space in the cellar, including a lobby, shoe cubbies, laundry, an office, locker rooms and saunas; and

WHEREAS, the PCE has been in operation as Yoga Vida since January 2017 with the following hours of operation: 5:30 a.m. to 11:00 p.m., Monday through Friday, and 7:00 a.m. to 9:00 p.m., Saturday and Sunday; and

WHEREAS, the application represents that the PCE is entirely contained within the first floor and cellar of the existing commercial building, thereby limiting visibility from the street, that the space is located in a manufacturing district with commercial uses surrounding it and that nearby uses include storage and office space; and

WHEREAS, with regard to sound attenuation, the applicant submits that the studio is isolated from adjacent structures with two layers of sheetrock in the studio and two layers outside with sound-attenuated insulation, that all penetration at studio ceilings and partitions are sealed mineral fiber insulation and caulked and that partitions have an STC rating of 56, the flooring has an STC rating of 56 and the ceilings have an STC rating of 55; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE provides

# MINUTES

class and private-session yoga instruction; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—has been installed in the entire PCE space; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-117K, dated April 26, 2017; and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the subject site without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, in an M1-6 zoning district, the legalization of a physical culture establishment on a portion of the cellar and first floor of a 10-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 28, 2017”- Four (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring January 31, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3'-0" wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any

gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by October 31, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## 2017-281-BZ

### CEQR #18-BSA-044K

APPLICANT – NYC Housing Preservation & Development, for William Hoffman, owner.

SUBJECT – Application October 24, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 23 Beacon Court, Block 8845, Lot 2042, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R4 zoning district, the reconstruction of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, rear yards and side yards, contrary to ZR § 23-45, 23-52 and 23-461; and

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# MINUTES

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WHEREAS, a public hearing was held on this application on October 31, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuild residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Beacon Court, between Lois Avenue and Plumb Beach Avenue, in an R4 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along Beacon Court, 45 feet of depth, 1,800 square feet of lot area and is occupied by a one-story detached residence; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the development of a single-family detached residence with non-compliances for front yards, side yards and rear yards; and

WHEREAS, at the subject site, front yards must be either 10 feet or 18 feet in depth under ZR § 23-45, rear yards must be at least 10 feet in depth under ZR § 23-52 and side yards must total 13 feet with a minimum of five feet each under ZR § 23-461; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Section 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

(a) that there would be a practical difficulty in complying with *flood-resistant construction*

*standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;

- (b) that any modifications of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to develop the proposed residence creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards, rear yards and side yards and that waiver of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; the applicant further states that the majority of residences within the surrounding neighborhood are similar detached residences; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed alteration satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA044K, dated October 24, 2017.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure; *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review; and makes the required findings under ZR § 64-92 to *permit*, in an R4 zoning district, the development of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning

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# MINUTES

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requirements for front yards, rear yards and side yards, contrary to ZR § 23-45, 23-52 and 23-461; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received October 24, 2017”- six (6) sheets; and *on further condition*:

THAT there shall be a front yard at least 10’-6” in depth, the rear yard shall be at least 9’-5” in depth and there shall be side yards with 4’-11” of width to the north and 8’-1” to the south, as illustrated on the Board-approved plans;

THAT there shall be a fire sprinkler system installed in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by October 31, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 31, 2017.

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## 2016-4467-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for Winston Network, Inc., c/o Outfront Media Inc., owner.

SUBJECT – Application December 16, 2016 – Variance (§72-21) to permit the legalization of an illuminated advertising sign contrary to ZR §22-35 (advertising signs not permitted in residential districts) and ZR §52-731.1 (non- conforming advertising signs in residential districts shall be terminated after 10 years from December 15, 1961). R4 zoning district.

PREMISES AFFECTED – 69-25 Astoria Boulevard, Block 1001, Lot 21, Borough of Queens.

## COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

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## 2017-227-BZ

APPLICANT – Sheldon Lobel, P.C., for 313 LLC, owner; Fuelsoul Group LLC dba Orangetheory Fitness, lessee.

SUBJECT – Application July 14, 2017 – Special Permit (§73-36) to permit the operation a Physical Cultural Establishment (*Orangetheory Fitness*) on a portion of the first floor of an existing building contrary to ZR §32-10. C6-4M Special Garment Center District.

PREMISES AFFECTED – 313-321 West 37<sup>th</sup> Street, Block 761, Lot 22, Borough of Manhattan.

## COMMUNITY BOARD #4M

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for continued hearing.

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*Carlo Costanza, Executive Director*

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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 102, Nos. 46-47

November 22, 2017

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### DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

VACANT

*Commissioners*

Carlo Costanza, *Executive Director*

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2017-23-BZ	32 Lexington Avenue aka 15 Quincy Street, Brooklyn

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# DOCKETS

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New Case Filed Up to November 14, 2017

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**2017-290-A**

1558 Third Avenue, located on the west side of Third Avenue between 87th & 88th Avenues, Block 01516, Lot(s) 32, 37 & 138, Borough of **Manhattan, Community Board: 8**. Appeal of a DOB determination challenging the determination of a zoning lot subdivision created a micro-lot that purports to separate the larger zoning lot from its frontage on 88th Street C1-9 district.

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**2017-291-BZ**

1367 East 26th Street, Located at East 26th Street between Avenue M and Avenue N, Block 07662, Lot(s) 0017, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of the existing single family home contrary to ZR §23-141 (floor area ratio & open space ratio); ZR §23-461(a) (side yard) and ZR §23-47 (rear yard). R2 zoning district. R2 district.

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**2017-292-BZ**

1363 East 26th Street, Located at East 26th Street between Avenue M and Avenue N, Block 07662, Lot(s) 0019, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of the existing single family home contrary to ZR §23-141 (floor area ratio & open space ratio); ZR §23-461(a) (side yard) and ZR §23-47 (rear yard). R2 zoning district. R2 district.

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**2017-293-BZ**

25 West 32nd Street, Located on the Northerly side of West 32nd Street between Broadway and Fifth Avenue, 372' west of Fifth Avenue, Block 00834, Lot(s) 0026, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of the Physical Culture Establishment (Juvenex Spa) to be located on the fourth, fifth and a portion of the sixth floors of an existing building contrary to ZR §32-10. C6-4 zoning district. C6-4 district.

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**2017-294-BZ**

55-27 Myrtle Avenue, located on the north side of Myrtle Avenue between Madison Street and Putnam Avenue, Block 03451, Lot(s) 0007, Borough of **Queens, Community Board: 5**. Special Permit (§73-36) to operate a physical culture establishment (Blink) within an existing building contrary to ZR §32-10. C4-3A zoning district, NYC Landmarked Ridgewood Theater. C4-3A district.

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**2017-295-BZ**

128 West 26th Street, Located at the South side of West 26th Street between 6th and 7th Avenue, Block 00801, Lot(s) 0058, Borough of **Manhattan, Community Board: 4**. Variance (§72-21) to permit the development of a fourteen (14) story, 24,684.5 square foot (10 FAR), mixed-use, commercial ground floor and residential above, contrary to ZR 42-00. M1-6 zoning district. M1-6 district.

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**2017-296-BZ**

817-33 Washington Street, Located at Washington Street 80.14 'N from NE corner of Gansevoort Street, Block 00644, Lot(s) 0033, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to operate a physical culture establishment (Caudalie) within an existing building contrary to ZR §42-10. M1-5 zoning district, Gansevoort Market Historic District . M1-5 district.

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**2017-297-BZ**

19 Stanton Road, Located between Gunnison Court and Losee Terrace, Block 08800, Lot(s) 0094, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district. R4-1 district.

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**2017-298-BZ**

14 White Street, Located on the northwest corner of White Street and Avenue of the Americas, Block 00191, Lot(s) 0008, Borough of **Manhattan, Community Board: 1**. Variance (§72-21) to permit the construction of a seven-story plus penthouse mixed commercial and residential building contrary to floor area regulations of ZR §111-20; street wall regulations of ZR §23-662; accessory parking regulations of ZR §13-11; and the curb cut location requirements of ZR §13-241. C6-2A (Special Tribeca Mixed Use District. Tribeca East Historic District. C6-2A district.

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**2017-299-BZ**

242-02 61st Avenue, Located at the intersection of Douglaston Parkway and 61st Avenue, Block 08286, Lot(s) 0185, Borough of **Queens, Community Board: 11**. Variance (§72-21) to permit the increase the degree of non-conformance of the a presently existing non-conforming shopping center by adding 15,181 square feet of retail floor area; adding approximately 1,116.10 square feet of signage and eliminate 101 parking spaces. R4 zoning district. R4 district.

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# DOCKETS

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**2017-300-BZ**

1275 Woodrow Road, The property is located on the corner of Rossville Avenue and Woodrow Road, Block 06145, Lot(s) 0016, Borough of **Staten Island, Community Board: 3**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Orangetheory Fitness) on the first floor level of an existing building contrary to ZR §32-10. C2-2/R3X zoning districts. R3X & C2-2 Overlay 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 12, 2017, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, December 12, 2017, 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

### 737-86-BZ

APPLICANT – Rampulla Associates Architects, LLP, for AGA, LLC., owner.

SUBJECT – Application June 30, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the enlargement of an existing retail store (UG 6) which expired on June 2, 2017; R3-1 (Special Richmond District).

PREMISES AFFECTED – 3304 Amboy Road, Block 4964, Lot 1, Borough of Staten Island.

**COMMUNITY BOARD # 3SI**

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### 62-96-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 200 Madison Owner LLC, owner; TSI East 36 LLC dba New York Sports Club, lessee.

SUBJECT – Application April 12, 2017 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a physical culture establishment (*New York Sports Club*) which expired on February 4, 2017; Waiver of the Rules. C5-2 zoning district.

PREMISES AFFECTED – 200 Madison Avenue, Block 865, Lot 14, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### 223-07-BZ

APPLICANT – Bryan Cave LLP, for Bliss World LLC, owner.

SUBJECT – Application February 17, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Bliss World*) on the third floor in an existing commercial building which expires on June 15, 2017. C5-3 Special Midtown District.

PREMISES AFFECTED – 12 West 57<sup>th</sup> Street, Block 1272, Lot 47, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### 169-09-BZ

APPLICANT – Akerman, LLP, for St. George Gardens LLC, owner.

SUBJECT – Application August 9, 2017 – Extension of Time to Complete Construction of a previously approved

Variance (§72-21) permitting the development of a multi-family residential building, contrary to floor area (§23-145), rear yard (§23-47), height and setback (§23-633), rear setback (§23-663), minimum distance between windows and lot lines (§23-861), and maximum number of dwelling units (§23-22) regulations which expired on August 23, 2015; Waiver of the Rules. R8 zoning district.

PREMISES AFFECTED – 186 Saint George's Crescent, Block 3313, Lot 12, Borough of Bronx.

**COMMUNITY BOARD #1BX**

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## REGULAR MEETING DECEMBER 12, 2017, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, December 12, 2017, 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

### 2017-208-BZ

APPLICANT – Law Office of Jay Goldstein, for Perry Weitz, owner.

SUBJECT – Application June 9, 2017 – Special Permit (§73-36) to permit the operation of physical culture establishment (*Rumble Fitness*) on a portion of the cellar and first floor an existing building contrary to ZR §32-10. M1-5B NoHo Historic District.

PREMISES AFFECTED – 700 Broadway, Block 545, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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### 2017-215-BZ

APPLICANT – Eric Palatnik, P.C., for 900 Third Avenue L.P., owner; MJM Boxing 3 LLC, lessee.

SUBJECT – Application December 12, 2017 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Title Boxing Club*) located on a portion of the first and cellar floors of an existing thirty-six (36) story commercial use building contrary to ZR §32-10. C6-6 Special Midtown District.

PREMISES AFFECTED – 900 3<sup>rd</sup> Avenue, Block 1309, Lot 32, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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*Carlo Costanza, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, NOVEMBER 14, 2017 10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown and Commissioner Sheta.

### SPECIAL ORDER CALENDAR

#### 1255-80-BZ

APPLICANT – Gerald J. Caliendo, RA. AIA, for Brett Morgan LLP, owner.

SUBJECT – Application November 23, 2014 – Extension of Term; Amendment and Waiver 72-01: request an extension of term for a previously expired variance that expired on 6/2/2011 and Amendment to change from the use (UG 17) to (UG6) and also require Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 35-33 31<sup>st</sup> Street, Block 00604, Lot 1, Borough of Queens.

#### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Application Withdrawn Without Prejudice.

#### THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, an amendment to a variance, previously granted by the Board, and an extension of term of the same, which expired on June 2, 2011; and

WHEREAS, a public hearing was held on this application on January 22, 2016, after due notice by publication in *The City Record*, with continued hearings on March 22, 2016, July 12, 2016, and August 22, 2017, and then to decision on November 14, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of 31st Street, between 36th Avenue and 35th Avenue, in an R5 zoning district, in Queens; and

WHEREAS, the site has approximately 50 feet of frontage along 31st Street, a depth of 80 feet, 4,008 square feet of lot area and is occupied by one-story plus mezzanine building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 2, 1981, when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story and mezzanine structure for use as a showroom with accessory storage and office for a term of twenty (20) years, expiring June 2, 2001, on condition that there be no manufacturing operation of any kind performed at the site, the door into the adjoining building be 4 feet in maximum width and constructed to the satisfaction

of the Department of Buildings, signs comply with C1 district regulations, the owner maintain the sidewalks in a clean condition at all times and there be no items on the streets except for routine loading and unloading; and

WHEREAS, on January 6, 2004, under the subject calendar number, the Board amended the resolution to extend the term for an additional ten (10) years, expiring June 2, 2011, on condition that the premises be maintained free of debris and graffiti, any graffiti on the premises be removed within 48 hours, all trash receptacles be located within the property line behind a fence except on the designated pick-up date, the trash dumpster be stored within Lot 9 and placed on the sidewalk only during pick-up times, a new Certificate of Occupancy be obtained within one year, by January 6, 2005, and that, upon expiration of the term, if the applicant returns to the Board for an extension, the applicant submit a financial study examining the feasibility of residential use of the premises; and

WHEREAS, the previous term having expired, the applicant seeks a further extension of the term for an additional ten (10) years, as well as an amendment permitting a change in use of the site to a Use Group 6 eating and drinking establishment; and

WHEREAS, the applicant also requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(b)(3)(ii) to permit the filing of this application more than two (2) years after but less than ten (10) years after the expiration of the term; and

WHEREAS, by letter dated November 10, 2017, the applicant requested that the subject application be withdrawn due to litigation pending in Queens County Court; and

WHEREAS, at hearing, the Board advised the applicant that accepting withdrawal of the application would render the subject variance expired, as of June 2, 2011, and require compliance of the site with use regulations applicable in the underlying zoning district; additionally, pursuant to Rule § 1-07.3(b)(3)(ii) of the current version of the Board's Rules, the applicant may file an application for an extension of the term of the variance granted under the subject calendar number on the Board's SOC calendar only until June 2, 2021, provided that a request for a waiver of that section is additionally requested, but, after such date, pursuant to Rule § 1-07.3(b)(4), the applicant would be required to file an application for a new variance for the site on the Board's BZ calendar; and

WHEREAS, the applicant acknowledged the foregoing, but maintained the request for withdrawal; and

WHEREAS, pursuant to § 1-12.2 of the Board's Rules, as the request for withdrawal was made prior to the hearing on the application being closed, the Board may permit withdrawal without prejudice.

*Therefore, it is Resolved*, that the Board of Standards and Appeals accepts the withdrawal of this application without prejudice.

Adopted by the Board of Standards and Appeals, November 14, 2017.

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## 198-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 270 Park Avenue South LLC, owner; NYHRC, lessee.

SUBJECT – Application March 17, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of physical culture establishment (*New York Health and Racquet Club*) which expired on February 10, 2019; Amendment to permit the expansion of the use at the cellar and first floor; Waiver of the Rules. C6-4A zoning district.

PREMISES AFFECTED – 270 Park Avenue South, Block 850, Lot 39, Borough of Manhattan.

## COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which will expire on February 10, 2019, and an amendment to the special permit to permit the expansion of the PCE to the cellar and first floor; and

WHEREAS, a public hearing was held on this application on November 14, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and the surrounding neighborhood; and

WHEREAS, Community Board 5, Manhattan, waived their recommendation on the subject application; and

WHEREAS, the Board was in receipt of three letters from residential tenants of the third floor of the subject building stating that such tenants had never experienced any disturbing noise or vibrations created by the applicant; and

WHEREAS, the subject site is located on the northwest corner of Park Avenue and East 21st Street, within a C6-4A zoning district, in Manhattan; and

WHEREAS, the site has approximately 99 feet of frontage along Park Avenue, 75 feet of frontage along East 21st Street, 7,406 square feet of lot area and is occupied by a 12-story plus penthouse mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 10, 2009, when, under the subject calendar number, the Board permitted the establishment of a PCE on the sub-cellar, cellar, first floor, second floor and second floor mezzanine levels of the subject building for a term of ten (10) years, expiring February 10, 2019, on condition that there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State

licensed massage therapists; all signage comply with C6-4A zoning regulation; the Department of Buildings (“DOB”) review the second floor mezzanine for compliance with ZR § 54-41; all second floor and second floor mezzanine windows be non-operable, one-inch thick and double-glazed in accordance with the BSA-approved plans; one-inch thick rubber flooring be installed throughout the exercise rooms of the second floor and second floor mezzanine of the PCE; a distributed speaker system be used with moderated volume unit; and fire safety measures be installed and/or maintained as shown on the Board-approved plans; and

WHEREAS, the PCE was approved to operate as and by the New York Health and Racquet Club and to occupy a total of 14,991 gross square feet in the subject building, with 7,685 square feet of floor space in the sub-cellar and cellar, 380 square feet of floor area on the first floor, 6,126 square feet of floor area on the second floor and 800 square feet of floor area on the second floor mezzanine; and

WHEREAS, the applicant proposes to amend the special permit to permit the enlargement of the PCE at the cellar and first floor levels by an additional 1,264 square feet of floor space in the cellar and 689 square feet of floor area on the first floor for the provision of additional office space, a revised reception desk and a seating lounge for patrons; accordingly, the PCE would occupy a total of 16,944 gross square feet in the subject building; and

WHEREAS, additionally, the applicant seeks to extend the term of the special permit grant and, accordingly, requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(2) to permit the filing of the application more than one (1) year before the expiration of the term; and

WHEREAS, the applicant submits that no operational changes to the PCE are herein proposed, to wit, the PCE continues to be operated as New York Health and Racquet Club and operates seven days a week from 6:00 a.m. to 11:00 p.m.; and

WHEREAS, the Board finds that a ten (10) year extension and amendment to reflect a change in weekend hours, as requested, are appropriate, with the conditions set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens and amends* the resolution, dated February 10, 2009, 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, expiring February 10, 2029, *on condition* that the site shall substantially conform to drawings as filed with this application, marked ‘Received February 19, 2017’- Seven (7) sheets and ‘July 25, 2017’- Two (2) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring February 10, 2029;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT all signage shall comply with C6-4A zoning

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regulation;

THAT the Department of Buildings shall review the second floor mezzanine for compliance with ZR § 54-41;

THAT all second floor and second floor mezzanine windows shall be non-operable, one-inch thick and double-glazed in accordance with the BSA-approved plans;

THAT one-inch thick rubber flooring shall be installed and/or maintained throughout the exercise rooms of the second floor and second floor mezzanine of the PCE;

THAT a distributed speaker system be used with moderated volume unit; and fire safety measures be installed and/or maintained as shown on the Board-approved plans;

THAT the sprinklers and approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exist, local audible and visual alarms and connection to an FDNY-approved central station—shall be maintained as shown on the Board-approved plans;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT substantial construction shall be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 14, 2017.

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## **549-67-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Irene B. Mancus & Joseph H. Mancuso Testamentary Trust, owner.

SUBJECT – Application October 16, 2015 – Extension of Term & Waiver (11-413) seek an extension of term of a previously variance granted pursuant to (72-21) permitting in an R3-2 zoning district an existing coal and oil establishment structural alterations to existing silos to provide storage rooms amend to legalize masonry extension for use as truck garage and removal silos. R3-2 zoning district.

PREMISES AFFECTED – 7-9 Elm Tree Lane, Block 5651, Lot 250, Borough of Bronx.

**COMMUNITY BOARD #12BX**

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M. for deferred decision.

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## **169-98-BZ**

APPLICANT – Robert J. Stahl for Herbert D. Freeman, Albany Crescent Holding, LLC, owner.

SUBJECT – Application April 10, 2015 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on July 20, 2009; Amendment (§11-413) to permit a change of use to Automotive Repair Facility (UG 16B); Waiver of the Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 3141 Bailey Avenue, Block 3267, Lot 38, Borough of Bronx.

**COMMUNITY BOARD #8BX**

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for continued hearing.

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## **344-03-BZ**

APPLICANT – Howard Goldman, for City of New York, owner; Nick’s Lobster House, lessee.

SUBJECT – Application August 12, 2015 – Application for an extension of term of the legalization of the reconstruction and extension of an existing building operating as an eating and drinking establishment in a C3 district, contrary to ZR 32-00. C3 zoning district.

PREMISES AFFECTED – 2777 Flatbush Avenue, Block 8591, Lot 980, Borough of Brooklyn.

**COMMUNITY BOARD #18BK**

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for adjourned hearing.

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## **187-08-BZ**

APPLICANT – Sheldon Lobel, P.C., for Congregation & Yeshiva Maschzikei Hadas, owner.

SUBJECT – Application April 22, 2016 – Amendment to a variance (§72-21) to allow a five-story school (*Congregation & Yeshiva Maschzikei Hadas*). The application seeks to increase the zoning lot contrary to the previous Board approval. M1-2/R6B zoning district.

PREMISES AFFECTED – 1247 38<sup>th</sup> Street, Block 5295, Lot(s) 52 & 109, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for continued hearing.

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## APPEALS CALENDAR

### 108-15-A thru 110-15-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Glebe Partners LLC, owners.

SUBJECT – Application May 13, 2015 – Appeal seeking determination that property owner has acquired common law vested right to complete construction of three, three-family residential buildings commenced under prior zoning district regulations. R6A zoning district.

PREMISES AFFECTED – 2317, 2319, 2321 Glebe Avenue, Block 3971, Lot(s) 167, 166, 165, Borough of Bronx.

#### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

**THE VOTE TO WITHDRAW** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

Adopted by the Board of Standards and Appeals, November 14, 2017.

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### 2016-4253-A

APPLICANT – Eric Palatnik, P.C., for Zev Johns, LLC, owner.

SUBJECT – Application September 14, 2016 – Appeal seeking a determination that the owner has acquired common law vested rights for a development commenced under the prior R7-1 district regulations. R3 Zoning district.

PREMISES AFFECTED – 565 St. John’s Place, Block 1175, Lot 87, Borough of Brooklyn

#### COMMUNITY BOARD #8BK

**ACTION OF THE BOARD** – Laid over to February 27, 2018, at 10 A.M., for adjourned hearing.

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### 2017-25-A thru 2017-28-A

APPLICANT – Gino O. Longo, R.A., for Thomas & Susan Aquafreda & Aquafreda LLC, owner.

SUBJECT – Application January 27, 2017 – Interpretative Appeal challenging the Department of Buildings determination.

PREMISES AFFECTED – 3094 and 3098 Dare Place and 3093 Casler Place, 3095 Casler Place, Block 5229, Lot(s) 487, 488, 489, p492, 500 Borough of Bronx.

#### COMMUNITY BOARD #10BX

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M., for continued hearing.

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## ZONING CALENDAR

### 2016-4333-BZ

APPLICANT – Slater & Beckerman P.C., for Grant Development Associates, L.P., owner.

SUBJECT – Application November 18, 2016 – Special Permit (§73-433) to permit the reduction of 35 accessory off-street parking spaces required for 78 existing income-restricted housing units. R7D zoning district.

PREMISES AFFECTED – 1350 Bedford Avenue, Block 1205, Lot 28, Borough of Brooklyn.

#### COMMUNITY BOARD #8BK

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Abstain: Commissioner Sheta.....1

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 28, 2016, acting on Department of Buildings (“DOB”) Application No. 321264396 reads in pertinent part:

Proposed removal of thirty-five (35) existing accessory off-street parking spaces at the subject premises is contrary to ZR § 25-23 and will require the approval by BSA of a special permit to waive the existing accessory off street parking spaces under ZR § 73-433; and

WHEREAS, this is an application under ZR §§ 73-433 and 73-03 to permit, on a site located within an R7D zoning district, the waiver of 35 accessory off-street parking spaces required for a building located on the zoning lot containing income-restricted housing units, contrary to ZR § 25-23; and

WHEREAS, a public hearing was held on this application on October 3, 2017, after due notice by publication in *The City Record*, with a continued hearing on November 14, 2017, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and the surrounding neighborhood; and

WHEREAS, Community Board 8, Brooklyn, recommends approval of this application; and

WHEREAS, the Board also received two letters in support of this application; and

WHEREAS, the subject site is bound by Bedford Avenue to the east, Dean Street to the south and Pacific Street to the north, in an R7D zoning district, in Brooklyn; and

WHEREAS, the site has approximately 233 feet of frontage along Bedford Avenue, 200 feet of frontage along Dean Street, 122 feet of frontage along Pacific Street, 35,400 square feet of lot area and is occupied by a six-story building containing 78 Section 8 units (the “Existing Building”) and an accessory parking lot with 35 off-street parking spaces; and

WHEREAS, the applicant proposes to develop the accessory parking lot with a nine-story residential building with approximately 80,000 square feet of zoning floor area containing 47 income-restricted housing units and 46 units that

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will be developed pursuant to a regulatory agreement with the New York City Department of Housing Preservation and Development (“HPD”) and made available to households earning between 80 percent and 130 percent of the area median income (“AMI”) (the “Proposed Building”); and

WHEREAS, ZR § 73-433 provides as follows:

For *zoning lots* within the *Transit Zone* with *buildings* containing *income-restricted housing units* in receipt of a certificate of occupancy prior to March 22, 2016, the Board of Standards and Appeals may permit a waiver of, or a reduction in, the number of *accessory* off-street parking spaces required for such *income-restricted housing units* prior to March 22, 2016, provided that the Board finds that such waiver or reduction will:

- (a) facilitate an improved site plan;
- (b) facilitate the creation or preservation of affordable housing, where a *development* includes new *residential floor area* on the *zoning lot*;
- (c) not cause traffic congestion; and
- (d) not have undue adverse effects on residents, businesses or *community facilities* in the surrounding area, as applicable, including the availability of parking spaces for such *uses*.

Factors to be considered by the Board may include, without limitation, the use of the existing parking spaces by residents of the *zoning lot*, the availability of parking in the surrounding area and the proximity of public transportation. The Board may impose appropriate conditions and safeguard to minimize adverse effects on the character of the surrounding area; and

WHEREAS, the applicant submits that the Existing Building located on the zoning lot contains “income-restricted housing units” as defined in ZR § 12-10; and

WHEREAS, ZR § 12-10 defines “income-restricted housing unit,” in pertinent part, to include:

Any dwelling unit for which the applicable number of required accessory off-street parking spaces was established pursuant to the provisions of Section 25-25 (Modification of Requirements for Income-Restricted Housing Units, Affordable Independent Residences for Seniors or Other Government-Assisted Dwelling Units) as such Section existed between December 16, 1961, and March 22, 2016 . . .; and

WHEREAS, the applicant submitted into the record Certificate of Occupancy No. 219091, dated January 23, 1981, and issued for the Existing Building when it was located in an R6 zoning district, reflecting a six-story residential building with 13 apartments per floor, for a total of 78 apartments, and 35 accessory parking spaces at grade; and

WHEREAS, the applicant submits that the 35 existing parking spaces were provided at the site pursuant to ZR § 25-25, as that section existed between December 16, 1961, and March 22, 2016 (the “Operative Period”); and

WHEREAS, the Board notes that the provision of 35

accessory off-street parking spaces is consistent with ZR § 25-25, as it existed in the Operative Period during which time parking had to be provided for 45 percent of the dwelling units subject to a federal rent subsidy program; and

WHEREAS, in addition, the applicant submits that at the time of the conversion of the Existing Building to residential use, ZR § 25-21 provided that accessory off-street parking spaces “shall be provided . . . for all new #residences# constructed after December 15, 1961, as a condition precedent to the #use# of such residences”; and

WHEREAS, in light of the foregoing, the Board finds that the subject site qualifies, as a threshold matter, for the requested relief; and

WHEREAS, in connection with ZR § 73-433(a), the applicant submits that the waiver herein requested will facilitate an improved site plan in that the existing off-street accessory parking lot, despite being available to residents of the Existing Building for free, has sat underutilized and mostly vacant and that the proposal to develop residential units on the site will put the site to greater productive use while also providing 23 parking spaces at grade in compliance with ZR § 25-23, spaces which are accessible from a curb cut located on Pacific Street; and

WHEREAS, accordingly, the Board finds that the subject proposal facilitates an improved site plan in accordance with ZR § 73-433(a); and

WHEREAS, in support of ZR § 73-433(b), the applicant represents that the special permit will facilitate the preservation of the income-restricted units in the Existing Building, which will remain affordable under the Section 8 program pursuant to a contract set to expire on October 1, 2030, as well as the creation of 93 affordable residential units plus one superintendent unit; and of the 93 affordable units, 47 units will be income-restricted housing units available to residents earning 80 percent AMI or less and, pursuant to the Mandatory Inclusionary Housing Program, approximately 23 of the total 93 units will remain affordable in perpetuity while the remaining 70 units will remain affordable pursuant to a regulatory agreement with HPD for a term of approximately 35 years; and

WHEREAS, at the Board’s request, and in support of this contention and the subject application, HPD submitted a letter, dated November 13, 2017, stating that the proposed residential development at the site is in HPD’s pipeline, consistent with the goals set forth in Housing New York and that, at closing, the proposed development will be made subject to a regulatory agreement with HPD through 2056, during which time the development’s 94 units will remain subject to a legally binding restriction limiting rents through the Mixed-Middle-Income Program and be made subject to a Mandatory Inclusionary Housing Restrictive Declaration under which 23 units will remain affordable in perpetuity; and

WHEREAS, the Board thus finds that the requested waiver, as applied to this proposal which includes new residential floor area on the zoning lot, will facilitate the creation or preservation of affordable housing; and

WHEREAS, with regards to ZR § 73-433(c), the applicant submits that the elimination of the parking spaces on

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the subject premise will not cause traffic congestion because only a few of the Existing Building's tenants own cars—specifically, according to a parking survey conducted on February 1, 2017, only six of the tenants in the Existing Building own cars; and

WHEREAS, the applicant additionally points to the general availability of on-street parking, permissive parking regulations in the surrounding area that allow on-street parking at most times and location of the site within close proximity to public transportation (including MTA subway, MTA bus and Long Island Railroad stations and stops) to justify their claim that waiver of parking at the site in connection with the Existing Building will not adversely affect neighborhood traffic conditions; and

WHEREAS, the Board finds that, in accordance with ZR § 73-433(c), the waiver will not cause traffic congestion; and

WHEREAS, the applicant represents that the grant of the requested special permit will not adversely affect residents, businesses or community facilities in the surrounding area in accordance with ZR § 73-433(d) because only six residents of the Existing Building own cars and these six cars can be accommodated by on-street parking spaces; and

WHEREAS, the applicant notes that all six cars have successfully been accommodated by on-street parking spaces since at least May 2016 when the 35 accessory off-street parking spaces on site became unavailable due to façade work being completed on the Existing Building pursuant to Local Law 11; and

WHEREAS, in light of the foregoing, the Board finds that the requested waiver will not have undue adverse effects on residents, businesses or community facilities in the surrounding area, as required under ZR § 73-433(d); and

WHEREAS, finally, with regards to the findings of ZR § 73-03, of which, the applicant submits, only subsections (a) and (b) are applicable to the subject application, the applicant states that, with regards to ZR § 73-03(a), the advantage to be derived from the special permit outweigh the hazards or disadvantages to the community at large because the requested special permit will put an underutilized portion of the zoning lot to beneficial residential use, specifically, it will provide much needed low- and middle income housing units and, with regards to ZR § 73-03(b), that no public improvement project has been approved or is pending “before the Board of Estimate, Site Selection Board or the City Planning Commission” that would interfere with the subject proposal; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the City Planning Commission of the City of New York (“CPC”) conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17DCP071K, dated January 13, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual

Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, on January 17, 2017, CPC issued a Negative Declaration, ULURP Nos. 170070ZMK, N170071ZRK, prepared in accordance with Article 8 of the Environmental Conservation Law 6 NYCRR Part 617, proposing that an (E) designation (E-412) be assigned to the project site for significant adverse impacts related to hazardous materials, air quality, and noise; and

WHEREAS, the (E) designation (E-412) text related to hazardous materials is as follows:

## Task 1 – Sampling Protocol

The applicant submits to OER, for review and approval, a Phase I of the site along with a soil, groundwater and soil vapor testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented. If site sampling is necessary, no sampling should begin until written approval of a protocol is received from OER. The number and location of samples should be selected to adequately characterize the site, specific sources of suspected contamination (i.e., petroleum based contamination and non-petroleum based contamination), and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.

## Task 2 – Remediation Determination and Protocol

A written report with findings and a summary of the data must be submitted to OER after completion of the testing phase and laboratory analysis for review and approval. After receiving such results, a determination is made by OER if the results indicate that remediation is necessary. If OER determines that no remediation is necessary, written notice shall be given by OER.

If remediation is indicated from test results, a proposed remediation plan must be submitted to OER for review and approval. The applicant must complete such remediation as determined necessary by OER. The applicant should then provide proper documentation that the work has been satisfactorily completed.

A construction-related health and safety plan should be submitted to OER and would be implemented during excavation and



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construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil, groundwater and/or soil vapor. This plan should be submitted to OER prior to implementation; and

WHEREAS, the (E) designation (E-412) text related to air quality is as follows:

Any new development or enlargement on the above referenced property must use natural gas as the type of fuel for heating, ventilating, and air conditioning for the (HVAC) system and ensure that the HVAC stack is located at least 88 feet above grade to avoid any potential significant adverse air quality impacts.

In order to ensure an acceptable interior noise environment, future residential/commercial uses on the above referenced property must provide a closed window condition with a minimum of 31 dBA window/wall attenuation on the north-facing, east-facing and west-facing facades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided; and

WHEREAS, the City Planning Commission determined that no other significant effects on the environment which would require an Environmental Impact Statement are foreseeable; and

WHEREAS, based upon its review of the record, the Board concludes that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-03 and 73-433; and

*Therefore it is Resolved*, that the Board of Standards and Appeals adopts a Type I Negative Declaration issued by the City Planning Commission on January 17, 2017, for CEQR No. 17DCP071K, as 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, effective as of the date of this grant, and makes each and every one of the required findings under ZR §§ 73-03 and 73-433 to permit, on a site located within an R7D zoning district, the waiver of 35 accessory off-street parking spaces required for a building located on the zoning lot containing income-restricted housing units, contrary to ZR § 25-23; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received August 30, 2017” – four (4) sheets and “Received October 13, 2017” – three (3) sheets, and *on further condition*:

THAT the Existing Building shall contain “income-

restricted housing units,” as that term is defined in ZR § 12-10, for the life of the Proposed Building or, in the alternative, shall provide the required parking upon the termination of the income-restricted units;

THAT restricted income and affordable housing units shall be provided and retained as described in the restrictive declaration and the regulatory agreements;

THAT recreational space at the site shall be provided as shown on the Board-approved plans;

THAT an e-designation (E-412) relating to hazardous materials and air quality be placed on the subject site;

THAT prior to the issuance of permits by the Department of Buildings, a restrictive declaration shall be recorded in the Office of the City Register in Kings County substantially conforming to the form and substance of the following:

DECLARATION, made this \_\_\_\_ day of \_\_\_\_\_, 201\_, by GRANT DEVELOPMENT ASSOCIATES, L.P., (“Declarant”) having an office at 124 Atlantic Avenue, Lynbrook, New York, 11583.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Brooklyn, designated as Block 1205, Lot 28 and Pending Lot 127 on the Tax Map of the City of New York (the “Premises”), and more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Premises is improved with a six-story Section 8 housing building (the “Existing Building”) which contains 78 “income-restricted housing units” as defined by Section 12-10 of the New York City Zoning Resolution (“ZR”). Thirty-five accessory parking spaces are provided in an open parking lot on the Premises for the 78 “income-restricted housing units”, pursuant to the parking requirements of former ZR §25-25, as amended, in effect in 1981. See Certificate of Occupancy No. 219091, dated January 23, 1981, in Schedule B annexed hereto and by this reference made a part hereof;

WHEREAS, Declarant has requested by application assigned BSA Cal. No. 2016-4333-BZ that the New York City Board of Standards and Appeals (the “Board”) grant a special permit, under ZR §73- 433 (the “Special Permit”), to waive the 35 off-street parking spaces that are accessory to the Existing Building;

WHEREAS, the special permit requires that the elimination of accessory parking for the 78 “income-restricted housing units” facilitate the development of new affordable housing on the zoning lot;

WHEREAS, the grant of the Special Permit will facilitate the construction of a nine-story residential building (the “Proposed Building”) with 47 “income-restricted housing units” and 46 units that are not income-restricted housing units but that

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# MINUTES

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are subject to rental restrictions pursuant to the Department of Housing Preservation and Development (“HPD”) regulatory agreements. Pursuant to ZR §25-251, no parking spaces are required for the 47 “income-restricted housing units.” Pursuant to ZR §25-23, twenty-three parking spaces are required and will be provided for the 46 other housing units in the Proposed Building. The portion of the Premises presently occupied by the existing 35 space parking lot will be developed with the Proposed Building and 23 parking spaces; and

WHEREAS, the Board requires Declarant to execute and record in the Office of the City Register of the City of New York this restrictive declaration prior to obtaining a building permit for the Premises;

NOW THEREFORE, in consideration of the Board’s approval of the Special Permit, Declarant does hereby declare that Declarant and its successors and/or assigns shall be legally responsible for compliance with the following restrictions:

1. If any of the 78 units in the Existing Building cease to be “income-restricted housing units” as defined by ZR §12-10 or the 47 “income restricted housing units” as defined by ZR §12-10 in the Proposed Building cease to be “income restricted housing units”, Declarant shall provide accessory parking as required by the Zoning Resolution;
2. This declaration may not be modified, amended or terminated without the prior written consent of the Board
3. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
4. Failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the Board, including, but not limited to, the Special Permit; and
5. This declaration shall be recorded at the city register’s (county clerk’s) office against the Premises and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to any buildings located on the Premises and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

THAT the above conditions shall appear on the certificate of occupancy;

THAT substantial construction shall be completed in accordance with ZR § 73-70;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all of applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 14, 2017.

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## **91-14-BZ**

APPLICANT – Law Office of Lyra J. Altman, for 3428 Bedford LLC by Jeffrey Mehl, owner.

SUBJECT – Application May 2, 2014 – 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 required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 3420 Bedford Avenue, southwest corner of Bedford Avenue and Avenue M, Block 7660, Lot (tentative) 45, Borough of Brooklyn.

## **COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M., for adjourned hearing.

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## **116-14-BZ**

APPLICANT – Gerard J. Caliendo, RA, AIA, for Ben Ohebshalom Med LLC, owner; Crank NYC II Inc., Anthony Maniscalco, lessee.

SUBJECT – Application May 30, 2014 – Special Permit (§73-36) to allow the legalization of an Physical Cultural Establishment (*Crank NYC II*) on the first floor level of an existing five story mixed commercial & residential building in a C1-9 zoning district.

PREMISES AFFECTED – 188 East 93<sup>rd</sup> Street, Block 1521, Lot 40, Borough of Manhattan.

## **COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for continued hearing.

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## **224-14-BZ and 225-14-A**

APPLICANT – Eric Palatnik, P.C., for 1534 Victory Boulevard LLC, owner.

SUBJECT – Application September 15, 2014 – Variance (§72-21) to for ambulatory diagnostic or healthcare treatment facility (medical office) (UG 4) located in an R1-2 zoning district. Also a companion GCL 35 as portion of the roadway is within a mapped street. R1-2 zoning district.

PREMISES AFFECTED – 1534 Victory Boulevard, Block 695, Lot 81, Borough of Staten Island.

## **COMMUNITY BOARD #1SI**

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# MINUTES

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## THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda,  
Commissioner Ottley-Brown and Commissioner Sheta .....4

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 23,  
2018, at 10 A.M., for decision, hearing closed.

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## 226-14-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Sharey  
Tefilah, owner.

SUBJECT – Application September 18, 2014 – Variance  
 (§72-21 to permit the proposed three (3) story use group 4  
 Synagogue, school and Rabbi's office. R4 zoning district.

PREMISES AFFECTED – 147-02 76<sup>th</sup> Road, Block 6686,  
Lot 1, Borough of Queens.

### COMMUNITY BOARD #8Q

**ACTION OF THE BOARD** – Laid over to January  
30, 2018, at 10 A.M., for continued hearing.

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## 105-15-BZ

APPLICANT – Eric Palatnik, P.C., for Aleksandr  
Finkelshtein, Contract Vendee.

SUBJECT – Application May 12, 2015 – Variance (§72-21)  
to permit the development of a four (4) story building  
consisting of Use Group 6 commercial offices on the first  
and second floor and community facility uses on the third  
and fourth floors. R4 zoning district.

PREMISES AFFECTED – 2102-2124 Avenue Z, Block  
7441, Lot 371, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to February  
27, 2018, at 10 A.M., for continued hearing.

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## 178-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for  
Margarita Bravo, owner.

SUBJECT – Application August 6, 2015 – Variance (§72-  
21) to permit the legalization of a two-family dwelling that  
exceeds permitted FAR and does not provide required front,  
side and rear yards. R3-1 zoning district.

PREMISES AFFECTED – 99-47 Davenport Court, Block  
14243, Lot 1110, Borough of Queens.

### COMMUNITY BOARD #10Q

**ACTION OF THE BOARD** – Laid over to March 6,  
2018, at 10 A.M., for adjourned hearing.

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## 2016-4179-BZ

APPLICANT – Eric Palatnik, P.C., for Moses Steinberg,  
owner.

SUBJECT – Application April 27, 2016 – Special Permit  
 (§73-19) to permit the legalization of a School  
 (*Congregation Machna Shelva* (UG 3). Companion  
 Variance (§72-21) (BSA Calendar Number: 246-15-BZ) to  
 permit the creation of a mezzanine on the first floor M1-1

zoning district.

PREMISES AFFECTED – 1462 62<sup>nd</sup> Street, Block 5734,  
Lot 45, Borough of Brooklyn.

### COMMUNITY BOARD #11BK

**ACTION OF THE BOARD** – Laid over to February  
27, 2018, at 10 A.M., for continued hearing.

-----

## 2016-4262-BZ

APPLICANT – Pryor Cashman LLP, for ZCAM, LLC,  
owner; Lyons Den Power Yoga, owner.

SUBJECT – Application October 3, 2016 – Special Permit  
 (§73-36) to permit the operation of a physical culture  
 establishment (*Lyons Den Power Yoga*) on the second and  
 third floors of an existing building. C6-2A (Tribeca East  
 Historic District) zoning district.

PREMISES AFFECTED – 279 Church Street, Block 175,  
Lot 16, Borough of Manhattan.

### COMMUNITY BOARD #1M

**ACTION OF THE BOARD** – Laid over to February  
13, 2018, at 10 A.M., for adjourned hearing.

-----

## 2017-60-BZ

APPLICANT – Law Office of Fredrick A. Becker, for  
Premier 644 Greenwich LLC, owner; Bright Horizons  
Children's Center LLC, lessee.

SUBJECT – Application March 9, 2017 – Special Permit  
 (§73-19) to allow for a Day Care Center (UG 3) (*Bright  
 Horizons Child Care Center*) to be located on the first (1st)  
 floor of an existing building contrary to ZR §42-00. M1-5  
 zoning district.

PREMISES AFFECTED – 111 Barrow Street, Block 603,  
Lot 37, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to December  
5, 2017, at 10 A.M., for deferred decision.

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# MINUTES

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## REGULAR MEETING

**TUESDAY AFTERNOON, NOVEMBER 14, 2017  
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown and Commissioner Sheta.

## ZONING CALENDAR

### 196-15-BZ

APPLICANT – Eric Palatnik, P.C., for Mercer Sq. LLC,  
owner; Gab & Aud, Inc., lessee.

SUBJECT – Application August 24, 2015 – Special  
Permit §73-36: to permit a physical culture establishment  
(*Haven Spa*) that will occupy the first floor of a 16-story  
residential building. C6-2 zoning district.

PREMISES AFFECTED – 250 Mercer Street aka 683  
Broadway, Block 535, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #1M

**ACTION OF THE BOARD** – Laid over to January  
30, 2018, at 10 A.M., for continued hearing.  
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### 2016-4153-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation  
Zichron Yehuda, owner.

SUBJECT – Application March 30, 2016 – Variance (§72-  
21) to permit the construction of a Use Group 3 school  
(*Project Witness*) contrary to floor area ratio and lot  
coverage (§24-34), front yard (§24-34) and side yard (§24-  
35(a)). R5 zoning district.

PREMISES AFFECTED – 4701 19<sup>th</sup> Avenue, Block 5457,  
Lot 166, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Laid over to February  
13, 2018, at 10 A.M., for continued hearing.  
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### 2016-4230-BZ

APPLICANT – Eric Palatnik, P.C., for Muslim American  
Society of Upper New York, owner.

SUBJECT – Application July 26, 2016 – Variance (§72-21)  
to allow the development of a House of Worship (UG 4A)  
contrary to floor area (ZR §33-123), street wall height and  
setback (ZR §33-432) and parking (ZR §36-21. C8-1  
zoning district.

PREMISES AFFECTED – 1912 & 1920 Amethyst Street,  
Block 4254, Lot(s) 11, 12, 13, 14, Borough of Bronx.

### COMMUNITY BOARD #11BX

**ACTION OF THE BOARD** – Laid over to January  
30, 2018, at 10 A.M., for continued hearing.  
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### 2017-23-BZ

APPLICANT – Davidoff Hutcher & Cintron LLP, for  
Classon Avenue Housing Development Funding Company,  
Inc., owner; Unity Preparatory Charter School of Brooklyn,  
lessee.

SUBJECT – Application January 24, 2017 – Variance (§72-  
21) to allow the development of a UG 3 School (*Unity  
Preparatory Charter School*) contrary to ZR §§23-153 and  
24-165 (maximum lot coverage, ZR §23-153 (permitted  
floor area, ZR §23-622 (maximum permitted height,  
maximum number of stories and required 15 foot initial  
setback and ZR 24-36 (required rear yard). R6B zoning  
district.

PREMISES AFFECTED – 32 Lexington Avenue aka 15  
Quincy Street, Block 1969, Lot 33, Borough of Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Laid over to February  
27, 2018, at 10 A.M., for continued hearing.  
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*Carlo Costanza, Executive Director*

# 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.

Volume 102, No. 48

November 29, 2017

### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

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111-01-BZ	9001 Ditmas Avenue, Brooklyn
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2016-4241-BZ	1 Maspeth Avenue, aka 378 Humboldt Street, Brooklyn
2017-100-BZ	412 East 90 <sup>th</sup> Street, Manhattan

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# DOCKETS

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New Case Filed Up to November 21, 2017

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**2017-301-BZ**

467 Marcy Avenue, Located on the east side of Marcy Avenue between Flushing and Park Avenue, Block 01720, Lot(s) 0001, Borough of **Brooklyn, Community Board: 3**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Trapeze School) contrary to ZR §32-10. M1-3 zoning district. M1-3 district.

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**2017-302-BZ**

174A & 176A Beach 111 Street, Located 380.00' westerly of the intersection of Beach 111 Street and Ocean Promenade, Block 16183, Lot(s) 0062, Borough of **Queens, Community Board: 14**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district. R4 district.

-----

**2017-303-BZ**

1281 Forest Avenue, Located on the north side of Forest Avenue between Hamlin Place and Jewett Avenue, Block 01042, Lot(s) 0013, Borough of **Staten Island, Community Board: 1**. Special Permit (§73-52) to extend by 25'-0 a commercial use into a residential zoning district To permit accessory commercial parking contrary to ZR §§22-10. C2-1/R3-2 & R3-1 zoning district. C2-1(R3-2) R3-1 district.

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**2017-304-BZ**

160 17th Street, Located at 17th Street between 3rd and 4th Avenues, Block 00630, Lot(s) 0022, Borough of **Brooklyn, Community Board: 7**. Special Permit (§73-19) to permit the construction of a school (UG 3) (Brooklyn Prospect Charter School) contrary to use regulation (ZR §42-10). M1-2D zoning district. M1-2D district.

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**2017-305-BZ**

66-26 Metropolitan Avenue, Located on the southeast corner of Metropolitan Avenue and 65th Lane, Block 03605, Lot(s) 0001, Borough of **Queens, Community Board: 5**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Matrix Sports Club) on a portion of the cellar level existing building contrary to ZR §42-10. M1-2 zoning districts. M1-2 district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING JANUARY 9, 2018, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 9, 2018, 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

#### 866-49-BZ

APPLICANT – Carl A. Sulfaro, Esq., for 2912 Realty, LLC, owner; A & AM Diagnostic Service Centers, Inc., lessee.  
SUBJECT – Application July 19, 2016 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on October 7, 2015; Waiver of the Rules. R3X zoning district.  
PREMISES AFFECTED – 200-01 47<sup>th</sup> Avenue, Block 5559, Lot 75, Borough of Queens.  
**COMMUNITY BOARD #11Q**

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#### 206-61-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Alrose 3039, LLC, owner.  
SUBJECT – Application July 14, 2016 – Extension of Term (§11-411) for a previously approved variance which permitted a six story office building (UG 6) which expired on July 11, 2016. R8B zoning district.  
PREMISES AFFECTED – 30 East 39<sup>th</sup> Street, Block 868, Lot 49, Borough of Manhattan.  
**COMMUNITY BOARD #6M**

-----

#### 243-13-BZ

APPLICANT – Greenberg Traurig, LLP, for VS 125 LLC, owner.  
SUBJECT – Application November 14, 2017 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a mixed-use building, contrary to setback requirements (ZR §91-32), which expires on February. C5-5 (LM) zoning district.  
PREMISES AFFECTED – 125 Greenwich Street aka 22 Thames Street, Block 51, Lot 14, Borough of Manhattan.  
**COMMUNITY BOARD #14M**

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## APPEALS CALENDAR

#### 2016-4348-A thru 2016-4353-A

APPLICANT – Sheldon Lobel, P.C., for Elmhurst Tower LLC, owner.  
SUBJECT – Application December 2, 2016 – Proposed construction of a four-story, three family residential building partially within the bed of a mapped street, pursuant to Article 3 of General City Law 35. R6B zoning district.  
PREMISES AFFECTED – 85-08, 85-12, 85-14, 84-71, 84-73 57<sup>th</sup> Avenue, Block 2882, Lot 22, Borough of Queens.  
**COMMUNITY BOARD #4Q**

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#### 2017-264-BZY

APPLICANT – Holland & Knight for SLC2 Holdings, LLC, owner.  
SUBJECT – Application September 7, 2017 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning district. C5-3 (Special Midtown District).  
PREMISES AFFECTED – 23 East 39<sup>th</sup> Street, North side of East 39<sup>th</sup> Street, 100 feet from intersection formed by East 39<sup>th</sup> and Madison Avenue. Block 00869, Lot 25, Borough of Manhattan.  
**COMMUNITY BOARD #5M**

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## REGULAR MEETING JANUARY 9, 2018, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, January 9, 2018, 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

#### 223-14-BZ

APPLICANT – Sheldon Lobel, P.C., for 1963 McDonald LLC, owner.  
SUBJECT – Application September 5, 2014 – Variance (§72-21) to request a variance of (23-141) maximum floor area ratio, lot coverage (33-26), and (23-47) rear yard, to legalize the existing building both a house of worship and a community facility uses, located within a (OPD) but primarily within an R5/C2-4 zoning district.  
PREMISES AFFECTED – 1963 McDonald Avenue, Block 6685, Lot 82, Borough of Brooklyn.  
**COMMUNITY BOARD #15BK**

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# CALENDAR

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**332-14-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Sherry Gantz, owner.

SUBJECT – Application December 30, 2014 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space ratio (ZR 23-141), side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R2 & R4/C2-2 zoning district.

PREMISES AFFECTED – 2912 Avenue N, Block 7683, Lot 45, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**2017-44-BZ**

APPLICANT – Sheldon Lobel, P.C., for Hong Diep Realty Incorporated; owner; LCAT Ventures, LLC, lessee.

SUBJECT – Application February 14, 2017 – Special Permit (§73-36) to permit the legalization of the operation of a physical culture establishment (F45 Training Flatiron) in the cellar and ground floors of an existing building contrary to ZR §32-31. C6-3A zoning district.

PREMISES AFFECTED – 123 West 20<sup>th</sup> Street, Block 796, Lot 23, Borough of Manhattan.

**COMMUNITY BOARD #4M**

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*Carlo Costanza, Executive Director*

# MINUTES

## REGULAR MEETING TUESDAY MORNING, NOVEMBER 21, 2017 10:00 A.M.

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown and Commissioner Sheta.

### SPECIAL ORDER CALENDAR

#### 240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties LLC, owner.

SUBJECT – Application December 24, 2015 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair facility (UG 16B) which is set to expire on November 3, 2018; Amendment (§11-413) to permit a change in use from automotive repair facility (UG 16B) to automotive sales (UG 9A); Extension of Time to Obtain a Certificate of Occupancy which expired on April 1, 2015; Waiver of the Rules to permit the filing for an Extension of Term in excess of 1 year prior to the expiration and for filing in excess of 30 day but less than 1 year of the expiration of the time to obtain a Certificate of Occupancy. C2-2/R6B & R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Block 7305, Lot 19, Borough of Queens.

#### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Dismissed for Lack of Prosecution.

#### THE VOTE TO DISMISS –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and, pursuant to ZR § 11-411, an extension of the term of a variance, previously granted by the Board, which will expire on November 3, 2018, an amendment to the same to facilitate a change in use and an extension of time to obtain a certificate of occupancy, which expired on April 1, 2015; and

WHEREAS, a public hearing was held on this application on August 23, 2016, after due notice by publication in *The City Record*, with continued hearings on October 18, 2016, December 13, 2016, January 31, 2017, and September 12, 2017, and then to decision on November 21, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, by letter dated March 8, 2016, Community Board 11, Queens, recommended approval of this application on condition that there be no road testing of vehicles on 45th Road, that the gate on 45th Road be locked

at night after business hours and that all lights in the parking lot be directed away from residences; and

WHEREAS, by follow up letter dated November 7, 2016, Community Board 11, Queens, reported that upon review of the operational plan presented by the applicant and the plan for test drives out of the facility, the Community Board agreed that the operational plan was acceptable and that the use of 45th Road would be preferable to driving cars through a showroom onto Northern Boulevard; and

WHEREAS, New York Senator Tony Avella submitted two letters into the record reporting a constituent's concerns with the subject application; and

WHEREAS, the subject site is located on the south side of Northern Boulevard, between 206th Street and Oceania Street, partially within an R4 zoning district and partially within an R6B (C2-2) zoning district, in Queens; and

WHEREAS, the site is a through lot with approximately 50 feet of frontage along Northern Boulevard, 50 feet of frontage along 45th Road, 10,000 square feet of lot area and is occupied by an automotive repair shop; and

WHEREAS, the Board has exercised jurisdiction over the subject property since December 13, 1955, when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story building to be used for body and fender repair, auto repairs, car and motor washing, welding, painting and spraying in conjunction with the owner's premises at the northwest corner of 209th Street and Northern Boulevard and to permit the use of the unbuilt upon space at the rear for a term of five (5) years, expiring December 13, 1960, on condition that the space at the rear be leveled and surfaced; a woven wire fence be positioned along the interior lot lines and rear lot lines with no openings therein to the property at either side or to 45th Road; a close split sapling fence be attached to the woven wire fence to a total height of five feet six inches facing on the exterior; fire fighting appliances be maintained as the Fire Commissioner directs; the building not be increased in height or area beyond that proposed; the sidewalk and curbing in front of the premises be restored or repaired to the satisfaction of the Borough President; one gasoline pump and one 550 gallon approved storage tank be installed within the building solely for use by the owner for cars being repaired; and there be no sign on the exterior of the building advertising sale or storage of gasoline; and

WHEREAS, on April 3, 1956, under the subject calendar number, the Board amended the resolution to state that, in the event the owner wished to rearrange the interior layout of the building by installing approved type paint and spray booth instead of building a paint and spray room, installing four additional skylights, making a total of six, and constructing a 5'-6" high masonry wall along the east and west lot lines where the building does not occur and along the 45th Road building line with a 10 foot wide sliding wood gate and a 3 foot wide exit door and to install a 15 foot wide curb cut on 45th Road, such changes may be

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made provided the requirements of the resolution be complied with in all other respects; and

WHEREAS, on June 26, 1956, under the subject calendar number, the Board further amended the resolution insofar as it referenced the building line fences, permitted the fences previously required on 45th Road to be changed from 5'-6" high masonry wall to 8 foot high chain link fence with posts 10 feet on center and permitted a similar gate to 45th Road as was permitted by the April 3, 1956, resolution; and

WHEREAS, on March 12, 1957, under the subject calendar number, the Board amended the reference to the gasoline dispensing system in the December 13, 1955, resolution to permit two additional gasoline pumps to be installed within the building and two 550 gallon approved gasoline storage tanks to be installed outside the building for the sole use by the owner for cars being repaired; and

WHEREAS, on September 17, 1958, under the subject calendar number, the Board further amended the resolution to add, in addition to the uses previously permitted at the site, the purchase, sale and exchange of automotive vehicles and products, provided that such uses were not contrary to any specific law, and to omit the reference to the site being used in connection with the owner's premises at the northwest corner of 209th Street and Northern Boulevard; and

WHEREAS, on November 15, 1960, under the subject calendar number, the Board extended the term of the variance for five (5) years, expiring November 15, 1965, on condition that illegal signs be removed on both the Northern Boulevard and 45th Road frontages and that a new certificate of occupancy be obtained; and

WHEREAS, on November 3, 1965, under the subject calendar number, the Board extended the term of the variance for another term of five (5) years, expiring November 3, 1970, on condition that a certificate of occupancy be obtained; and

WHEREAS, on February 23, 1971, under the subject calendar number, the Board extended the term of variance for a term of ten (10) years, expiring November 3, 1980, on condition that the a new certificate of occupancy be obtained; and

WHEREAS, on June 18, 1974, under the subject calendar number, the Board amended the resolution to allow the lot to be reduced in area and the building to be substantially altered as shown on revised drawings; and

WHEREAS, on January 27, 1981, under the subject calendar number, the Board amended the resolution to extend the term for five (5) years, expiring November 3, 1985, on condition that vehicular traffic entering and exiting on 45th Road be kept to a minimum; the rule against parking on the sidewalk on Northern Boulevard and 45th Road be enforced; the gate adjoining the property immediately to the east be removed; the existing fences in back of the property for its full length be restrung and repaired; the existing fence and gate fronting on 45th Road be screened on the inside with wooden slates 8 inches wide by 3 inches apart placed horizontally and all fences and wood slats be repainted

every two years; and that a new certificate of occupancy be obtained within one year, by January 27, 1982; and

WHEREAS, on July 9, 1986, under the subject calendar number, the Board, upon receiving a sworn affidavit from the owners declaring that they would close the opening in the fence between the subject lot and Lots 47 and 48 and operate with the doors facing 45th Road closed, the Board amended the resolution to extend the term of the variance for three (3) years, expiring November 3, 1988, on condition that the hours of operation be limited to 8:30 a.m. to 5:00 p.m. Monday through Friday, closed Saturday and Sunday; the rear overhead doors facing 45th Road be kept closed at all times during business hours except when cars enter or leave the building; there be no opening on the easterly lot line fence between the subject lot and Lot 48; the adjacent Lots 47 and 48 not be used in conjunction with the site; the ventilation systems shown on the plans be kept operating at all times during business hours; that no certificate of occupancy be issued until the ventilation system was installed and operational; and that a new certificate of occupancy be obtained within six months, by January 9, 1987; and

WHEREAS, on February 13, 1990, under the subject calendar number, the Board extended the term of the variance for five (5) years, expiring November 3, 1993, and legalized the elimination of the spray paint booth, the gasoline pump and the body and fender repair uses on condition that a new certificate of occupancy be obtained within one year, by February 13, 1991; and

WHEREAS, on June 7, 1994, under the subject calendar number, the Board extended the term of the variance for five (5) years, expiring November 3, 1998, on condition that a new certificate of occupancy be obtained within one year, by June 7, 1995; and

WHEREAS, on May 25, 1999, under the subject calendar number, the Board again extended the term of the variance for a term of ten (10) years, expiring November 3, 2008, and granted an amendment to the variance permitting the existing opening in the fence between the parking area of the subject site and the owner's property to the east on condition that no vehicles be parked on the sidewalk; the premises be kept clean of debris and graffiti; all landscaping be maintained in accordance with the BSA approved plans; all lighting be pointed away from residential uses and that a new certificate of occupancy be obtained with one (1) year, by May 25, 2000; and

WHEREAS, on March 6, 2001, under the subject calendar number, the Board amended the resolution to permit the construction of a second story on the existing commercial building, a total of 5,000 square feet, to be occupied as office and storage space, on condition that the office use be limited to 1960 square feet; that any changes to the office occupancy require approval from the BSA; the building not be accessible from 45th Road; all fencing and screening surrounding the premises be maintained; and that substantial work be completed within two years, by March 6, 2003; and

WHEREAS, on April 29, 2003, under the subject

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calendar number, the Board granted an extension of the time to obtain a certificate of occupancy for two (2) years, expiring April 29, 2005, on condition that the premises be maintained free of debris and graffiti and that any graffiti located on the premises be removed within 48 hours; and

WHEREAS, on February 13, 2007, under the subject calendar number, the Board granted another extension of time for two (2) years on condition that substantial construction on the second story be completed by February 13, 2009; and

WHEREAS, on April 28, 2009, under the subject calendar number, the Board granted a third extension of time for three (3) years, on condition that substantial construction be completed by April 28, 2012; and

WHEREAS, on December 8, 2009, under the subject calendar number, the Board extended the term of the variance for ten (10) years, expiring November 3, 2018, and amended specific prior conditions to the grant, thereafter requiring that no spray-painting be performed on site; the gate remain closed and no access be provided from the site to 45th Road; no vehicles be parked on the sidewalk; the premises be maintained free of debris and graffiti; all lighting be directed away from residential uses; the hours of operation be limited to Monday through Friday, 8:00 a.m. to 6:00 p.m. and closed on weekends; and that a new certificate of occupancy be obtained by June 8, 2010; and

WHEREAS, on April 1, 2014, under the subject calendar number, the Board granted an extension of time to obtain a certificate of occupancy for one (1) year on condition that a certificate of occupancy be obtained by April 1, 2015; and

WHEREAS, the applicant filed the subject application for an extension of the term, an amendment to the variance to permit a change in use from automotive repair (Use Group 16) to automobile sales (Use Group 9), an extension of time to obtain a certificate of occupancy, and, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, a waiver of Rule § 1-07.3(d)(2), to permit the filing of an application for an extension of time to obtain a certificate of occupancy more than thirty (30) days after the expiration of that time, and Rule § 1-07.3(b)(2), to permit the filing of an application for an extension of term more than one (1) year before the expiration of the term; and

WHEREAS, the Board expressed concern regarding the proposed use of 45th Road for access to the accessory parking on the site, past residential neighbors located in an R4 zoning district, and requested an operational plan; and

WHEREAS, at hearing on October 17, 2016, upon receipt of the operational plan, which described how automobiles would exit the subject site by its rear gate onto 45th Road and return to the site via the same gate, the Board requested that the applicant, instead, explore options for operating test drives from Northern Boulevard, including potentially obtaining an easement for access to Northern Boulevard through an adjacent lot; and

WHEREAS, by submission dated November 16, 2016, the applicant revised its proposal to request that, should the application be granted, the Board condition the resolution on

vehicles for test drive being parked at Lot 29, a lot located immediately the east of the subject site and under common control; and

WHEREAS, in light of this representation, at the hearing held on January 31, 2017, the Board requested that a fence be placed across the 45th Road to prevent egress from that curb cut by cars as well as a written easement agreement regarding the provision of parking on Lot 29; and

WHEREAS, the next three hearings—scheduled for March 21, 2017, June 27, 2017, and September 12, 2017—were subsequently adjourned at the applicant's request; and

WHEREAS, at the executive session held on September 11, 2017, the Board remarked on the slow prosecution of this case, including the failure of the applicant to provide, among other things, the easement agreement with Lot 29 requested on January 31, 2017, and warned that should such materials not be received by the next hearing, the Board would vote to deny or dismiss the application for failure to prosecute; and

WHEREAS, at hearing on September 12, 2017, the applicant repeated that the subject proposal was to close the curb cut on 45th Road and require that all vehicular access to the site be through Northern Boulevard, and explained that the delay in prosecution was due to time needed to explore whether test drives could be removed from the subject site entirely; and

WHEREAS, the applicant's representative stated that the applicant had determined that test drives could, indeed, be eliminated from the subject site; and

WHEREAS, the Chair specifically asked the applicant's representative whether the applicant would object to a condition that test drives not occur at this site and the applicant's representative indicated that such a condition would not pose a problem; and

WHEREAS, the applicant subsequently requested an adjournment of the next hearing, scheduled for November 21, 2017, which the Board denied; and

WHEREAS, at the hearing held on November 21, 2017, the applicant's representative stated that the applicant had determined that the elimination of vehicular access to the rear of the lot was not acceptable; and

WHEREAS, the Board expressed frustration that it had theretofore been led to believe that the applicant was amenable to the Board's requests regarding the minimal use of 45th Road, a means of access that has been a concern of the Board throughout the more than 60 years the Board has exercised jurisdiction over the site; and

WHEREAS, to wit, with regards to access to 45th Road from the subject site, previous grants have been conditioned on, among other things, the positioning of a woven wire fence with no openings to the property to 45th Road (December 13, 1955); traffic entering and exiting on 45th Road being kept to a minimum (January 27, 1981); the building not being accessible from 45th Road (March 6, 2001); and no access being provided from the site to 45th Road (December 8, 2009); and

*Therefore, it is Resolved,* that the subject application is hereby dismissed for lack of prosecution; the site must

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comply with the terms and conditions, including all conditions from prior resolutions not specifically waived by the Board, of the most recent grant issued under the subject calendar number, dated April 1, 2014.

Adopted by the Board of Standards and Appeals, November 21, 2017.

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## 704-59-BZ

APPLICANT – Carl A. Sulfaro, Esq., for The Rand Properties Group, LLC, owner; Danes Parking Corp., lessee. SUBJECT – Application May 9, 2016 – Extension of Term (§11-411) of a previously approved variance which permitted a parking lot (UG 8) which expired on June 3, 2010; Waiver of the Rules. R8 zoning district.

PREMISES AFFECTED – 53 East 177<sup>th</sup> Street (fka 53-57 East 177<sup>th</sup> Street), Block 2828, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #5BX

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

#### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and, pursuant to ZR §11-411, an extension of the term of a variance, previously granted by the Board, which expired on June 3, 2010; and

WHEREAS, a public hearing was held on this application on February 14, 2017, after due notice by publication in *The City Record*, with a continued hearing on September 12, 2017, and then to decision on November 21, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of East 177<sup>th</sup> Street and Walton Avenue, in an R8 zoning district, in the Bronx; and

WHEREAS, the site has approximately 75 feet of frontage along East 177<sup>th</sup> Street, 100 feet of frontage along Walton Avenue, 7,500 square feet of lot area and is occupied as a Use Group 8 parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 1960, when, under the subject calendar number, the Board granted a variance to permit, in a residence use district, the maintenance of a parking lot for the parking and storage of more than five motor vehicles for a term of ten (10) years, expiring March 8, 1970, on condition that the surface of the lot is paved with clean cinders or gravel, treated with a binder and properly rolled and drained to the satisfaction of the Borough Superintendent; the northerly curb cut to Walton Avenue be eliminated; an entrance gate and curb cut on East 177<sup>th</sup>

Street would be permitted if the owner desired; there be provided, where shown, a 5 foot 6 inch woven wire fence on an eight inch concrete curb; and there be no signs other than the sign required by the Commissioner of License; and

WHEREAS, on June 23, 1970, under the subject calendar number, the Board granted an extension of the term of the variance for five (5) years, expiring March 8, 1975, on condition that the gates be made 50 percent opaque; paving and bumpers comply with the rules and regulations of the Department of Buildings; sidewalks in front of the premises be paved from building line to curb in compliance with the rules and regulations of the Department of Highways within two months; that the lot be cleaned and so maintained; and that a new certificate of occupancy be obtained; and

WHEREAS, on April 22, 1975, under the subject calendar number, the Board granted an additional extension of term for five (5) years, expiring April 22, 1980; and

WHEREAS, on June 3, 1980, under the subject calendar number, the Board granted a ten (10) year extension of the term of the variance, expiring June 3, 1990, on condition that the use be limited to Use Group 8 for pleasure cars only, dead storage be prohibited, bumpers be installed where required and the existing canopy be removed and that a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, on June 5, 1990, under the subject calendar number, the Board granted another ten (10) year extension of term of the variance, expiring June 3, 2000; and

WHEREAS, on July 24, 2007, under the subject calendar number, the Board granted a waiver of its Rules and granted a ten (10) year extension of the term of the variance, expiring June 3, 2010; and

WHEREAS, the previous term having expired, the applicant seeks a ten (10) year extension of the term of the variance; and

WHEREAS, additionally, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, or Rule § 1-07.3(b)(3)(i) more than two years but less than ten years after the expiration of the term; and

WHEREAS, the applicant represents that the use has been continuous since the expiration of the term and that substantial prejudice would result without the requested waiver; and

WHEREAS, based on observations based on submitted photographs of the site, the Board requested that certain site work be completed prior to decision, including painting and repairing the existing fence, making the existing fence more opaque so as to obscure the use from its residential neighbors, removing barbed wire from the site and improving the condition of the existing attendant’s booth; and

WHEREAS, the applicant subsequently submitted photos evidencing the completion of this requested site work; and

WHEREAS, in addition, upon learning that the existing fence and attendant booth were not located within

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the bounds of the subject site, but were, instead, located, at least in part, on the public sidewalk, the Board requested that the fence and attendant's booth be relocated to within the subject property lines; and

WHEREAS, the applicant revised the plans to show revised locations for both the fence and attendant booths; and

WHEREAS, the applicant having satisfactorily addressed the Board's concerns regarding the site's appearance and maintenance, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 11-411 and finds that a ten (10) year extension of the term of the variance is appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated March 8, 1960, as amended through July 24, 2007, so that as amended this portion of the resolution reads: "to grant an extension of the term of the variance for a term of ten (10) years from the expiration of the last grant, to expire on June 3, 2020, *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received November 6, 2017- One (1) sheet; and *on further condition*:

THAT the fence and attendant's booth be relocated prior to obtaining a revised certificate of occupancy;

THAT the lot be cleaned and so maintained;

THAT that the use be limited to Use Group 8 for pleasure cars only;

THAT dead storage be prohibited;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT a new certificate of occupancy be obtained within one (1) year;

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 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 21, 2017.

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## 30-00-BZ

APPLICANT – Fried, Frank, Harris Shriver & Jacobson LLP, for The Trustees of Columbia University in the City of New York, lessee.

SUBJECT – Application February 17, 2016 – Extension of term of a previously granted variance granted pursuant to §72-21 of the zoning resolution which permitted an open parking lot (Use Group 8) which expired on February 6, 2016. R7-2 zoning district.

PREMISES AFFECTED – 465-469 West 165<sup>th</sup> Street and

458-464 West 166<sup>th</sup> Street, Block 2111, Lot(s) 53, 54, 55, 57, 71, 72, 73, Borough of Manhattan.

## COMMUNITY BOARD #12M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board, which expired February 6, 2016; and

WHEREAS, a public hearing was held on this application on May 24, 2016 after due notice by publication in *The City Record*, with continued hearings on October 14, 2016, March 28, 2017, May 23, 2017, and September 12, 2017 and then to decision on November 21, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, Manhattan, recommends approval of this application for a term of three (3) years or through the end of Columbia University's current lease; and

WHEREAS, the subject site is located on the south side of West 166<sup>th</sup> Street, between Amsterdam Avenue and Edgecomb Avenue, in an R7-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 125 feet of frontage along West 166<sup>th</sup> Street, 65 feet of frontage along West 165<sup>th</sup> Street, 17,730 square feet of lot area and is occupied by an open parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 6, 2001, when, under the subject calendar number, the Board granted a variance to permit the operation of an open parking lot in Use Group 8 for a term of five (5) years, expiring February 6, 2006, on condition that no vehicles be parked on the sidewalk, that there be no parking of commercial vehicles, that the subject site be kept clean and free of debris, that the site remain graffiti free at all times, that all fencing be maintained in accordance with the Board-approved plans, that the above conditions appear on the certificate of occupancy and that a new certificate of occupancy be obtained within one (1) year, by February 6, 2002; and

WHEREAS, on February 27, 2007, under the subject calendar number, the Board granted an extension of term of the variance for ten (10) years, expiring February 6, 2016, on condition that the term appear on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks an additional extension of term for ten (10) years; and

WHEREAS, the applicant represents that there are approximately 71 parking spaces for motor vehicle parking

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and storage at the subject site with seven bicycle parking spaces and that these conditions will be maintained; and

WHEREAS, as to the term proposed by Community Board 12, Manhattan, the applicant notes that control of the subject site has transferred from The Trustees of Columbia University in the City of New York (“Columbia University”) to New York Presbyterian Hospital and that accordingly an extension of term of ten (10) years is appropriate to meet the parking needs of the employees of New York Presbyterian Hospital; and

WHEREAS, at hearing, the Board requested additional information about maintenance and operation of the subject site; and

WHEREAS, in response, the applicant submits that new fencing relocated to the property line has been installed with privacy slats, that a new parking attendant’s booth has been constructed, shields have been placed on lights to prevent spillover onto adjacent residential properties and the sign bracket along West 166th Street has been removed and provided additional information regarding stability of the concrete-block wall; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated February 6, 2001, as amended February 27, 2007, so that as amended this portion of the resolution shall read: “to *grant* extension of term of the variance for ten (10) years, expiring February 6, 2026; *on condition* that the use and operation of the parking lot shall substantially conform to the drawings filed with this application marked ‘Received November 1, 2017’-Four (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring February 6, 2026;

THAT no vehicles shall be parked on the sidewalk;

THAT there shall be no parking of commercial vehicles;

THAT the subject site shall be kept clean and free of debris;

THAT the site shall remain graffiti free at all times;

THAT all fencing shall be maintained in accordance with the Board-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by November 21, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 21, 2017.

## 111-01-BZ

APPLICANT – Eric Palatnik, P.C., for Barge Realty LLC, owner; Briad Wenco, LLC, lessee.

SUBJECT – Application February 10, 2017 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive-thru facility at an eating and drinking establishment (Wendy's) which expired February 1, 2016; Amendment for minor modification to previous approved plans; Waiver of the Rules. C1-2 (R5) zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, Block 8108, Lot 6, Borough of Brooklyn.

## COMMUNITY BOARD #17BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a Waiver of the Board’s Rules of Practice and Procedure, an amendment to a previously granted special permit and an extension of term for the same, which expired on February 2, 2016; and

WHEREAS, a public hearing was held on this application on November 21, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the subject site is bound by Ditmas Avenue to the southeast, East 91st Street to the northeast and Remsen Avenue to the southwest, within an R5 (C1-2) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 200 feet of frontage along Ditmas Avenue, 100 feet of frontage along East 91st Street, 140 feet of frontage along Remsen Avenue, 24,000 square feet of lot area and is occupied by a one-story eating and drinking establishment with a drive-through and 27 accessory parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 14, 2001, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, to allow an accessory drive-through facility at a then-proposed eating and drinking establishment on condition that the premises remain graffiti free at all times, that landscaping be maintained in accordance with the Board-approved plans and that the hours of operation for the drive-through be Sunday through Thursday, 10:00 a.m. through 11:00 p.m. and Friday and Saturday, 10:00 a.m. to midnight; and

WHEREAS, on February 1, 2005, under the subject calendar number, the Board amended the resolution to change the hours of operation of the drive-through facility to

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10:00 a.m. to 1:00 a.m., daily, for a term of one (1) year, expiring February 1, 2006, on condition that, upon closure of the main restaurant at 11:00 p.m., the parking areas on the site shall be chained off by restaurant staff so that no vehicle access to these areas is possible and that the chains shall be visible to drivers at night in accordance with the note on the Board-approved plans and that all landscaping be planted and maintained as indicated on the approved plans and all trees adjacent to the neighboring residential uses be maintained at a maximum height of 6 feet; and

WHEREAS, on October 17, 2006, under the subject calendar number, the Board further amended the resolution to extend the term of the special permit for an additional five (5) years, expiring February 1, 2011, on condition that the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; all garbage removal be performed between 6:00 a.m. and 1:00 a.m.; the hours of operation for the drive-through be 10:00 a.m. to 2:00 a.m., Sunday through Wednesday, and 10:00 a.m. to 3:00 a.m., Thursday through Saturday; the parking lot be closed and chained off at 11:00 p.m. each night; signs reading "Please lower your radio as a courtesy to our neighbors," "This area of the parking lot closes at 11:00 p.m.," and "Any comments or suggestions regarding the operation of this facility should be directed to the store manager" be prominently posted at the site in accordance with Board-approved plans; and

WHEREAS, on July 12, 2011, under the subject calendar number, the Board extended the term of the special permit for an additional five (5) years, expiring February 1, 2016, on condition that there be no change in the operator of the eating and drinking establishment without prior approval of the Board; landscaping be maintained in accordance with the Board-approved plans; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; all garbage removal be performed between the hours of 6:00 a.m. and 1:00 a.m.; the hours of operation of the drive-through be limited to Sunday through Wednesday, 10:00 a.m. to 2:00 a.m., and Thursday through Saturday, 10:00 a.m. to 3:00 a.m.; and a new certificate of occupancy be obtained by July 12, 2012; and

WHEREAS, by letter dated August 31, 2016, the Board approved a change in the operator of the eating and drinking establishment from Quality Is Our Recipe, LLC to Briad Wenco, LLC, noting that the establishment would continue to be a Wendy's restaurant; and

WHEREAS, the last term having expired, the applicant seeks an extension of the term of the special permit for an additional five (5) years as well as an amendment to the previously approved hours of operation for the facility, to 9:00 a.m. to 2:00 a.m., daily, and modifications to the previously approved plans, specifically, alterations to the site plan to bring the site into ADA compliance, improvements to the building façade and new exterior signage; and

WHEREAS, in addition, the applicant seeks a waiver of the Board's Rules of Practice and Procedure, pursuant to § 1-14.2, of § 1-07.3(b)(2) to permit the filing of this

application less than two (2) years after the expiration of the term; and

WHEREAS, in accordance with that Rule, the applicant has demonstrated that the subject eating and drinking establishment with accessory drive-through facilities has been continuous since the expiration of the term and that substantial prejudice would result without the requested waiver; and

WHEREAS, in accordance with ZR § 73-03(f), the Board finds the circumstances warranting the original grant still maintain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, therefore, the Board finds that the requested five (5) year extension of term for the subject special permit, amendment to the hours of drive-through facility and modifications to the previously approved plans are 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 14, 2001, as amended through July 12, 2011, so that as amended this portion of the resolution reads: "to permit the extension of the term of the special permit for an additional five years from February 1, 2016, to expire on February 2, 2021; *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received August 3, 2017- Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 1, 2021;

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

THAT landscaping shall be maintained in accordance with the BSA-approved plans;

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT all garbage removal shall be performed between the hours of 6:00 a.m. and 1:00 a.m.;

THAT the hours of operation for the drive-through shall be limited to: 9:00 a.m. to 2:00 a.m., daily;

THAT the parking lot shall be closed and chained off at 11:00 p.m. each night;

THAT the above conditions and reference to this calendar number (BSA Cal No 111-01-BZ) shall appear on the certificate of occupancy;

THAT signs reading: "Please lower your radio as a courtesy to our neighbors"; "This area of the parking lot closes at 11:00 p.m."; and "Any comments or suggestions regarding the operation of this facility should be directed to the storage manager" shall be prominently posted at the site in accordance with the BSA-approved plans;

THAT a new certificate of occupancy shall be obtained by July 12, 2012;

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



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Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 21, 2017.

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## 227-02-BZ

APPLICANT – Stanley K. Schlein, Esq., for 4201 Webster Corp., owner.

SUBJECT – Application August 21, 2015 – Extension of Term (§§72-01 and 72-22) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with an accessory convenience store which expired on December 12, 2013; Amendment to the condition of term since the term expired in excess of 2 years but less than ten years; Extension of Time to Obtain a Certificate of Occupancy which expired on December 10, 2006; Waiver of the Board’s Rules. R7-A zoning district. PREMISES AFFECTED – 527 East 233<sup>rd</sup> Street, Block 3395, Lot 80, Borough of Bronx.

## COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an amendment, extension of term and extension of time to obtain a certificate of occupancy of a variance, previously granted by the Board, which expired December 12, 2013; and

WHEREAS, a public hearing was held on this application on November 15, 2016, after due notice by publication in *The City Record*, with a continued hearing on April 25, 2017, and then to decision on November 21, 2017; and

WHEREAS, Community Board 12, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of East 233<sup>rd</sup> Street, between Peters Place and Webster Avenue, in an R7A zoning district, in the Bronx; and

WHEREAS, the site has approximately 76 feet of frontage along East 233<sup>rd</sup> Street, 191 feet of frontage along Peters Place, 192 feet of frontage along Webster Avenue, 19,570 square feet of lot area and is occupied by a gasoline service station and a one-story accessory convenience store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 10, 2002, when, under the subject calendar number, the Board granted a variance to

permit the construction and operation of a gasoline service station and an accessory convenience store for a term of ten (10) years, expiring December 10, 2012, on condition that the proposal comply with the fire safety measures stated on the Proposed Conditions Site Plan (sheet 2 of 6) and that the above conditions be noted on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks an amendment, an extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(b)(3)(ii) to permit the filing for an extension of term more than two (2) years after but less than ten (10) years after the expiration of the term; and

WHEREAS, the applicant represents that an amendment to the condition of the Board’s prior grant is necessary because more than two (2) years but less than ten (10) have passed since the variance expired; and

WHEREAS, the applicant has demonstrated that the use has been continuous since the expiration of term and that substantial prejudice would result without such a waiver and amendment; and

WHEREAS, in response to Board questions regarding landscaping, the storage container and ice box, banners and flags, accessibility and striping of parking spaces, the applicant revised the drawings; and

WHEREAS, the applicant also submitted evidence indicating installation of fencing around the storage container, cleaning of building walls and fencing, removal of graffiti, removal of extraneous flags and banners, painting of parking lines and relocation of the ice box from the accessible entrance to the accessory building; and

WHEREAS, based upon its review of the record, the Board finds the requested waiver and amendment, extension of term and extension of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and *reopens* and *amends* the resolution, dated December 10, 2002, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of ten (10) years from the expiration of the last grant, to expire December 10, 2022; *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received September 26, 2017’ - One (1) sheet; and *on further condition*:

THAT the term of the variance shall be limited to ten (10) years from the expiration of the last grant, expiring December 10, 2022;

THAT the proposal shall comply with the fire safety measures stated on the Proposed Conditions Site Plan (sheet 2 of 6);

THAT the above conditions shall be noted on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained

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within four (4) years, by November 21, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 21, 2017.

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## 107-06-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 817 Lexington LLC entities c/o Managing Guy LLC, owner; Equinox 63<sup>rd</sup> Street, Inc., lessee.

SUBJECT – Application January 27, 2017 – Extension of Term of a previously approved Special Permit (§ 73-36) to allow a physical culture establishment use (Equinox) in the cellar, sub cellar, first floor and second floor of a 22 story mixed use building which expires on February 27, 2017. C1-8X/R8B zoning district. Landmark Building (Barbizon Hotel For Women).

PREMISES AFFECTED – 140 East 63<sup>rd</sup> Street, Block 1397, Lot 7505, Borough of Manhattan.

## COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an application for the extension of a term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on February 27, 2017, and amendment to reflect a change in hours of operation; and

WHEREAS, a public hearing was held on this application on September 12, 2017, after due notice by publication in *The City Record*, with a continued hearing on November 21, 2017, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 8, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of East 63rd Street and Lexington Avenue, partially located within a C1-8X zoning district and

partially located within an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 120 feet of frontage along East 63rd Street, 112 feet of frontage along Lexington Avenue, 13,137 square feet of lot area and is occupied by a 22-story mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 27, 2007, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to allow the establishment of a PCE in the sub-cellar, cellar, first floor and second floor levels of the subject building for a term of ten (10) years, expiring February 27, 2017, on condition that there be no change in ownership or operating control without prior application to and approval from the Board; that the hours of operation be limited to Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; that massages only be performed by New York State licensed massage therapists; and that these conditions appear on the Certificate of Occupancy; and

WHEREAS, on January 8, 2013, under the subject calendar number, the Board amended the resolution to permit the expansion of the PCE on the first floor to a total of 19,164 square feet of floor area in the subject building; and

WHEREAS, the term of the prior term having expired, the applicant seeks an extension of the term of the special permit and a change to the hours of operation on Saturday and Sundays only to 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that there have been no changes to the floor area occupied by the subject PCE, which remains at 19,164 square feet, or the operator, Equinox Fitness Club; and

WHEREAS, an article from the New York Post, dated March 28, 2017, was entered into the record reporting that owners of residential units in the subject building initiated litigation against the subject PCE alleging that, *inter alia*, residents as high as the fifth floor could hear music and the dropping or throwing of weights emanating from the subject PCE space; and

WHEREAS, in light of this article, the Board requested that notice of the November 21, 2017, hearing be posted in the lobby of the building to notify building residents of the subject application; and

WHEREAS, at the November 21, 2017, hearing, the applicant informed that Board that building management would not permit the posting of the notice of hearing in the building, but would circulate the notice to residents via email; the applicant additionally stated that notice of the hearing was posted at various locations outside the subject building and provided photographs of such postings; and

WHEREAS, the Board notes that no public speakers appeared to give testimony on this application at the hearing on November 21, 2017, and no written objections were received on this application in advance of that hearing; and

WHEREAS, the applicant additionally provided an acoustical study, completed in October 2016, and stated that the following sound attenuation measures have been instituted

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at the site in response to neighborhood complaints: (1) management has been enforcing strict controls to eliminate Olympic lifting, weight drops and any other non-sanctioned behavior; (2) in September 2015, special 3” thick acoustical tiles were added to the second floor to abate noise and vibration transmission; (3) in October 2016, the head wall of the cycling studio on the second floor was rebuilt, windows in the cycling studio were permanently closed and the building shaft adjacent to the cycling studio was sealed; (4) in January 2016, new audio limiters were installed in both the second floor cycling studio and group fitness studio and a new audio system with better control over bass and tamper proof controls was installed in the boxing studio; (5) in November 2015, the strength area on the second floor was relocated; and (6) in December 2016, password protection was installed on all limiters and the volume was set to below typical club averages; and

WHEREAS, the applicant provided proof of Department of Buildings (“DOB”) signoff for sprinklers at the site as of May 28, 2008, and Fire Department approval of an interior fire alarm system, sprinklers and smoke detectors within the subject PCE space, dated May 4, 2010; and

WHEREAS, by letter dated June 2, 2017, the Fire Department states that the premise was last inspected for compliance with the Fire Code and DOB’s Place of Assembly regulations on October 3, 2016, the inspection account was approved and that the Fire Department has no objection to the approval of this application; and

WHEREAS, the Board finds that a ten (10) year extension and amendment to reflect a change in weekend hours, as requested, are appropriate, with the conditions set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated February 27, 2017, as amended through January 8, 2013, 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, expiring February 27, 2027, *on condition* that the site shall substantially conform to drawings as filed with this application, marked ‘Received January 27, 2017- Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring February 27, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.;

THAT massages shall only be performed by New York State licensed massage therapists;

THAT noise abatement measures shall be maintained in the PCE space to ensure that sound levels—including sounds emanating from any sound system, if installed—do not exceed 45 dBA;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT the existing approved interior fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and connection to an FDNY-approved central station—shall be maintained throughout the entire PCE space;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 21, 2017.

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## 189-09-BZ

APPLICANT – Eric Palatnik, P.C., for Noor Al Islam Society, owner.

SUBJECT – Application June 10, 2015 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the legalization of an existing mosque and Sunday school (Nor Al-Islam Society), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street, which expired on May 10, 2015; Amendment to permit minor changes to the interior layout. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Avenue, Block 01208, Lot 0001, Borough of Staten Island.

## COMMUNITY BOARD #1SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an application for the extension of a term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on February 27, 2017, and amendment to reflect a change in hours of operation; and

WHEREAS, a public hearing was held on this application on September 12, 2017, after due notice by publication in *The City Record*, with a continued hearing on November 21, 2017, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda and Commissioner

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Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 8, Manhattan, recommends approval of the application; and

WHEREAS, the subject site is located on the southeast corner of the intersection of East 63rd Street and Lexington Avenue, partially located within a C1-8X zoning district and partially located within an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 120 feet of frontage along East 63rd Street, 112 feet of frontage along Lexington Avenue, 13,137 square feet of lot area and is occupied by a 22-story mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 27, 2007, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to allow the establishment of a PCE in the sub-cellar, cellar, first floor and second floor levels of the subject building for a term of ten (10) years, expiring February 27, 2017, on condition that there be no change in ownership or operating control without prior application to and approval from the Board; that the hours of operation be limited to Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 9:00 p.m.; that massages only be performed by New York State licensed massage therapists; and that these conditions appear on the Certificate of Occupancy; and

WHEREAS, on January 8, 2013, under the subject calendar number, the Board amended the resolution to permit the expansion of the PCE on the first floor to a total of 19,164 square feet of floor area in the subject building; and

WHEREAS, the term of the prior term having expired, the applicant seeks an extension of the term of the special permit and a change to the hours of operation on Saturday and Sundays only to 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that there have been no changes to the floor area occupied by the subject PCE, which remains at 19,164 square feet, or the operator, Equinox Fitness Club; and

WHEREAS, an article from the New York Post, dated March 28, 2017, was entered into the record reporting that owners of residential units in the subject building initiated litigation against the subject PCE alleging that, *inter alia*, residents as high as the fifth floor could hear music and the dropping or throwing of weights emanating from the subject PCE space; and

WHEREAS, in light of this article, the Board requested that notice of the November 21, 2017, hearing be posted in the lobby of the building to notify building residents of the subject application; and

WHEREAS, at the November 21, 2017, hearing, the applicant informed that Board that building management would not permit the posting of the notice of hearing in the building, but would circulate the notice to residents via email; the applicant additionally stated that notice of the hearing was posted at various locations outside the subject building and provided photographs of such postings; and

WHEREAS, the Board notes that no public speakers appeared to give testimony on this application at the hearing on November 21, 2017, and no written objections were received on this application in advance of that hearing; and

WHEREAS, the applicant additionally provided an acoustical study, completed in October 2016, and stated that the following sound attenuation measures have been instituted at the site in response to neighborhood complaints: (1) management has been enforcing strict controls to eliminate Olympic lifting, weight drops and any other non-sanctioned behavior; (2) in September 2015, special 3" thick acoustical tiles were added to the second floor to abate noise and vibration transmission; (3) in October 2016, the head wall of the cycling studio on the second floor was rebuilt, windows in the cycling studio were permanently closed and the building shaft adjacent to the cycling studio was sealed; (4) in January 2016, new audio limiters were installed in both the second floor cycling studio and group fitness studio and a new audio system with better control over bass and tamper proof controls was installed in the boxing studio; (5) in November 2015, the strength area on the second floor was relocated; and (6) in December 2016, password protection was installed on all limiters and the volume was set to below typical club averages; and

WHEREAS, the applicant provided proof of Department of Buildings ("DOB") signoff for sprinklers at the site as of May 28, 2008, and Fire Department approval of an interior fire alarm system, sprinklers and smoke detectors within the subject PCE space, dated May 4, 2010; and

WHEREAS, by letter dated June 2, 2017, the Fire Department states that the premise was last inspected for compliance with the Fire Code and DOB's Place of Assembly regulations on October 3, 2016, the inspection account was approved and that the Fire Department has no objection to the approval of this application; and

WHEREAS, the Board finds that a ten (10) year extension and amendment to reflect a change in weekend hours, as requested, are appropriate, with the conditions set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *reopens and amends* the resolution, dated February 27, 2017, as amended through January 8, 2013, 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, expiring February 27, 2027, *on condition* that the site shall substantially conform to drawings as filed with this application, marked 'Received January 27, 2017- Six (6) sheets; and *on further condition*:"

THAT this grant shall be limited to a term of ten (10) years, expiring February 27, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Thursday, 5:30 a.m. to 11:00 p.m., Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 7:00 a.m. to 9:00 p.m.;

THAT massages shall only be performed by New York State licensed massage therapists;

THAT noise abatement measures shall be maintained in

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the PCE space to ensure that sound levels—including sounds emanating from any sound system, if installed—do not exceed 45 dBA;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT the existing approved interior fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and connection to an FDNY-approved central station—shall be maintained throughout the entire PCE space;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

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;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 21, 2017.

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## 42-10-BZ

APPLICANT – Akerman, LLP, for 2170 Mill Avenue, owner.

SUBJECT – Application April 18, 2017 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to allow for a mixed use building, contrary to use (§22-10), floor area, lot coverage, open space (§23-141), maximum dwelling units (§23-22), and height (§23-631) regulations which expires on May 7, 2017.

C2-2/R3-1 & R3-1 zoning district.

PREMISES AFFECTED – 2170 Mill Avenue, Block 8470, Lot 1150, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction, which expired on May 7, 2017; and

WHEREAS, a public hearing was held on November 21, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the subject site is located on the west side of Mill Avenue, between Avenue U and Avenue V, partially within an R3-1 zoning district and partially within an R3-1 (C2-2) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 100 feet of frontage along Mill Avenue, a depth of 460 feet and 46,000 square feet of lot area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 7, 2013, when, under the subject calendar number, the Board granted a variance to permit the construction of a multi-family residential development contrary to ZR §§ 22-10, 23-141, 23-22, 23-45, 23-451 and 23-631 on condition that the resulting building have 54,615 square feet of floor area (1.19 FAR), a maximum perimeter wall height and building height of 41’-1”, a Mill Avenue street wall height of 29’-9”, a front yard with a depth of 8 feet along the unpaved 60 foot wide right-of-way abutting the eastern lot line of the site (the “Avenue V Easement”), a front yard with a depth of 25 feet along Mill Avenue, a rear yard with a depth of 30 feet, 48 dwelling units, 1,542.83 square feet of front yard planning along the Avenue V Easement, and 50 on-grade parking spaces, as indicated on the BSA-approved plans; all signage at the site be consistent with BSA-approved plans; all requirements associated with the E designation (E-71) are satisfied; and that substantial construction be completed within four (4) years, by May 7, 2017; and

WHEREAS, the time to complete construction having expired, the applicant seeks the herein requested relief; and

WHEREAS, the applicant submits that an extension is needed to allow additional time to secure financing for the development; and

WHEREAS, based upon its review of the record, the Board finds that a four (4) year extension of time to complete construction 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 May 7, 2013, so that as amended this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction to May 7, 2021; and *on further condition*:

THAT the following shall be the bulk parameters of the building: 54,615 square feet of floor area (1.19 FAR), a maximum perimeter wall height and building height of 41’-1”, a Mill Avenue street wall height of 29’-9”, a front yard with a depth of 8 feet along the unpaved 60 foot wide right-of-way abutting the eastern lot line of the site (the “Avenue V Easement”), a front yard with a depth of 25 feet along Mill Avenue, a rear yard with a depth of 30 feet, 48 dwelling units, 1,542.83 square feet of front yard planning along the Avenue V Easement, and 50 on-grade parking spaces, as indicated on the BSA-approved plans;

THAT all signage at the site shall be in accordance with BSA-approved plans;

THAT all requirements associated with the E designation (E-71) are satisfied;

THAT substantial construction shall be completed within four (4) years, by May 7, 2021;

THAT all conditions from the prior resolution not

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specifically waived by the Board remain in effect; 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) ad/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, November 21, 2017.

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## 499-29-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum, owner.

SUBJECT – Application September 9, 2016 – Extension of Term and Waiver (11-411) to extend the term of the previously granted variance allowing the operation n Automotive Service Station (UG 16B) which expired on March 23, 2016; Waiver of the Rules. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 248-70 Horace Harding Expressway, Block 8276, Lot 660, Borough of Queens.

### COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for decision, hearing closed.

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## 418-50-BZ

APPLICANT – Law Office of Stuart Klein, for WOTC Tenants’ Corp., owner.

SUBJECT – Application September 12, 2017 – Compliance Hearing.

PREMISES AFFECTED – 73-69 217<sup>th</sup> Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74<sup>th</sup> Avenue (Block 7754, Lot 3); 73-10 220<sup>th</sup> Street (Block 7755, Lot 3), Borough of Queens.

### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Laid over to February 27, 2018, at 10 A.M., for continued hearing.

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## 256-02-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly S. Friedman, Esq., for Red Hook 160 LLC, owner.

SUBJECT – Application May 27, 2016 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the re-use of a vacant six story manufacturing building, and the addition of three floors, for residential (UG2) use, which expired on May 1, 2016. M2-1 zoning district.

PREMISES AFFECTED – 160 Imlay Street, Block 515, Lot 75, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,

Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

**ACTION OF THE BOARD** – Laid over to December 5, 2017, at 10 A.M., for decision, hearing closed.

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## 260-06-BZ

APPLICANT – J. Owen Zurhellen, II, for Charlton Cooperative Corp., owner; Tri Ippon LLC, lessee.

SUBJECT – Application March 17, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitted the operation of a Physical Cultural Establishment (*Oishi Judo Club*) on the first floor in a six-story (plus basement) building which expires on April 10, 2017. M1-6 zoning (Special Hudson Square) District

PREMISES AFFECTED – 112 Charlton Street/547 Greenwich Street, Block 597, Lot 45, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for continued hearing.

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## 2016-4255-BZ

APPLICANT – Eric Palatnik, P.C., for Mykhaylo Kadar, owner.

SUBJECT – Application September 16, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (ZR §23-141); side yard (ZR §23-461); and rear yard (ZR §23-47). R3-1 zoning district.

PREMISES AFFECTED – 4801 Ocean Avenue, Block 8744, Lot 51, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for deferred decision.

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## ZONING CALENDAR

### 2016-1219-BZ

#### CEQR #16-BSA-075Q

APPLICANT – Sheldon Lobel, P.C., for 74<sup>th</sup> and Myrtle LLC, owner.

SUBJECT – Application February 10, 2016 – Variance (§72-21) to permit the development of a two-story plus cellar mixed-use building with ground floor commercial use an residential use on the second floor, contrary to residential floor area, front yard, side yard, parking and use regulations. R4-1 zoning district.

PREMISES AFFECTED – 73-45 Myrtle Avenue, aka 78-70 74<sup>th</sup> Street, Block 3823, Lot 88, Borough of Queens.

### COMMUNITY BOARD #5Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,

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Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative: .....0

## THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 3, 2017, acting on Department of Buildings (“DOB”) Application No. 421226774 reads in pertinent part:

1. As per Zoning Resolution 22-10, Use Group 6 (Commercial) is not permitted “As-of-Right” in a Residential district;
2. As per Zoning Resolutions [sic] 23-45, proposed Front Yard is deficient [...];
3. As per Zoning Resolution 23-462, proposed Side Yards are deficient [...];
4. As per Zoning Resolution Section 23-142, maximum allowable residential FAR is exceeded [...]; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an R4-1 zoning district, the construction of a two-story plus cellar mixed-use commercial and residential building contrary to the use, front yard, side yards, floor area and floor area ratio regulations set forth in ZR §§ 22-10, 23-45, 23-462 and 23-142; and

WHEREAS, a public hearing was held on this application on August 22, 2017, after due notice by publication in *The City Record*, with a continued hearing on November 21, 2017, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 5, Queens, recommends approval of this application on condition that the applicant plant three street trees along the Myrtle Avenue frontage and one street tree on the 74th Street frontage of the site; and

WHEREAS, the subject site is located on the northwest corner of Myrtle Avenue and 74th Street, within an R4-1 zoning district, in Queens; and

WHEREAS, the site has approximately 102 feet of frontage along Myrtle Avenue, 35 feet of frontage along 74th Street, 2,620 square feet of lot area and is currently vacant; and

WHEREAS, the applicant originally proposed a building with 4,195 square feet of floor area, including 2,158 square feet of residential floor area and 2,037 square feet of commercial floor area, a floor area ratio (“FAR”) of 1.60, one 5 foot side yard, no front yards and zero parking spaces; and

WHEREAS, the original proposal additionally required a waiver of Section 35 of the General City Law and a companion application for that relief was filed under BSA Cal. No. 2016-1220-A; and

WHEREAS, upon review of the application filed under BSA Cal. No. 2016-1220-A, the New York City Department of Transportation recommended that the proposed building be aligned with the existing structures on the block; and

WHEREAS, the applicant subsequently revised the proposal to construct a building with 4,705 square feet of floor area, including 2,708 square feet of residential floor area and 1,997 square feet of commercial floor area, a front yard

fronting Myrtle Avenue that varies in width from 3’-11” to 2’-9”, no front yard fronting 74th Street, no side yards and two parking spaces accessible from a 14 foot curb cut on Myrtle Avenue; and

WHEREAS, the applicant proposes Use Group 6 commercial use on the ground floor accessible from Myrtle Avenue, two two-bedroom apartments on the second floor accessible from a residential lobby fronting 74th Street, and storage located in the cellar; and

WHEREAS, the revised proposal no longer requires a waiver of the General City Law and the application filed under BSA Cal. No. 2016-1220-A was, accordingly, withdrawn by the applicant; and

WHEREAS, by letter dated May 10, 2016, the Fire Department states that it has no objections to the subject application provided that the building will be fully sprinklered and a fire hydrant is located within 250 feet of the main front entrance; and

WHEREAS, at the subject site, commercial use is not permitted pursuant to ZR § 22-10; one front yard of at least 10 feet is required pursuant to ZR § 23-45; two side yards measuring at least 8 feet each are required pursuant to ZR § 23-462; and a maximum residential FAR of 0.75 is permitted pursuant to ZR § 23-142; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the irregular shape, narrowness of the lot are unique physical conditions that create a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations, particularly the front and side yard requirements; and

WHEREAS, the applicant submits that the subject lot approximates the shape of a bowtie, narrower in its middle than at either side, which vary in width from 22 feet at the western end to 35 feet at the eastern end, and that this shape results in infeasibly narrow, triangular floorplates for an as-of-right building, specifically, one that varies in width from 18 feet to 7 feet; and

WHEREAS, in light of the foregoing, the Board finds that the irregular shape and narrowness of the site are unique physical conditions that create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, with regards to the (b) finding, the applicant submits that there is no reasonable possibility that a conforming development at the subject site will bring a reasonable return and, in support of that contention, submitted a financial analysis of (1) a two-story plus cellar residential building containing two one-bedroom dwelling units and 1,504 square feet of total floor area (the “AOR Residential Scenario”); (2) a two-story plus cellar mixed-use residential and community facility building with one studio dwelling unit on the second floor and 928 square feet of total floor area (the “AOR Mixed Use Scenario”) and (3) the subject proposal; and

WHEREAS, the financial analyses submitted with this application conclude that only the subject proposal will realize a positive return (0.1 percent); and

WHEREAS, upon review of the applicant’s submissions, the Board finds, in accordance with ZR § 72-21(b), that, due to

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the site's unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant states that the subject proposal will not substantially impair the appropriate use or development of adjacent properties and not be detrimental to the public welfare, in accordance with ZR § 72-21(c); specifically, the proposed ground floor commercial use is consistent with the immediately adjacent blocks with frontage along Myrtle Avenue, which are mapped within C1-3 overlays (the subject block is the only one within a stretch of approximately 13 blocks along Myrtle Avenue, from 72nd Street to 82nd street—a length of more than 3,000 feet—without the C1-3 overlay) and that the revised proposal to provide a front yard along Myrtle Avenue enables the proposed building to align with the building located immediately to the west so that both building provide a consistent front wall along the avenue; and

WHEREAS, the proposed plans include only one street tree along the Myrtle Avenue frontage and, in response to Board questions regarding the ability to provide three street trees along this frontage and one street tree along 74th Street, as recommended by the Community Board, the applicant represents that given the location of the site at a corner, the presence of a bus stop along the Myrtle Avenue frontage, a fire hydrant along the site's 74th Street frontage and New York City Department of Parks regulations regarding the placement of street trees in relation to those features—including a minimum distance of 40 feet from the corner of a street intersection to the tree trunk, a minimum distance of 3 feet from a fire hydrant to the edge of a tree pit and a minimum distance of 2 feet from a curb cut to the edge of a tree pit and 7 feet from a curb cut to the tree trunk—only one street tree could be accommodated at the subject site; and

WHEREAS, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents and the Board finds that the hardship claimed as grounds for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant submits that the subject proposal is the minimum variance necessary to afford relief because it is the only scenario that provides a return and will enable the applicant to successfully redevelop the site; and

WHEREAS, the Board finds that the subject proposal is the minimum necessary to afford the owner relief, particularly in light of revisions to the proposal that reduced the degree of the front yard waiver and eliminated waivers of the General City Law and applicable parking regulations previously sought in the original application; and

WHEREAS, the project is classified as an Unlisted Action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the

Final Environmental Assessment Statement CEQR No. 16BSA075Q, dated February 7, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals does hereby issue 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 1997, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, in an R4-1 zoning district, the construction of a two-story plus cellar mixed-use commercial and residential building contrary to the use, front yard, side yards, floor area and floor area ratio regulations set forth in ZR §§ 22-10, 23-45, 23-462 and 23-142; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 20, 2017"—Eight (8) sheets; and *on further condition*:

THAT the maximum envelope of the building shall be as follows: a maximum of 4,705 square feet of floor area (a maximum of 1,997 square feet of commercial floor area (0.76 FAR) and a maximum of 2,708 square feet of residential floor area (1.03 FAR)), a total maximum FAR of 1.80, no side yards, no front yard along the 74th Street frontage, and a front yard along the Myrtle Avenue frontage with a depth of at least 2'-9" at the western end of the site so that the building aligns with the existing two-story building located immediately adjacent to the site to the west, as illustrated on the Board-approved plans;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.



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Adopted by the Board of Standards and Appeals,  
November 21, 2017.

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**2016-1220-A**

APPLICANT – Sheldon Lobel, P.C., for 74<sup>th</sup> and Myrtle LLC, owner.

SUBJECT – Application February 10, 2016 – Proposed construction of a two-story plus cellar building partially within the bed of a proposed street widening, pursuant to Article 3 of General City Law 35. R4-1 zoning district.

PREMISES AFFECTED – 73-45 Myrtle Avenue, aka 78-70 74<sup>th</sup> Street, Block 3823, Lot 88, Borough of Queens.

**COMMUNITY BOARD #5Q**

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative: .....0

Adopted by the Board of Standards and Appeals,  
November 21, 2017.

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**2017-38-BZ**

APPLICANT – Eric Palatnik, P.C., for Avrohom Ackerman, owner.

SUBJECT – Application February 7, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-142); side yard (ZR §23-461(a)) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1155 East 28<sup>th</sup> Street, Block 7628, Lot 23, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3  
Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 27, 2017, acting on Department of Buildings (“DOB”) Application No. 321511440 reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted 0.50;
2. Proposed plans are contrary to ZR 23-141 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 straight line extension of the North side yard results in a side yard with 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 30’-0”;

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the proposed enlargement of a two-story plus cellar and attic detached single-family residence that does not comply with the zoning requirements for floor area ratio, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461(a) and 23-47; and

WHEREAS, a public hearing was held on this application on September 12, 2017, after due notice by publication in *The City Record*, with a continued hearing on November 21, 2017, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application on condition that the proposed side entrance and two window wells be eliminated from the proposal; and

WHEREAS, in addition, the Board was in receipt of one letter in support and two letters in objection to the subject application; the objectors raised concerns about the small size of the lot and ability to accommodate the proposed enlargement, that the proposal is out of scale and does not match the style of adjacent properties and repeated the Community Board’s request that the side entrance and two window wells be eliminated from the proposal; and

WHEREAS, the subject site is located on the east side of East 28th Street, between Avenue K and Avenue L, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 27 feet of frontage along East 28th Street, a depth of 100 feet and 2,700 square feet of lot area; and

WHEREAS, the site is occupied by a two-story plus cellar and attic detached single-family home with 1,425 square feet of floor area, a floor area ratio (“FAR”) of 0.53, an open space ratio of 132, a rear yard measuring 35’-2 3/8”, side yards measuring 3’-9 5/8” and 7’-2 3/8” and a garage in the rear yard; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General

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Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

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 detached single-family

residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to remove the garage located in the rear yard and enlarge the existing residence with two-story plus attic extensions into both the southern side yard and rear yard and an additional one-story addition in the rear yard resulting in a dwelling with 2,684 square feet of floor area, 0.99 FAR, an open space ratio of 53, a 20 foot rear yard at the first story and 27 foot rear yard at the second story and attic levels and side yards measuring 3'-9 5/8" and 5'-2 3/8"; and

WHEREAS, the applicant initially proposed, in addition, a one-story greenhouse in the rear yard, a stoop and two window wells in the northern side yard; and

WHEREAS, in response to concerns raised by the Community Board and comments from the Board that the window wells were located very close to the property line and an adjacent driveway and that the proposed greenhouse further reduced the proposed 20 foot rear yard, the applicant revised the plans to remove those aspects of the proposal and a neighbor who had previously submitted a letter in opposition to the proposal confirmed in testimony provided at public hearing and the reasons for his objections were no longer applicable; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted and an open space ratio of at least 150.0 is required pursuant to ZR § 23-141; two side yards totaling at least 13 feet and a minimum width of 5 feet each are required pursuant to ZR § 23-461(a); and a rear yard of at least 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, additionally, pursuant to ZR § 23-48, because the subject lot is narrower than the minimum lot width for single-family detached residences located in R2 zoning districts set forth in ZR § 23-32 and the applicant submitted evidence that the subject site was owned separately and individually from all other adjoining tracts of land on December 15, 1961, and on the date of application for a building permit, the required total width of the side yards may be reduced as-of-right to 8'-8", but each side yard must have a minimum width of five feet; and

WHEREAS, with regards to the existing non-complying 3'-9 5/8" northern side yard, which is proposed to be maintained, the applicant submitted Sanborn maps demonstrating that a building was located at the site in substantially the same location as the existing building since at least 1930, prior to the 1961 Zoning Resolution; and

WHEREAS, the applicant submitted an analysis of single- or two-family dwellings located within 400 feet of the subject premises located within an R2 zoning district (the "Study Area") concluding that, of the 109 residences in the Study Area, excluding the subject site, 106 residences (97 percent) has an open space ratio of less than 150 and 25 residences (23 percent) have open space ratios of less than 60; 98 residences (90 percent) have FARs of greater than 0.50 and 29 (27 percent) have FARs of 0.90 or greater; and, of the 41 residences on the subject tax block, 17 residences (41 percent) have rear yards with a depth of less than 30 feet, 9 residences (22 percent) have rear yards 20 feet in depth or less and 32 residences (78 percent) have garages located in the rear yards, including 10 residences (24 percent) that also have rear yards

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less than 30 feet deep, effectively decreasing their rear yard depths; and

WHEREAS, in light of the foregoing, 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 NYCRR 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, in an R2 zoning district, the proposed enlargement of a two-story plus cellar and attic detached single-family residence that does not comply with the zoning requirements for floor area ratio, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 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 November 21, 2017"-Eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.99 (2,684 square feet of floor area), a minimum open space ratio of 56, a rear yard of at least 20 feet at the first story and at least 27 feet at the second story and attic levels, and side yards measuring at least 3'-9 5/8" and 5'-2 3/8", as illustrated on the BSA-approved plan; and

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the BSA-approved plans shall remain or the special permit is void;

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 special 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 21, 2017.

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## **330-14-BZ**

APPLICANT – Law Office of Lyra J. Altman, for Jack Guindi, owner.

SUBJECT – Application December 30, 2014 – Special Permit (73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yards (ZR 23-461); perimeter wall height (ZR 23-263) and less than the required minimum rear yard (ZR23-47); R3-2 zoning district.

PREMISES AFFECTED – 1746 East 21<sup>st</sup> Street, Block 6783, Lot 18, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to January 30,

2018, at 10 A.M., for deferred decision.

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## **270-15-BZ**

APPLICANT – Moshe M. Friedman, P.E., for 338 Devoe St LLC, owner.

SUBJECT – Application December 10, 2015 – Variance (§72-21) to permit the construction of a 3 story residential building contrary to use regulations. M1-1 zoning district. PREMISES AFFECTED – 338 Devoe Street, Block 2924, Lot 12, Borough of Brooklyn.

## **COMMUNITY BOARD #1BK**

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M., for continued hearing.

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## **2016-4127-BZ**

APPLICANT – Dennis D. Dell'Angelo, for 1547 East 26<sup>th</sup> Street, LLC, owner; Israel Stern, lessee.

SUBJECT – Application February 26, 2016 – Special Permit (§73-622) for the enlargement of an existing single-family residence contrary to floor area and lot coverage (ZR 23-141); perimeter wall height (ZR 23-631) and less than the required rear yard (ZR 23-47). R3-2 zoning district.

PREMISES AFFECTED – 1547 East 26<sup>th</sup> Street, Block 6773, Lot 77, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to February 27, 2018, at 10 A.M., for continued hearing.

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## **2016-4301-BZ**

APPLICANT – Eric Palatnik, P.C., for Robertas A Urbonas, owner.

SUBJECT – Application November 9, 2016 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-142); side yard (ZR 23-48); lot area and width (ZR 23-32) and less than the required rear yard (ZR 23-47). R5-OP zoning district.

PREMISES AFFECTED – 136 Oxford Street, Block 8757, Lot 97, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for continued hearing.

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## **2017-244-BZ**

APPLICANT – Eric Palatnik, P.C., for Co-Op City Baptist Church, owner.

SUBJECT – Application August 17, 2017 – Variance (§72-21) to reinstate a variance granted under Cal. No. 7-04-BZ – to permit construction of Use Group 4 house of worship contrary to the underlying bulk regulations. R3A zoning district.

PREMISES AFFECTED – 2208 Boller Avenue, Block 5135, Lot 1, Borough of Bronx.

## **COMMUNITY BOARD #10BX**

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**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M., for adjourned hearing.

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**REGULAR MEETING**  
**TUESDAY AFTERNOON, NOVEMBER 21, 2017**  
**1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, and Commissioner Ottley-Brown and Commissioner Sheta.

## ZONING CALENDAR

### 2017-151-BZ

#### CEQR #17-BSA-124M

APPLICANT – Law Office of Jay Goldstein, for AC Bowery Owner LLC, owner; Grand Unicorn Experiment, lessee.

SUBJECT – Application May 18, 2017 – Special Permit (§73-36) to permit the legalization of physical culture establishment (*Grand Unicorn Experiment*) on the cellar and first floors of an existing commercial building contrary to ZR §32-10. C6-1G zoning district.

PREMISES AFFECTED – 161 Bowery, Block 424, Lot 6, Borough of Manhattan.

#### COMMUNITY BOARD #3M

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Chief Plan Examiner of the Manhattan Borough Office of the Department of Buildings (“DOB”), dated April 19, 2017, acting on DOB Application No. 123076027, reads in pertinent part:

Proposed use of portion of cellar and first floor as a Physical Culture Establishment (PCE) is not permitted as of right in C6-1G Zoning District and is contrary to ZR Section 32-10 . . . .; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-1G zoning district, a physical culture establishment (“PCE”) in portions of the cellar and first floor levels of an existing seven-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 21, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 3, Manhattan, waived its recommendation for this application; and

WHEREAS, the subject site is located on the east side of Bower, between Delancey Street and Broome Street, in a C6-1G zoning district, in Manhattan; and

WHEREAS, the site has approximately 23 feet of

frontage along Bowery, a depth of 114 feet along the southern lot line and a depth of 115 feet along the northern lot line, 2,670 square feet of lot area and is occupied by a seven-story plus cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

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WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 1,782 square feet of floor area on the first floor with an exercise studio, locker area and retail space, and 1,842 square feet of floor space in the cellar of the subject building containing a second open exercise studios, bathrooms, showers and office space; and

WHEREAS, the PCE has been in operation as Mark Fisher Fitness Bowery since November 2016 with the following hours of operation: Monday through Friday, 6:00 a.m. to 10:00 p.m., and Saturday through Sunday 7:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential nor future use or development of the surrounding area because it is of limited size, located in a commercial building in a commercial zoning district and on a heavily trafficked street with easy access by public transportation; and

WHEREAS, the applicant additionally submitted that the following sound attenuation measures to mitigate any adverse impacts of the use to tenants of the subject and surrounding buildings: studio partitions are isolated from adjacent structure with two layers of 5/8" sheetrock in the studio and two layers outside of the studio, with green glue, and 4" sound attenuated batt insulation; all flooring at the studio is 4" isolated mat subfloor with neoprene isolators, fiberglass batting and perimeter isolation boards at all edges; all penetrations at studio ceilings and partitions are sealed with mineral fiber insulation and caulked; and all partitions have an STC rating of 60 and flooring have an STC rating of 64; and

WHEREAS, in light of the foregoing, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE provides group and individual physical fitness instruction utilizing calisthenics and functional training equipment, including free weights, cable pulls, resistance training and kettlebells; and

WHEREAS, the Board finds that the subject PCE use

is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; 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 applicant states that sprinklers and fire alarm systems—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—are installed throughout the PCE space; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 17-BSA-124M dated May 18, 2017; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C6-1G zoning district, a physical culture establishment in portions of the cellar and first floor levels of an existing seven-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 18, 2017"—Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on November 1, 2026;

THAT the following sound attenuation measures shall be maintained as indicated on the Board-approved plans to ensure that the subject use does not violate the New York City Noise Code: studio partitions are isolated from adjacent structure with two layers of 5/8" sheetrock in the studio and two layers outside of the studio, with green glue, and 4" sound attenuated batt insulation; all flooring at the studio is 4" isolated mat subfloor with neoprene isolators, fiberglass batting and perimeter isolation boards at all edges; all penetrations at studio ceilings and partitions are sealed with mineral fiber insulation and caulked; and all partitions have an STC rating of 60 and flooring have an STC rating of 64;

THAT there will be no change in ownership or operating control of the PCE without prior application to

# MINUTES

and approval from the Board;

THAT accessibility compliance under Local Law 58/87 will be as reviewed and approved by DOB;

THAT the existing fire alarm and sprinkler systems shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the Certificate of Occupancy;

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 21, 2017.

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## 2017-203-BZ

### CEQR #17-BSA-137M

APPLICANT – Francis R. Angelino, Esq., for Tahor 26 Owner, LLC, owner; EBF NY 1, LLC, lessee.

SUBJECT – Application June 7, 2017 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Every Body Fights*) in a portion of the cellar of an existing commercial building contrary to ZR §32-10. C5-3 (MID) zoning district.

PREMISES AFFECTED – 295 Madison Avenue, Block 1275, Lot 50, Borough of Manhattan.

### COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, the decision of the Deputy Borough Commissioner, dated June 1, 2017, acting on Department of Buildings (“DOB”) Application No. 123095907, reads in pertinent part:

ZR 32-10: Proposed basement and first floor “Physical Culture Establishment” is not permitted As-Of-Right in C5-3 and C5-2.5 as per section ZR 32-10. Use as the physical cultural health establishment in C5-3 and C5-2.5 shall comply with 73-36...; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located partially within a C5-2.5 zoning district and partially within a C5-3 zoning

district, in the Special Midtown District, a physical culture establishment (“PCE”) in portions of the basement and first floor levels of an existing 45-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 21, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 5, Manhattan, waived its recommendation for this application; and

WHEREAS, the subject site is located on the southeast corner of Madison Avenue and East 41st Street, partially within a C5-2.5 zoning district and partially within a C5-3 zoning district, in the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 47 feet of frontage along Madison Avenue, 185 feet of frontage along East 41st Street, 13,725 square feet of lot area and is occupied by a 45-story plus basement and cellar commercial building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or

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# MINUTES

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addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 140 square feet of floor area on the first floor, providing access to the PCE from East 41st Street, and 6,500 square feet of floor area in the basement with boxing rings, locker rooms, cardiovascular equipment, and a reception area; and

WHEREAS, the PCE has been in operation since August 2017 as Every Body Fights with the following hours of operation: Monday through Friday, 5:00 a.m. to 9:00 p.m., and Saturday through Sunday, 9:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because it is located in a commercial building in the heavily trafficked Special Midtown District and will draw its patrons from the immediate area, which is well-served by public transportation; and

WHEREAS, though the main portion of the PCE space is separated from office uses in the subject building by the ground floor, sound mitigation measures, including acoustical treatments in the ceiling and partitions, have been installed in the portions of the basement occupied by the PCE to mitigate any adverse impacts of the use to other building tenants; specifically: demising partitions are

isolated from adjacent structure with two layers of 5/8” sheetrock inside and two layers outside and 3-5/8” sound attenuated Thermafiber insulation; ceilings are two layers 5/8” sheetrock on wave hangers with 2-1/2” Thermafiber insulation and 2” thick K-13 spray insulation; floors are 9mm finish rubber flooring on 4mm acoustical rubber underlayment; all penetrations at studio ceilings and partitions are sealed with mineral fiber insulation and caulked; partitions have an STC rating of 56, the ceiling has an STC rating of 55 and the floor has an STC rating of 56; and

WHEREAS, accordingly, the Board finds that the PCE is so located as to not impair the essential character or future use or development of the surrounding area; and

WHEREAS, the applicant submits that the PCE contains facilities for the provision of physical fitness instruction, including boxing, cardiovascular, strength and circuit exercises; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-36(a)(2) for the issuance of the special permit; 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 applicant states that sprinklers and fire alarm systems—including smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station—are installed throughout the PCE space; and

WHEREAS, the applicant provided evidence that sprinklers at the site were inspected and approved by DOB on August 11, 2017; and

WHEREAS, pursuant to ZR § 73-03, the Board finds that, under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of the PCE use are outweighed by the advantages to be derived by the community; and

WHEREAS, the applicant represents that the PCE will not interfere with any public improvement projects; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the premises without the special permit; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 17-BSA-137M, dated June 7, 2017; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to legalize, on a site partially located

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# MINUTES

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partially within a C5-2.5 zoning district and partially within a C5-3 zoning district, in the Special Midtown District, the operation of a physical culture establishment in portions of the basement and first floor levels of an existing 45-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 17, 2017” – Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant will expire on August 1, 2027;

THAT the following sound attenuation measures shall be maintained as indicated on the Board-approved plans to ensure that the subject use does not violate the New York City Noise Code: demising partitions are isolated from adjacent structure with two layers of 5/8” sheetrock inside and two layers outside and 3-5/8” sound attenuated Thermafiber insulation; ceilings are two layers 5/8” sheetrock on wave hangers with 2-1/2” Thermafiber insulation and 2” thick K-13 spray insulation; floors are 9mm finish rubber flooring on 4mm acoustical rubber underlayment; all penetrations at studio ceilings and partitions are sealed with mineral fiber insulation and caulked; partitions have an STC rating of 56, the ceiling has an STC rating of 55 and the floor has an STC rating of 56;

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 the existing fire alarm and sprinkler systems shall be maintained as indicated on the Board-approved plans;

THAT minimum 3 foot wide exit pathways shall be provided leading to the required exits and such pathways shall always be maintained unobstructed, including from any equipment;

THAT the above conditions shall appear on the Certificate of Occupancy;

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 21, 2017.

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## 17-15-BZ

APPLICANT – Law Office of Lyra J. Altman, for Beach Front Estates LLC, owner.

SUBJECT – Application January 26, 2015 – Variance (72-21) to allow the construction of a four story residential building at the premises, located within an R4A zoning

district.

PREMISES AFFECTED – 133 Beach 5<sup>th</sup> Street, Block 15609, Lot Tentative 40, Borough of Queens.

## COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Laid over to February 27, 2018, at 10 A.M., for continued hearing.

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## 2016-4171-BZ

APPLICANT – Sheldon Lobel, P.C., for Jisel Cruz, owner.  
SUBJECT – Application April 15, 2016 – Variance (§72-21) to permit the development of a three-story plus penthouse residential building (UG 2) contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 823 Kent Avenue, Block 1898, Lot 23, Borough of Brooklyn.

## COMMUNITY BOARD #3BK

**ACTION OF THE BOARD** – Laid over to March 6, 2018, at 10 A.M., for continued hearing.

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## 2016-4241-BZ

APPLICANT – Eric Palatnik, P.C., for Ocher Realty LLC, owner.

SUBJECT – Application August 19, 2016 – Special Permit (§73-44) to allow the reduction of required parking for the use group 4 ambulatory diagnostic treatment healthcare facility and Use Group 6 offices. C8-2 zoning district.

PREMISES AFFECTED – 1 Maspeth Avenue aka 378 Humboldt Street, Block 2892, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M., for continued hearing.

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## 2017-100-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly S. Friedman, Esq., for Trustees of the Spence School, Inc., owner.

SUBJECT – Application April 4, 2017 – Special Permit (§73-19) to allow for a Use Group 3 school use (*The Spence School*) contrary to ZR §32-31 (Use Regulations); Variance (§72-21) to permit the development of the building contrary to ZR §33-292 (Proposed building extends 30 ft. into the required open area) and ZR §33-26 (Proposed building extends 20 ft. into the required rear yard. C8-4 zoning district.

PREMISES AFFECTED – 412 East 90<sup>th</sup> Street, Block 1569, Lot 35, Borough of Manhattan.

## COMMUNITY BOARD #8M

**ACTION OF THE BOARD** – Laid over to March 6, 2018, at 10 A.M., for continued hearing.

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*Carlo Costanza, Executive Director*



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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 102, Nos. 49-50

December 13, 2017

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SHAMPA CHANDA, *Vice-Chair*

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NASR SHETA

VACANT

*Commissioners*

Carlo Costanza, *Executive Director*

Loreal Monroe, *Counsel*

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<b>OFFICE -</b>	<b>250 Broadway, 29th Floor, New York, N.Y. 10007</b>
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363-04-BZ	6002 Fort Hamilton Parkway, Brooklyn
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36-15-BZ	241 Atlantic Avenue, aka 66 Boerum Place, Brooklyn
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2017-302-BZ	174A & 176A Beach 111 <sup>th</sup> Street, Queens
2016-4468-BZ	27 East 61 <sup>st</sup> Street, Manhattan

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# DOCKETS

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New Case Filed Up to December 5, 2017

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**2017-306-BZ**

1977 East 14th Street, Located on the East Side of East 14th Street between Avenue S and Avenue T, Block 07293, Lot(s) 0056, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of the existing single family home contrary to ZR §23-47 (rear yard). R5 zoning district. R5 district.

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**2017-307-A**

24-01 - 24-11 36th Avenue, Located on the corner formed by the intersection of east side of 24th Street and 36th Avenue, Block 00338, Lot(s) 0001, Borough of **Queens, Community Board: 1**. Appeal of a Department of Buildings Determination which denied a Construction Code Determination request. R5 district.

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**2017-308-BZ**

50 E. 69th Street, An interior lot located on the south side of E. 69th Street, on the block bounded by E. 69th Street, Park Avenue, E. 68th Street and Madison Avenue, Block 01383, Lot(s) 0040, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to permit the conversion of an existing building, subject to a previous Board approval which permitted medical offices with a residential penthouse to be used as a single-family residence contrary to ZR §23-47 (Rear Yard); ZR §23-44 (rear yard obstruction); ZR §23-861 (open space between rear windows and property's rear lot line; ZR §23-153 (lot coverage) and ZR §23-691 (maximum base height and building height). R8B/LH-1A, R10 Special Park Improvement District. Upper East Side Historic District. R8B, R10 district.

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**2017-309-BZ**

406 Remsen Avenue, located on the corner formed by Remsen Avenue and Lenox Road, Block 04663, Lot(s) 4, Borough of **Brooklyn, Community Board: 17**. Re-Instatement (§11-411) previously approved variance which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on September 28, 2009; Waiver of the Rules. C1-2 in R5 zoning district. R6 district.

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**2017-310-A**

10002 Farragut Road, Located at East 100th Street, dead end, Block 08169, Lot(s) 0031, Borough of **Brooklyn, Community Board: 18**. Pursuant to § 645 of the New York City Charter, the Department of Buildings (the "Department") respectfully submits to the Board of Standards and Appeals (the "Board") this statement in support of its application to modify certificate of occupancy 321114450F dated September 1, 2015 C8-1 district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING JANUARY 23, 2018, 10:00 A.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 23, 2018, 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

### 271-81-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Pan Am Equities, owner; NYHRC, lessees.

SUBJECT – Application November 4, 2016 – Extension of Term of a Special permit (§73-36) which permitted the operation of a Physical Culture Establishment (*New York Health and Racquet Club*) which expired on October 6, 2016; Extension of Time to obtain a Certificate of Occupancy which expired on September 15, 2010; Waiver of the Rules. C6-6/C6-6.5 (MID) zoning district.

PREMISES AFFECTED – 110/12 West 56<sup>th</sup> Street, Block 1008, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### 176-09-BZ

APPLICANT – Bryan Cave LLP, for City of New York, owner.

SUBJECT – Application October 6, 2017 – Extension of time to complete construction of a Special Permit (§73-64) to waive height and setback regulations (§33-432) for a community use facility (Fashion Institute of Technology) which expired on October 6, 2017. C6-2 zoning district.

PREMISES AFFECTED – 230-236 West 28<sup>th</sup> Street, Block 777, Lot(s) 1, 18, 37, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### 304-09-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for WIN Glenmore Housing Development Fund Corporation, owner.

SUBJECT – Application September 12, 2017 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) which permitted the erection of a ten-story, mixed-use community facility (Women In Need) and commercial building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21) which expired on June 7, 2015; Waiver of the Board's Rules M1-4 zoning district.

PREMISES AFFECTED – 81-111 Junius Street, Block 3696, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #16BK**

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### 299-12-BZ

APPLICANT – Goldman Harris LLC, for 40-56 Tenth Avenue Ventures LLC, owners.

SUBJECT – Application August 28, 2017 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of a 12-story commercial building, contrary to floor area (§43-12), height and setback (§43-43), and rear yard (§43-311/312) regulations which expires on May 3, 2018. M1-5 zoning district.

PREMISES AFFECTED – 40-56 Tenth Avenue, Block 646, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #2M**

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## REGULAR MEETING JANUARY 23, 2018, 1:00 P.M.

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, January 23, 2018, 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

### 2016-4347-BZ

APPLICANT – Eric Palatnik, P.C., for PATHE, Inc., owner.

SUBJECT – Application December 2, 2016 – Special Permit (73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-142); side yard requirements (ZR 23-48) and less than the minimum rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 1605 Oriental Boulevard, Block 8757, Lot 22, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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### 2017-205-BZ

APPLICANT – Benjamin Stark, Esq., Slater & Beckerman, P.C., for United Services Housing Development Fund Corporation, owner.

SUBJECT – Application June 8, 2017 – Variance (§72-21) to permit the conversion of the former Sgt. Joseph E. Muller U.S. Army Reserve Center into a 90-bed Use Group 3A non-profit institution with sleeping accommodations contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 555 Nereid Avenue, Block 5065, Lot 1, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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# CALENDAR

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**2017-206-BZ**

APPLICANT – Benjamin Stark, Esq., Slater & Beckerman, P.C., for United Services Housing Development Fund Corporation, owner.

SUBJECT – Application June 8, 2017 – Variance (§72-21) to permit the development of a 23-space open parking area accessory to a proposed 90-bed Use Group 3A non-profit institution with sleeping accommodations contrary to ZR §42-10 filed under BSA Calendar Number 2017-205-BZ. M1-1 zoning district.

PREMISES AFFECTED – 4449 Bronx Boulevard, Block 5065, Lot 53, Borough of Bronx.

**COMMUNITY BOARD #12BX**

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**2017-225-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 305 East 61<sup>st</sup> Street Group LLC, owner; Aqua Ancient Baths LLC, lessee.

SUBJECT – Application July 11, 2017 – Special Permit (§73-36) to permit the operation of Physical Culture Establishment (*Aqua Ancient Baths*) in portions of the cellar, basement and first floor of an existing building contrary to ZR §32-10. C2-5/R8B zoning district.

PREMISES AFFECTED – 306 East 61<sup>st</sup> Street, Block 1436, Lot 5, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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*Carlo Costanza, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, DECEMBER 5, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda,  
Commissioner Ottley-Brown, and Commissioner Sheta.

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**SPECIAL ORDER CALENDAR**

**540-53-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Marbridge Realty Company Inc., owner.

SUBJECT – Application August 21, 2017 – Extension of Term (§11-41) of a previously approved variance which permitted a parking lot accessory to a commercial building contrary to use regulations which expired on June 1, 2015; Waiver of the Rules. C2-4/R3-1 & R3-1 zoning district.

PREMISES AFFECTED – 87-17 111<sup>th</sup> Street, Block 9301, Lot 124, Borough of Queens.

**COMMUNITY BOARD #9Q**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of term of a variance, previously granted by the Board, which expired June 1, 2015, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on December 5, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of 111th Street, between Jamaica Avenue and 91st Avenue, partially in an R3-1 zoning district and partially in a C2-4 (R6A) zoning district, in Queens; and

WHEREAS, the site has approximately 100 feet of frontage along 111th Street, 100 feet of depth, 10,000 square feet of lot area and is occupied by a two-story commercial building and accessory parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 9, 1954, when, under the subject calendar number, the Board granted a variance to permit the construction and maintenance of a commercial building with a curb cut nearer a residence district than permitted on condition that the lots to the south with a two-story frame building thereon remain occupied for residential use under the same ownership to act as a buffer and not be

used in any way with Lot 124, that the loading building and use not be extended beyond what therein permitted and shown on such plans and for use only in conjunction with the subject site under the same ownership facing on Jamaica Avenue, that fences be maintained on the lot lines and street building line of the portion of the plot to be left vacant, with no openings therein except to 111th Street, where an opening may be permitted of a width not over 15 feet and fitted with gates of similar construction as the fences, that the site be paved with concrete, that there be no windows opening to the rear and any openings proposed in the rear be filled with glass blocks as approved for exterior walls, that no signs be erected on the site, except there may be a small sign not over 15 square feet in area attached to the fence at the street line, that opposite the opening in the fence there may be a curb cut of similar width and that such portable fire-fighting equipment be installed as the Fire Department directs; and

WHEREAS, on June 1, 1960, under the subject calendar number, the Board granted a variance to permit the construction of a two-story extension to the one-story building occupying more than the permitted area and encroaching on the required rear yard, extending the present use on the first floor, the second floor for offices, with customer and employee parking on the open area on condition that the variance on the parking area be limited to a term of twenty (20) years, expiring June 1, 1980, that there be no additional driveway door on 111th Street and that there be no additional signs on 111th Street; and

WHEREAS, on October 18, 1960, under the subject calendar number, the Board amended the resolution to add thereto that in the event the owner desires to eliminate the southerly door from the existing building and to install an overhead door in the new building, such changes may be permitted and that the curb cuts on 111th Street and the gate to the parking area be arranged substantially as shown on the revised plot plan; and

WHEREAS, on June 20, 1961, under the subject calendar number, the Board granted an extension of time to obtain permits and complete the work on condition that a certificate of occupancy be obtained; and

WHEREAS, on February 10, 1981, under the subject calendar number, the Board granted an extension of term of the variance for a term of five (5) years from June 1, 1980, to June 1, 1985, on condition that the existing canopy structure connecting both two-story buildings be removed by no later than September 1, 1981, and that the graffiti on the front façade of the building be removed and that a new certificate of occupancy be obtained within one (1) year, by February 10, 1982; and

WHEREAS, on June 8, 1982, under the subject calendar number, the Board amended the variance to permit the construction of a canopy structure connecting two buildings on condition that a new certificate of occupancy be obtained within one (1) year, by February 10, 1983; and

WHEREAS, on January 14, 1986, under the subject calendar number, the Board granted an extension of term of the variance for five (5) years, expiring June 1, 1990, for the

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parking area only on condition that a certificate of occupancy be obtained within one (1) year, by January 14, 1987; and

WHEREAS, on July 3, 1990, under the subject calendar number, the Board granted an extension of term of the variance for five (5) years, expiring June 1, 1995, on condition that a new sidewalk and curb be installed prior to the issuance of a temporary or permanent certificate of occupancy and that a new certificate of occupancy be obtained within one (1) year, by July 3, 1991; and

WHEREAS, on January 9, 1996, under the subject calendar number, the Board granted an extension of term of the variance for ten (10) years, expiring June 1, 2005, on condition that the parking lot be used solely as accessory parking for tenants, employees and visitors, that all site lighting be directed downward and away from adjacent residential uses and that a new certificate of occupancy be obtained within one (1) year, by January 9, 1997; and

WHEREAS, on April 8, 1997, under the subject calendar number, the Board granted an extension of time to obtain a certificate of occupancy for 15 months, expiring April 8, 1998; and

WHEREAS, on May 2, 2006, under the subject calendar number, the Board granted an extension of term of the variance for ten (10) years, expiring June 1, 2015; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term of the variance and an extension of time to obtain a certificate of occupancy; and

WHEREAS, in addition, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(b)(3) to permit the filing for an extension of term less than ten (10) years after the expiration of the term; and

WHEREAS, the applicant has demonstrated that the use has been continuous since the expiration of term and that substantial prejudice would result without such a waiver; and

WHEREAS, at hearing, in response to questions from the Board, the applicant submitted that there is a chain at the subject site that closes off the parking lot after business hours; and

WHEREAS, the Board finds that the requested extensions are appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated February 9, 1954, as amended through May 2, 2006, so that as amended this portion of the resolution shall read: "to grant an extension of term for ten (10) years, expiring June 1, 2025; on condition that all work and site conditions shall substantially conform to the drawings filed with this application marked 'Received August 21, 2017'-One (1) sheet; and on further condition:

THAT the chain closing off the parking lot after business hours shall be maintained;

THAT the parking lot shall be used solely as accessory

parking for tenants, employees and visitors;

THAT all site lighting shall be directed downward and away from adjacent residential uses;

THAT any graffiti on the front façade of the building shall be removed;

THAT there shall be no additional driveway door on 111th Street;

THAT there shall be no additional signs on 111th Street;

THAT fences shall be maintained on the lot lines and street building line of the portion of the plot to be left vacant, with no openings therein except to 111th Street, where an opening may be permitted of a width not over 15 feet and fitted with gates of similar construction as the fences;

THAT the site shall be paved with concrete;

THAT there shall be no windows opening to the rear and any openings proposed in the rear be filled with glass blocks as approved for exterior walls;

THAT no signs shall be erected on the site, except there may be a small sign not over 15 square feet in area attached to the fence at the street line;

THAT opposite the opening in the fence there may be a curb cut of similar width;

THAT such portable fire-fighting equipment shall be installed as the Fire Department directs;

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 certificate of occupancy shall be obtained within four (4) years, by December 5, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## 617-56-BZ

APPLICANT – Kenneth H. Koons, AIA, for John O’Dwyer, owner.

SUBJECT – Application June 20, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of a transient parking lot (UG 8) which is set to expired on September 27, 2017. C2-3/R6 & C1-3 zoning district.

PREMISES AFFECTED – 3120 Albany Crescent, Block 3267, Lot 15, Borough of Bronx.

### COMMUNITY BOARD #15BX

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

#### THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-411 for an extension of term of a variance, previously granted by the Board, which expired September 27, 2017; and

WHEREAS, a public hearing was held on this application on October 3, 2017, after due notice by publication in *The City Record*, and then to decision on December 5, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 8, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Albany Crescent, between West 231st Street and West 233rd Street, partially in an R6 (C1-3) zoning district and partially in an R6 (C2-3) zoning district, in the Bronx; and

WHEREAS, the site has approximately 112 feet of frontage along Albany Crescent, 162 feet of depth, 17,890 square feet of lot area and is occupied by an open parking lot with 66 spaces and an accessory office building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 9, 1957, when, under the subject calendar number, the Board granted a variance to permit the maintenance of a parking lot for the parking and storage of more than five (5) motor vehicles for a term of five (5) years, expiring April 9, 1962, on condition that all buildings and uses on the subject site be removed and the site be leveled substantially to the grade of Albany Crescent and be surfaced with clean gravel or steam cinders and treated with a binder and properly rolled, that there be constructed on all lot lines a woven wire fence of the chain link type not less than 5’-6” in height with no openings therein except two to Albany Crescent each not over 11 feet in width, that such opening be fitted with gates of similar construction which normally be kept closed except when the parking lot is in operation, that opposite such openings there may be two curb cuts now existing each not exceeding 11 feet in width, as shown, that during the term of this variance the site be occupied for no other use than as herein permitted, that there may be a building constructed for an office and shelter for

an attendant not exceeding 100 square feet in area, nor one story in height, which may be located near the entrance, that such portable fire-fighting appliances be maintained as the Fire Department directs, that there may be a sign attached to the fence at the entrance, that such sign not exceed 15 square feet in area and not extend beyond the building line, that proper bumpers be maintained against such fences for protection thereto and that a certificate of occupancy be obtained within six (6) months, by October 9, 1957; and

WHEREAS, on June 26, 1962, under the subject calendar number, the Board granted an extension of term for five (5) years, expiring June 26, 1967, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on June 20, 1967, under the subject calendar number, the Board granted an extension of term for five (5) years, expiring June 26, 1972, on condition that a certificate of occupancy be obtained; and

WHEREAS, on June 6, 1972, under the subject calendar number, the Board granted an extension of term for five (5) years, expiring June 26, 1977, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on September 27, 1977, under the subject calendar number, the Board granted an extension of term for five (5) years, expiring September 27, 1982, on condition that a new certificate of occupancy be obtained within one (1) year, by September 27, 1978; and

WHEREAS, on September 13, 1983, under the subject calendar number, the Board granted an extension of term for five (5) years, expiring September 27, 1987, on condition that the sidewalk and curb be repaired where necessary and that bumpers be installed or repaired where required and that a new certificate of occupancy be obtained within one (1) year, by September 13, 1983; and

WHEREAS, on January 12, 1988, under the subject calendar number, the Board granted an extension of term for five (5) years, expiring September 27, 1992, on condition that a new certificate of occupancy be obtained within one (1) year, by January 12, 1989; and

WHEREAS, on October 26, 1993, under the subject calendar number, the Board granted an extension of term for five (5) years, expiring September 27, 1997, on condition that the fences be maintained, that the site be maintained graffiti free and that a new certificate of occupancy be obtained within one (1) year, by October 26, 1994; and

WHEREAS, on January 13, 1998, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring September 27, 2007, on condition that the fencing be painted in a uniform color and adequately maintained, that the site be maintained graffiti free and that a new certificate of occupancy be obtained within one (1) year, by January 13, 1999; and

WHEREAS, on February 24, 2009, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring September 27, 2017, on condition that the term be listed on the certificate of occupancy and that a new certificate of occupancy be obtained by August 24, 2009; and

WHEREAS, the term of the variance having expired,



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the applicant now seeks an extension of term for an additional ten (10) years; and

WHEREAS, the applicant submitted a copy of a parking lot license issued by the New York City Department of Consumer Affairs (“DCA”) stating that the car capacity at the subject site is 80 parking spaces, which is more than the Board approved under the subject calendar number; and

WHEREAS, in response to concerns from the Board about the number of parking spaces at the site, the applicant amended the drawings to indicate that only 66 parking spaces are permitted, and the applicant represents any renewed parking lot license from DCA will only be for 66 parking spaces; and

WHEREAS, in response to further questions from the Board, the applicant submitted evidence that vinyl slats had been installed on the fencing with ragged edges, which the applicant states will be cut to create an even border along the top and bottom of the fencing; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated April 9, 1957, as amended through February 24, 2009, so that as amended this portion of the resolution shall read: “to *grant* an extension of term for ten (10) years, expiring September 27, 2027; *on condition* that the use and operation of the site and all work shall substantially conform to drawings filed with this application marked ‘Received August 22, 2017’-Three (3) sheets; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring September 27, 2027;

THAT the vinyl slats installed on the fencing shall be trimmed to be even across the top and bottom of the fencing;

THAT the sidewalk and curb shall be repaired where necessary;

THAT bumpers shall be installed or repaired where required;

THAT the fences shall be painted in a uniform color and shall be adequately maintained;

THAT the site shall be maintained graffiti free;

THAT the above conditions shall be noted on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained within four (4) years, by December 5, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 5, 2017.

## 866-85-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Anne Marie Cicciu Inc., owner.

SUBJECT – Application June 12, 2017 – Extension of Term of a Variance (§72-21) for a UG8 open parking lot and storage of motor vehicles which expired on May 12, 2017. R7-1 zoning district.

PREMISES AFFECTED – 2338 Cambreleng Avenue, Block 3089, Lot 22, Borough of Bronx.

### COMMUNITY BOARD #6BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board, which expired May 12, 2017; and

WHEREAS, a public hearing was held on this application on October 3, 2017, after due notice by publication in *The City Record*, and then to decision on December 5, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of Cambreleng Avenue, south of Crescent Avenue, in an R7-1 zoning district, in the Bronx; and

WHEREAS, the site is occupied by an open parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 12, 1987, when, under the subject calendar number, the Board granted a variance for a term of ten (10) years, expiring May 12, 1997, to permit open parking and storage of motor vehicles in Use Group 8 on condition that the owner comply with the conditions set forth in the conditional negative declaration, that the variance be limited to a term of ten (10) years, that the lot be constructed in accordance with the Department of Buildings Rules for Parking Lots, that the lot be used for passenger vehicles only, that all lighting be directed down and away from adjoining residences, that the gate be locked after dark and that the above conditions be listed on the certificate of occupancy; and

WHEREAS, on November 23, 1999, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring May 12, 2007, on condition that all signs, lighting levels and landscaping be maintained in accordance with the Board-approved plans, that other than as amended the resolution be complied with in all respects and that a new certificate of occupancy be obtained within one (1) year, by November 23, 2000; and

WHEREAS, on May 3, 2011, under the subject

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calendar number, the Board granted an extension of term for ten (10) years, expiring May 12, 2017, and an extension of time to obtain a certificate of occupancy, expiring May 3, 2012, on condition that the term appear on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term; and

WHEREAS, the applicant represents that that the subject site is in compliance with the Board's conditions and safeguards and that security features include a key access system and keeping the gate locked at all times when not in use; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated May 12, 1987, as amended through May 3, 2011, so that as amended this portion of the resolution shall read: "to grant an extension of term for ten (10) years, expiring May 12, 2027; on condition that any and all work and site conditions shall substantially conform to the drawings filed with this application marked 'Received November 17, 2017'-One (1) sheet; and on further condition:

THAT the lot shall be maintained in accordance with the Department of Buildings Rules for Parking Lots;

THAT the lot shall be used for passenger vehicles only;

THAT all lighting shall be directed down and away from adjoining residences;

THAT the gate shall be locked after dark;

THAT all signs, lighting levels and landscaping shall be maintained in accordance with the Board-approved plans;

THAT the above conditions be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by December 5, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## 256-02-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly S. Friedman, Esq., for Red Hook 160 LLC, owner.

SUBJECT – Application May 27, 2016 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the re-use of a vacant six story manufacturing building, and the addition of three floors, for residential (UG2) use, which expired on May 1, 2016. M2-1 zoning district.

PREMISES AFFECTED – 160 Imlay Street, Block 515, Lot 75, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....3

Negative: .....0

Abstain: Chair Perlmutter .....1

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction, which expired May 1, 2016, under a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on November 21, 2017, after due notice by publication in *The City Record*, and then to decision on December 5, 2017; and

WHEREAS, Vice-Chair Chanda performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the west side of Imlay Street, between Commerce Street and Verona Street, within an M2-1 zoning district, in Brooklyn; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 23, 2003, when, under the subject calendar number, the Board granted a variance to permit the conversion of a six-story industrial building to residential use on condition that the following activities be implemented prior to construction to ensure that there will not be any potential hazardous materials effects and/or impacts on the proposed residents: (1) Ground-penetrating radar to determine if the 20,000 gallon petroleum underground storage tank is located at the subject site., (2) Testing the fluid contained within the transformers for PCBs and (3) Phase II investigation to determine the nature and extent of the suspect liquid observed through a hole adjacent to the 20,00 gallon above-ground storage tank at the north end of the building, that the premises be maintained free of debris and graffiti, that any graffiti located in the premises be removed within 48 hours, that parking will be provided according to BSA approved plans, that the applicant will comply with all applicable fire safety measures, that all exits from the commercial and residential spaces must comply with applicable provisions of the Building Code, with compliance to be determined by the Department of Buildings and that the above conditions be noted in the certificate of occupancy; and

WHEREAS, judicial proceedings, including appeals, were instituted to review the Board's decision under the

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subject calendar number, and the applicant submits that, consistent with ZR § 72-23, the date of entry of the final order in such proceedings was March 18, 2008, in *Red Hook/Gowanus Chamber of Commerce v. New York City Bd. of Standards & Appeals*, 49 A.D.3d 749 (N.Y. App. Div. 2008); and

WHEREAS, on May 1, 2012, under the subject calendar number, the Board granted an extension of time to complete construction for four (4) years, expiring May 1, 2016, on condition that substantial construction be completed by May 1, 2016; and

WHEREAS, by letters dated January 7, 2013, April 29, 2013, and April 9, 2015, under the subject calendar number, the Board approved minor modifications to the Board-approved plans; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an extension of time; and

WHEREAS, the applicant states that, due to delays relating to the transfer of ownership and damage caused by Superstorm Sandy, additional time is necessary to complete construction; and

WHEREAS, the applicant submitted a construction progress report detailing the progress of work at the subject site, and the applicant states that work commenced on all portions of the subject building subsequent to the Board's approval of minor modifications in 2013 and that work has been ongoing since this application was filed; and

WHEREAS, the applicant states that a Phase II Environmental Site Investigation Report dated April 12, 2013, has been prepared, which concludes that no evidence of buried petroleum tanks or vaults at the subject site and that no PCBs at concentrations that exceed the Part 375 Unrestricted Use Soil Cleanup Objectives were detected; and

WHEREAS, in response to questions from the Board, the applicant submitted a copy of a DOB Stop Work Rescind Order dated November 28, 2017, stating that construction work may continue in accordance with the DOB-approved plans and permits; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution dated December 23, 2003, as amended through May 1, 2012, so that as amended this portion of the resolution shall read: "to *grant* an extension of time to complete construction for four (4) years, expiring May 1, 2020; *on condition* that all work and site conditions shall substantially conform to the Board-approved plans; and *on further condition*:

THAT that the premises shall be maintained free of debris and graffiti;

THAT at any graffiti located in the premises shall be removed within 48 hours;

THAT parking shall be provided according to Board-approved plans;

THAT the applicant shall comply with all applicable fire safety measures;

THAT all exits from the commercial and residential spaces must comply with applicable provisions of the Building Code, with compliance to be determined by the Department of Buildings;

THAT the above conditions shall be noted on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by May 1, 2020;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## 363-04-BZ

APPLICANT – Greenberg Traurig, LLP, for Fort Hamilton Group LLC, c/o Halcyon Management Group, owner.

SUBJECT – Application July 21, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the development of mixed residential and commercial retail building with accessory parking contrary to underlying use regulations. The amendment seeks to reduce the approved parking from 93 spaces to 58 spaces contrary to the Board's previous approvals. M1-1 zoning district.

PREMISES AFFECTED – 6002 Fort Hamilton Parkway, Block 5715, Lot 7501, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated July 13, 2017, acting on Alteration Application No. 321583354, reads in pertinent part:

"Proposed number of parking spaces is less th[a]n the number of spaces requ[i]red by BSA variance approval Cal. No. 363-04 BZ amended in 2014"; and

WHEREAS, this is an application for an amendment to a variance, previously granted by the Board, to permit a reduction in the number of accessory residential parking

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spaces from 93 spaces to 56 unattended accessory parking spaces; and

WHEREAS, a public hearing was held on this application on December 5, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 12, Brooklyn, recommend approval of this application; and

WHEREAS, the subject site is located on the west side of Fort Hamilton Parkway, between 60th Street and 61st Street, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 236 feet of frontage along 60th Street, 203 feet of frontage along Fort Hamilton Parkway, 99 feet of frontage along 61st Street, 33,472 square feet of lot area and is occupied by a five-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 19, 2005, when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing industrial building to residential use on condition that the building contain a maximum of 100 units, that the total floor area ratio not exceed 3.0, that use of the 92 cellar-level accessory parking spaces shall be used exclusively by residents of the building and that the above conditions be listed on the certificate of occupancy; and

WHEREAS, on November 21, 2006, under the subject calendar number, the Board amended the variance to permit the removal of the proposed mezzanines, the reconfiguration of the dwelling units, commercial space, and parking lot, which increased the number of parking spaces from 92 to 93, with 48 spaces in the cellar and 45 spaces in the unenclosed lot on the site, and a reduction in the height of the building from six to five stories and other interior and exterior reconfigurations to the approved plans; and

WHEREAS, on May 11, 2010, under the subject calendar number, the Board granted an extension of time to complete construction for four (4) years, expiring July 19, 2013; and

WHEREAS, on July 16, 2013, under the subject calendar number, the Board granted an extension of time to complete construction and to obtain a certificate of occupancy for four (4) years, expiring July 19, 2017; and

WHEREAS, by letter dated May 21, 2014, the Board approved minor modifications to the Board-approved plans as follows: to increase the height which would vary from 47'-4" to 51'-3" to account for a 3'-11" change in elevation, to maintain the existing commercial street wall on both the building's frontages, ground floor retail space is proposed instead of ground floor residential space, for a total of 13,995 square feet of retail floor area with a loading dock provided to accommodate the increased retail space; to reduce the residential floor area to 83,553 square feet with the total number of units remaining at 92; to rearrange the

93 parking spaces, with 67 spaces to be provided in an attended cellar level facility, and 26 spaces in a single-story, at-grade rear yard enclosure, and an outdoor recreation space provided for residential tenants above the parking enclosure; to modify the façade of the building to allow for heating and cooling units to be located under and along the windows, which façade design would include "pilasters" to recall the existing façade, a treatment of the building's base with a "rusticated" appearance similar to the existing façade; and

WHEREAS, the applicant now seeks an amendment to the variance to reduce the number of accessory residential parking spaces from 93 spaces to 56 spaces; and

WHEREAS, the applicant represents that approximately 96 percent of the dwelling units in the building are currently occupied but that only 34 percent of the parking spaces have been rented, representing a total parking demand of approximately 34 parking spaces—22 fewer spaces than the 56 parking spaces proposed; and

WHEREAS, the applicant proposes to revise the parking configuration in the cellar by removing stackers and providing 32 self-service parking spaces in the cellar while maintaining the 24 unattended parking spaces on the first floor; and

WHEREAS, the applicant states that, in comparable zoning districts that allow residential uses, parking is required for 50 percent of new dwelling units and that the proposed number of parking spaces would exceed such requirement; and

WHEREAS, the applicant provided a parking study concluding that ownership of automobiles in the surrounding area has declined by 11 percent since 2000, that only approximately 40 percent of tenants within a half-mile radius of the subject site own automobiles, that car ownership in three census tracts bordering the subject site is approximately 32 percent and that the current rate of tenants' renting parking spaces in the subject building is unlikely to increase a substantial amount; and

WHEREAS, the applicant further notes that the subject site is well-served by public transit with nearby subway and train stations nearby and multiple bus routes with stops within two blocks of the subject site as well as approximately 206 public parking spaces located within a one-third mile radius of the subject site in two public parking lots and one parking garage; and

WHEREAS, by letter dated August 10, 2016, the New York City Office of Environmental Remediation ("OER") issued a Notice of Satisfaction stating that the site has satisfied the hazardous materials restrictive declaration requirements, that Track 2 Restricted Residential cleanup for hazardous materials has been achieved, that no further hazardous materials action is required and that OER has no objection to the issuance of a certificate of occupancy for the subject site; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards

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and Appeals does hereby *reopen* and *amend* the resolution, dated November 21, 2006, as amended through July 16, 2013, so that as amended this portion of the resolution shall read: “to *permit* a reduction in the number of accessory residential parking spaces from 93 spaces to 56 unattended accessory parking spaces, *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked ‘Received October 23, 2017’-Thirteen (13) sheets; and *on further condition*:

THAT the building shall contain a maximum of 100 units;

THAT the total floor area ratio shall not exceed 3.0;

THAT use of the cellar-level accessory parking spaces shall be used exclusively by residents of the building;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by December 5, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## 164-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Rouse SI Shopping Center, LLC, owner; 280 Marsh LLC dba Massage Envy Staten Island, lessee.

SUBJECT – Application August 15, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Massage Envy*) which will expire on October 2, 2017. C4-1 zoning district.

PREMISES AFFECTED – 280 Marsh Avenue (The Crossings @ Staten Island Mall), Block 2400, Lot 300, Borough of Staten Island.

## COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit, previously granted by the Board,

which expired October 2, 2017; and

WHEREAS, a public hearing was held on this application on August 15, 2017, after due notice by publication in *The City Record*, with a continued hearing on September 26, 2017, and then to decision on December 5, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located within The Crossings at Staten Island Mall, which is north of Platinum Avenue, west of Marsh Avenue, and east of Staten Island Mall Drive, in a C4-1 zoning district, on Staten Island; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 2, 2007, when, under the subject calendar number, the Board granted a special permit (“PCE”) in a one-story commercial unit within a shopping mall complex for a term of ten (10) years, expiring October 2, 2017, on condition that there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board, that all massages be performed by New York State licensed massage therapists, that the hours of operation be limited to: Monday through Friday, 8:00 a.m. to 10:00 p.m., Saturday 8:00 a.m. to 6:00 p.m., and Sunday, 10:00 a.m. to 6:00 p.m., and that the above conditions appear on the Certificate of Occupancy; and

WHEREAS, on September 11, 2012, under the subject calendar number, the Board amended its resolution to permit a 1,270 square foot expansion on the first floor on condition that all conditions from the prior resolution not specifically waived by the Board remain in effect; and

WHEREAS, the term of the special permit having expired, the applicant now seeks an extension of term; and

WHEREAS, the facility remains in operation as Massage Envy with the following hours of operation: Monday through Friday, 8:00 a.m. to 10:00 p.m., Saturday 8:00 a.m. to 6:00 p.m., and Sunday, 10:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant notes that the PCE continues to occupy a total of 4,351 square feet of floor area, including reception, a waiting area, treatment rooms, restrooms, a hand-washing room, an office and storage; and

WHEREAS, the Board notes that its determination is subject to and guided by ZR § 73-03; and

WHEREAS, consistent with ZR § 73-03(a), the Board finds that, under the conditions and safeguards imposed, the hazards of disadvantage to the community at large of the special permit are outweighed by the advantages to be derived by the community; and

WHEREAS, as to ZR § 73-03 subsections (b) and (c), the Board finds, respectively, that the subject special permit will not interfere with any public improvement project and that the use will not interfere with the existing street system; and

WHEREAS, the Board notes that ZR § 73-03

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subsections (d) and (g) are inapplicable to this application; and

WHEREAS, § 73-36 mandates a term not to exceed ten (10) years and, thus, pursuant to ZR § 73-03(e), the Board shall establish a term not to extend ten (10) years; and

WHEREAS, consistent with ZR § 73-03(f), the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that a ten (10) year extension is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution dated October 2, 2007, as amended September 11, 2012, so that as amended this portion of the resolution shall read: “to grant an extension of term for ten (10) years, expiring October 2, 2027; *on condition* that all work and site conditions shall substantially conform to the drawings filed with this application marked ‘Received April 13, 2017’- Three (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 2, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the hours of operation shall be limited to: Monday through Friday, 8:00 a.m. to 10:00 p.m.; Saturday 8:00 a.m. to 6:00 p.m.; and Sunday, 10:00 a.m. to 6:00 p.m.;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by December 5, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## 36-15-BZ

APPLICANT – Akerman, LLP, for CAC Atlantic, LLC, owner; 66 Boerum Place Fitness Group, LLC, lessee.

SUBJECT – Application June 7, 2017 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Planet Fitness) on portions of the cellar, first and second floors of a new building. The Amendment seeks to legalize the expansion of the facility by 555 square feet of floor area on the second floor. C6-2A (Special Downtown Brooklyn District) zoning district.

PREMISES AFFECTED – 241 Atlantic Avenue aka 66 Boerum Place, Brooklyn.

### COMMUNITY BOARD #2BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 9, 2017, acting on New Building Application No. 320728735, reads in pertinent part:

“Proposed extension of and layout changes of physical culture establishment within the existing building is contrary to ZR Section 32-10 and BSA Cal. No. 36-15-BZ”; and

WHEREAS, this is an application for an amendment to a special permit, previously granted by the Board, which expires September 18, 2025, to extend the proposed PCE on the second story along with modifications to partitions, equipment layout and signage; and

WHEREAS, a public hearing was held on this application on December 5, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Atlantic Avenue and Boerum Place, in a C6-2A zoning district, in the Special Downtown Brooklyn District, in Brooklyn; and

WHEREAS, the site has approximately 172 feet of frontage along Atlantic Avenue, 173 feet of frontage along Boerum Place, 211 feet of frontage along State Street depth, 187,349 square feet of lot area and is occupied by an 11-story, with cellar, mixed-use building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 18, 2015, when, under the subject calendar number, the Board granted a special permit to allow the operation of a physical culture establishment (“PCE”) in the cellar and on the first and second stories of an 11-story mixed-use building for a term of ten (10) years, expiring September 18, 2025, on condition that there be no

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change in ownership or operating control of the PCE without prior application to and approval from the Board, that all fire safety and sound attenuation measures be installed and maintained as shown on the Board-approved plans and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the applicant now seeks an amendment to extend the proposed PCE on the second story along with modifications to partitions, equipment layout and signage; and

WHEREAS, the applicant represents that the PCE will continue to operate as Planet Fitness with hours of operation 24 hours per day, seven days per week; and

WHEREAS, the applicant represents that as amended the PCE will occupy a total of 17,292 square feet of floor space as follows: 10,970 square feet of floor space in the cellar, 628 square feet of floor area on the first floor and 5,694 square feet of floor area on the second floor; and

WHEREAS, the applicant proposes to modify the amount of signage accessory to the PCE but notes that the proposed signage on each street frontage complies with the applicable district regulations; and

WHEREAS, at hearing, the Board noted with approval that the temporary certificate of occupancy issued for the subject site indicates that fire safety and sound attenuation measures have been installed at the subject site in conjunction with the subject special permit; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated September 18, 2015, so that as amended this portion of the resolution shall read: “to *amend* the special permit to extend the proposed PCE on the second story along with modifications to partitions, equipment layout and signage; *on condition* that all work, site conditions and operations shall substantially conform to drawings filed with this application marked ‘Received August 30, 2017’-Eight (8) Sheets; and *on further condition*:

THAT the term of this grant shall expire on September 18, 2025;

THAT there shall be no change in ownership or operating control of the PCE without prior application to and approval from the Board;

THAT all fire safety and sound attenuation measure shall be installed and maintained as shown on the Board-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by December 5, 2021;

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 objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered

approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## **75-95-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for The Rupert Yorkville Towers Condominium, owner; TSI East 91<sup>st</sup> Street LLC dba New York Sports Club, lessee.

SUBJECT – Application August 18, 2016 – Extension of Term for a special permit (§73-36) permitting the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on January 28, 2016; Waiver of the Rules. C2-8 zoning district.

PREMISES AFFECTED – 1635 Third Avenue, Block 1537, Lot 7501, Borough of Manhattan.

## **COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for adjourned hearing.

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## **173-95-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 30 East 85<sup>th</sup> Street Company LLC, owner; Equinox Madison Avenue, Inc., lessee.

SUBJECT – Application July 12, 2017 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of Physical Culture Establishment (Equinox) which expired on August 15, 2015; Waiver of the Rules. C5-1/R8B Special Madison Avenue Preservation District.

PREMISES AFFECTED – 30 East 85<sup>th</sup> Street, Block 1496, Lot 7501, Borough of Manhattan.

## **COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M., for continued hearing.

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## **97-07-BZ**

APPLICANT – Law Office of Fredrick A. Becker, for Atlas Park LLC, owner; TSI Glendale, LLC dba New York Sports Club, lessee.

SUBJECT – Application April 13, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*New York Sports Club*) on the second floor of a two-story commercial building within a commercial mall complex which expired on December 31, 2016; Amendment to request a change in the hours of operation; Waiver of the Board's rules. M1-1 zoning district.

PREMISES AFFECTED – 80-16 Cooper Avenue, Block 3810, Lot 350, Borough of Queens.

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## COMMUNITY BOARD #5Q

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for continued hearing.

## 143-07-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad House of Canarsie, Inc., owner.

SUBJECT – Application December 28, 2016 – Extension of Time to complete construction of an approved variance (§72-21) to permit the construction of a three-story and cellar synagogue (*Chabad House of Canarsie*), which expired on December 4, 2016. R2 zoning district.

PREMISES AFFECTED – 6404 Strickland Avenue, Block 8633, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M., for continued hearing.

## 97-08-BZ

APPLICANT – Eric Palatnik P.C., for Yismach Moshe of Williamsburgh, Inc., owner.

SUBJECT – Application March 10, 2015 – Compliance Hearing.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 01736, Lot 0014, Borough of Brooklyn.

## COMMUNITY BOARD #3BK

**ACTION OF THE BOARD** – Laid over to February 27, 2018, at 10 A.M., for continued hearing.

## APPEALS CALENDAR

### 2017-52-A

APPLICANT – Slater & Beckerman P.C., for 1109 Metropolitan Avenue LLC, owner.

SUBJECT – Application February 22, 2017 – Interpretative Appeal challenging the Department of Buildings determination that a proposed caretaker's apartment for a proposed sign painting shop does not satisfy the ZR 12-10 definition of an "accessory use". M3-1 zoning district.

PREMISES AFFECTED – 1109 Metropolitan Avenue, Block 2927, Lot 25, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Appeal granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, the determination of the Department of Buildings (“DOB”), dated January 26, 2017, acting on Alteration Application No. 321052114, reads in pertinent part:

The request, that the proposed caretaker’s apartment for the proposed sign painting contractor’s establishment satisfies ZR 12-10’s definition for “accessory use,” is hereby denied.

[ . . . ]

The proposed accessory caretaker’s apartment shall satisfy ZR 12-10’s definition for “accessory use,” including paragraph (b), which states that “[a]n ‘accessory use’ . . . is a use which is clearly incidental to, and customarily found in connection with, such principal use . . . .”

[ . . . ]

However, none of the buildings listed above are examples of caretaker’s apartments that are “clearly incidental to, and customarily found in connection with” a sign painting contractor’s establishment in Use Group 16A.

Therefore, for the above stated reasons, the applicant’s request is hereby denied and a caretaker’s apartment shall not be considered an “accessory use” to a sign painting contractor’s establishment.

The proposed caretaker’s apartment in the subject building shall, instead, be considered a residential use in Use Group 2, pursuant to ZR 22-12 (Use Group 2), which is not a permitted use in the M3-1 District, pursuant to ZR 42-00 (General Provisions); and

WHEREAS, this is an appeal for interpretation under ZR § 72-11 and Charter § 666(6)(a), brought on behalf of 1109 Metropolitan Avenue LLC, doing business as Colossal Media (“Appellant”), owner of the subject site, alleging errors pertaining to accessory uses permitted for a sign painting shop in Use Group 16 (the “Sign Painting Shop”) under ZR § 12-10 with respect to a proposed caretaker’s apartment (the “Caretaker’s Apartment”); and

WHEREAS, for the reasons that follow, the Board grants this appeal; and

WHEREAS, a public hearing was held on this application on September 12, 2017, after due notice by publication in *The City Record*, with a continued hearing on December 5, 2017, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Council Member Antonio Reynoso submitted testimony in support of Appellant by letter dated January 20, 2016, stating that Appellant has represented that the Caretaker’s Apartment meets all requirements of existing zoning and is necessary to ensure that the new facility is secure and operational at all times, as required by Appellant’s business operations; and

WHEREAS, DOB and Appellant have been represented by counsel throughout this appeal; and

### BACKGROUND

WHEREAS, the subject site is located on the north side of Metropolitan Avenue, between Vandervoort Avenue and English Kills, a tributary of Newtown Creek, north of



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Grand Street, in an M3-1 zoning district, in Brooklyn; and  
WHEREAS, the site has approximately 139 feet of frontage along Metropolitan Avenue, between 61 feet and 113 feet of depth, 11,222 square feet of lot area and is occupied by a two-story industrial building currently being enlarged and converted for use as a Use Group 16 sign painting shop; and

WHEREAS, Appellant states that, after conversion to the Sign Painting Shop, the subject building will contain approximately 7,489 square feet of floor area as follows: 4,997 square feet of floor area on the first floor for use as workshop space and 2,492 square feet of floor area on the second floor proposed to be used as an accessory office (1,814 square feet of floor area) and the Caretaker's Apartment (678 square feet of floor area); and

WHEREAS, Appellant originally proposed to dedicate 1,196 square feet of floor area to the Caretaker's Apartment but subsequently reduced the size in response to DOB's concerns that the Caretaker's Apartment would not be "clearly incidental" to the Sign Painting Shop; and

WHEREAS, Appellant states that the Sign Painting Shop will be used by an existing business, which will employ approximately 40 full-time employees in departments devoted to operations, painting, rigging, shop and maintenance, and that employees will be responsible for the creation of custom patterning, sign designs and mixing of custom paint colors, that the Sign Painting Shop will operate 24 hours per day, seven days per week, and that office equipment, job materials, safety equipment, scissor lifts and other work vehicles will be stored at the subject site; and

WHEREAS, the Board notes that, generally, the term "sign painting shop" includes an establishment employing commercial artists and artisans to paint signage by hand and that sign painting shops are a small industry within the City; and

## PROCEDURAL HISTORY

WHEREAS, on May 4, 2015, DOB issued a zoning determination stating, in part, that a "proposed accessory caretaker apartment with living and sleeping accommodations is contrary to ZR12-10" because "no such living or sleeping accommodations are [permitted to be] located in a C7, C8 or Manufacturing District"; and

WHEREAS, on October 23, 2015, through its internal appeals process, DOB upheld its denial of a proposed caretaker apartment on the grounds that no sufficient demonstration had been made that such caretaker's apartment would be necessary for the maintenance of the subject building; and

WHEREAS, on June 28, 2016, DOB considered additional information provided in response to the determination dated October 23, 2015, and upheld its denial on the grounds that no sufficient demonstration had been made that a caretaker's apartment would be incidental to or customarily found in connection with a sign painting shop and that caretakers' apartments are not incidental to or customarily found in connection with uses located within heavy manufacturing districts; and

WHEREAS, on January 26, 2017, DOB issued the determination cited above, and Appellant commenced this appeal on February 22, 2017, seeking reversal of DOB's determination; and

## RELEVANT PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, ZR § 42-00 states in relevant part: "Use Group[] . . . 16 . . . , including each *use* listed separately therein, . . . are permitted in *Manufacturing Districts* as indicated in Sections 42-11 to 42-15, inclusive"; and

WHEREAS, ZR § 42-12 allows as of right, in M1, M2 and M3 zoning districts, Use Group 16 uses set forth in ZR § 32-25; and

WHEREAS, ZR § 32-25 describes Use Group 16 uses, in relevant part, as follows:

Use Group 16 consists of . . . necessary semi-industrial *uses* which:

- (1) are required widely throughout the city; and
- (2) involve offensive noise, vibration, smoke, dust, or other particulate matter, odorous matter, heat, humidity, glare or other objectionable influences, making such *uses* incompatible with *residential uses* and other *commercial uses*.

### A. Retail or Service Establishments

[ . . . ]

Sign painting shops, with no limitation on *floor area* per establishment [PRC-B1]

[ . . . ]

### E. Accessory Uses

WHEREAS, ZR § 12-10 defines "accessory uses," in part, as follows:

An "accessory use":

- (a) is a *use* conducted on the same *zoning lot* as the principal *use* to which it is related (whether located within the same or an *accessory building or other structure*, or as an *accessory use* of land) . . . ; and
- (b) is a *use* which is clearly incidental to, and customarily found in connection with, such principal *use*; and
- (c) is . . . in the same ownership as such principal *use* . . . .

[ . . . ]

An *accessory use* includes: . . . (2) Living or sleeping accommodations for caretakers in connection with any *use* listed in Use Groups 3 through 18 inclusive . . . ; and

## ISSUE PRESENTED

WHEREAS, this appeal concerns whether the Caretaker's Apartment is an accessory use to the Sign Painting Shop permitted in an M3-1 zoning district under ZR §§ 42-12 and 12-10; and

WHEREAS, however, the sole issue disputed by Appellant1 and DOB—and, in turn, considered by the

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1 Appellant also argues that no showing of a customary connection need be made for "[l]iving or sleeping

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Board—is whether the Caretaker’s Apartment is “customarily found in connection with” the Sign Painting Shop under the definition of “accessory use” in ZR § 12-10; and

## DISCUSSION

WHEREAS, ZR § 12-10 provides: “An ‘accessory use’ . . . is a *use* which is . . . customarily found in connection with” “the principal *use* to which it is related”; and

WHEREAS, in *New York Botanical Garden v. Bd. of Standards & Appeals of City of New York*, 91 N.Y.2d 413, 421 (1998), the Court of Appeals of New York explains the “accessory use” inquiry as follows:

In this case, there is no dispute that radio stations and their attendant towers are clearly incidental to and customarily found on college campuses in New York and all over the United States. The issue before the BSA was: is a station of this particular size and power, with a 480-foot tower, customarily found on a college campus or is there something inherently different in this radio station and tower that would justify treating it differently; and

WHEREAS, here, Appellant and DOB similarly “dispute that [living or sleeping accommodations for caretakers] are . . . customarily found [with sign painting shops] in New York,” *id.*; see also *Exxon Corp. v. Bd. of Standards & Appeals of City of New York*, 151 A.D.2d 438, 439 (N.Y. App. Div. 1989) (discussing application of “accessory use” definition); and

WHEREAS, accordingly, the Board first examines whether living or sleeping accommodations for caretakers generally are “customarily found in connection with” sign painting shops and then looks to whether Appellant has demonstrated that the specific activities proposed render the Caretaker’s Apartment a “living or sleeping accommodations for caretakers” within the meaning of ZR § 12-10; and

WHEREAS, for the reasons that follow, the Board finds both the general and specific inquiries answered in the affirmative; and

### (1) GENERAL INQUIRY

WHEREAS, Appellant and DOB disagree as to whether living or sleeping accommodations for caretakers are typically found in conjunction with sign painting shops; and

WHEREAS, Appellant argues that the plain meaning of the ZR § 12-10 definition of “accessory use” evinces a clear intent to determine, by legislative fiat, that living or sleeping accommodations for caretakers are always

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accommodations for caretakers in connection with any *use* listed in Use Groups 3 through 18 inclusive” under ZR § 12-10; however, the Board need not resolve that issue in this appeal because, as discussed herein, the record demonstrates a customary connection between accommodations for caretakers and a Use Group 16 sign painting shop.

customarily found in connection with any and all uses listed in Use Groups 3 through 18 by explicitly identifying such use on a list of uses “included” as “accessory”; and

WHEREAS, Appellant also furnished, in support of a general customary connection, multiple certificates of occupancy listing as lawful uses art studios and photography studios with caretakers’ apartments within the same building; and

WHEREAS, Appellant notes that there is a dearth of sign painting shops located within the City and that accordingly it is appropriate for the Board to examine analogous uses; and

WHEREAS, DOB does not credit this evidence, noting that art studios and photographic developing or photographic printing establishments are listed in Use Group 9, not Use Group 16; and

WHEREAS, DOB states that, in *New York Botanical Garden*, the court examined the exact same principal use and concludes that Appellant needs to demonstrate the custom in the Use Group 16 sign painting industry specifically, rather than analogizing to a Use Group 9 use; and

WHEREAS, DOB states that none of the examples provided are in the same use group as—or even analogous to—sign painting shops; and

WHEREAS, DOB also points out that, in *New York Botanical Garden*, the Court of Appeals specifically interpreted the list in the “accessory use” definition “as examples of permissible accessory uses (provided, of course, that they comply with the requirements of Zoning Resolution § 12-10 [accessory use] [a], [b] and [c]),” 91 N.Y.2d at 422; and

WHEREAS, DOB posits that, if there are too few sign painting shops within the City to demonstrate a customary connection, Appellant should demonstrate that sign painting shops around the country typically have caretakers’ apartments; and

WHEREAS, Appellant responds that a country-wide query would prove too onerous and that, in any case, other localities may have regulations regarding caretakers’ apartments that materially differ from the Zoning Resolution; and

WHEREAS, nothing in the record demonstrates that there are sign painting shops in the City without caretakers’ apartments or that there are more than a few, if any, other sign painting shops whatsoever within the City; and

WHEREAS, as noted above, the Board finds that sign painting shops employ commercial artists and artisans to paint signs and that sign painting is a small industry within the City; and

WHEREAS, the Board also notes that many artists work with paint as their medium and often toil long hours with expensive equipment and inventory, which they have a strong interest in protecting, so there is sufficient overlap and overall similarity of activities carried on within sign painting shops and art studios to make an analogy between Use Group 16 sign painting shops and Use Group 9 artists’ studios, as Appellant suggests; and

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WHEREAS, the Board credits said analogy between art studios and sign painting shops as being close enough to find the supplied certificates of occupancy of art studios with caretakers' apartments of probative value; and

WHEREAS, the Board notes that caretaker's apartment is shorthand for "living or sleeping accommodations for caretakers," which appears in ZR § 12-10; and

WHEREAS, the Board determines that said certificates of occupancy indicate that living or sleeping accommodations for caretakers are concomitant with sign painting shops; and

WHEREAS, because there is sufficient evidence in the record to support a general connection between living or sleeping accommodations for caretakers and sign painting shops, the Board need not reach Appellant's argument as to an interpretation regarding every use in Use Groups 3 through 18, which is beyond the scope of this appeal; and

WHEREAS, accordingly, the Board finds that, generally, living or sleeping accommodations for caretakers are "customarily found in connection with" Use Group 16 sign painting shops under ZR § 12-10; and

## (2) SPECIFIC INQUIRY

WHEREAS, the Board next considers the specific activities proposed with regard to the Caretaker's Apartment; and

WHEREAS, at the outset, the Board notes that this consideration does not look to the size and scope of the proposed activities, which would implicate the not-at-issue "clearly incidental" aspect of the "accessory use" definition; rather, the Board examines whether the activities proposed for the Caretaker's Apartment are of a type and character within the ambit of the general term "living or sleeping accommodations for caretakers" or whether there is something inherently different about Appellant's proposed activities that would justify treating the Caretaker's Apartment differently; and

WHEREAS, Appellant states that the Caretaker's Apartment will allow an individual (the "Caretaker") to reside at the subject site and perform the following duties: collect all refuse and manage the collection of refuse by private refuse collectors; maintain the sidewalk at the subject site in good condition; maintain the bulkhead and shoreline at the subject site in good condition; maintain the subject site and subject building in good condition; maintain the façade of the subject building in a clean and graffiti-free condition; maintain and operate the mechanical and heating equipment at the subject site; maintain the subject site in a state of overall good repair; ensure continuance of maintenance, security and good repair of the subject site; maintain the Sign Painting Shop's inventory; and

WHEREAS, Appellant also notes that the subject site is remote, with infrequent vehicular and pedestrian traffic, and bordered on two sides by waterfront, leaving the subject site susceptible to burglaries and vandalism, and that the Caretaker would provide constant safeguarding and perform frequent patrolling to assure that the subject building remain secure and safe; and

WHEREAS, Appellant states that the Caretaker's responsibilities pertaining to site security and theft deterrence would be the most practical and cost-effective measure because the subject site is already outfitted with gates, lighting, fencing and 14 security cameras, with two additional cameras to be installed, which have not been effective in deterring break-ins; and

WHEREAS, Appellant submitted police reports documenting three burglaries that have occurred at the subject site since 2016 and states that the subject site has been burgled four times with one instance unreported; and

WHEREAS, Appellant submitted a fourth police report documenting a burglary that occurred while this appeal was pending; and

WHEREAS, Appellant states that the Caretaker will perform duties akin to the responsibilities of a superintendent who lives in a residential building; and

WHEREAS, DOB states that it is improper to compare caretakers with superintendents since they are different uses and that the Caretaker's Apartment should instead be categorized as a primary, residential use that is not permitted in M3-1 zoning districts as of right; and

WHEREAS, the Board notes that a restrictive declaration for caretakers' apartments, in the form approved by DOB and required to be recorded against all premises with caretakers' apartments prior to the issuance of a certificate of occupancy pursuant to the ZR § 12-10 definition of "accessory use," states that a caretaker will provide the following maintenance and repair services for the premises: collect all refuse and maintain such refuse in refuse bins; maintain the sidewalk outside the premises in good repair and in clear condition; maintain the façade of the premises in a clean and graffiti-free condition; maintain and operate mechanical equipment that heats the premises; maintain the premises in overall good repair; and perform any other caretaker functions necessary to insure the continuance of maintenance, security and good repair of the premises; and

WHEREAS, the Board notes that the premises issued the supplied certificates of occupancy for art studios with caretakers' apartments have recorded restrictive declarations listing the same duties as those proposed for the Caretaker; and

WHEREAS, the Board finds that the specific activities proposed for the Caretaker, including maintaining and safeguarding the subject site, fall within the scope of duties typical of caretakers; and

WHEREAS, the Board finds that, as an apartment where the Caretaker will reside, the Caretaker's Apartment is properly classified under "living or sleeping accommodations for caretakers" within the meaning of the "accessory use" definition of ZR § 12-10; and

## CONCLUSION

WHEREAS, the Board has considered all of DOB's arguments on appeal and finds them ultimately unpersuasive as applied to the Caretaker's Apartment at the subject site; and

WHEREAS, because the Board's determination is

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limited to the evidence in the record regarding the Caretaker's Apartment at the subject site, nothing herein shall be understood as a determination by the Board that living or sleeping accommodations for caretakers generally are always customarily found in connection with any and all uses listed in Use Groups 3 through 18 since it is unnecessary to reach such issue in this appeal; and

WHEREAS, for the foregoing reasons, the Board finds that the Caretaker's Apartment is a permitted accessory use for the Sign Painting Shop at the subject site.

*Therefore it is Resolved*, that the determination of the Department of Buildings, dated January 26, 2017, acting on Alteration Application No. 321052114, shall be and hereby is *reversed*, only as to the Caretaker's Apartment accessory to the Sign Painting Shop in Use Group 16 as proposed at the subject site, and that this appeal shall be and hereby is *granted*.

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## 2016-2-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Vincent Theurer, owner.

SUBJECT – Application January 4, 2016 – Appeal seeking determination that the Department of Buildings improperly denied an application for a permit for construction of cabana based on erroneous determination that the cabana should be considered a dwelling unit and not an accessory structure, requiring compliance with minimum required distance between buildings (ZR 23-711(f)) and minimum distance between lot lines and building walls (ZR 23-881) in the lower density growth management area. R1-1(NA-1).

PREMISES AFFECTED – 74 Buttonwood Road, Block 877, Lot 32, Borough of Staten Island.

## COMMUNITY BOARD #2SI

**ACTION OF THE BOARD** – Laid over to March 20, 2018, at 10 A.M., for adjourned hearing.

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## ZONING CALENDAR

### 4-15-BZ

#### CEQR #15-BSA-140K

APPLICANT – Sheldon Lobel, P.C., for Bais Chaya Esther Inc., owner.

SUBJECT – Application January 9, 2015 – Variance (§72-21) to permit the conversion of the existing building at the premises from residential to community facility use.

PREMISES AFFECTED – 119 Webster Avenue, block 5416, Lot 1, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner

Sheta.....4

Negative: .....0

## THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated January 6, 2016, acting on Department of Buildings Application No. 320267386 reads in pertinent part:

Existing three story multiple dwelling building to be altered into a three story community facility.

1. Provide off street loading facility as per Section ZR 113-22(a);
2. New non-compliance of required side yards and front yard by conversion [*sic*] created and it is prohibited as per ZR 54-31, ZR 23-46[4], ZR 23-45;
3. New non-compliance of exceeding floor area, resulting from the addition of exterior stairs as the two means of egress for the community facility as per ZR 23-141;
4. New non-compliance of lot coverage and open space resulting from the addition of exterior stairs as the two means of egress for the community facility as per ZR 23-141; and

WHEREAS, the Board notes that since the filing of this application, the Zoning Resolution has been amended and the text formerly found in ZR § 23-141, setting forth the maximum floor area ratio, minimum required open space and maximum lot coverage permitted in an R3-2 zoning district, is now found in ZR § 23-142; thus, the Board treats the citation to ZR § 23-141 in DOB's objection as a citation to ZR § 23-142; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an R5 zoning district and the Special Ocean Parkway District, the development of a three-story Use Group 3 school that does not comply with applicable bulk regulations pertaining to floor area, floor area ratio, open space, lot coverage, front yards, side yards and off-street loading regulations, contrary to ZR §§ 23-142, 23-45, 23-464 and 113-22; and

WHEREAS, this application is filed on behalf of Bais Chaya Esther, Inc., a non-profit religious corporation ("Bais Chaya"), for purposes of housing the third location of the Bais Chaya Esther School, which will serve as an elementary school; and

WHEREAS, a public hearing was held on this application on August 2, 2016, after due notice by publication in *The City Record*, with continued hearings on September 27, 2016, August 22, 2017, and October 31, 2017, and then to decision on December 5, 2017; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, additionally, the Board was in receipt of three form letters in support of this application and five form letters in opposition, citing concerns regarding existing

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traffic and parking concerns in the neighborhood and the potential for the subject proposal to exacerbate both; and

WHEREAS, the subject site is located on the northeastern corner of Webster Avenue and Seton Place, in an R5 zoning district and the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 21 feet of frontage along Webster Avenue, 96 feet of frontage along Seton Place, 2,014 square feet of lot area and is occupied by a three-story plus cellar residential building; and

WHEREAS, the applicant proposes to convert the existing building into a Use Group 3 school with the addition of approximately 730 square feet of floor area, existing in two exterior enclosed stairs provided as additional means of egress, and a proposed handicap lift; and

WHEREAS, the existing building, which was issued a certificate of occupancy dated February 27, 1924, is non-compliant with regards to floor area (4,795 square feet), floor area ratio ("FAR") (2.38 FAR), open space (20 percent), lot coverage (80 percent), wall height (34 feet), front yard (7'-4.5") and setback (0 foot setback); and

WHEREAS, at the subject site, a maximum FAR of 1.25 (2,513 square feet of floor area), a minimum of 45 percent open space and a maximum of 55 percent lot coverage are permitted pursuant to ZR § 23-142; one front yard of at least 10 feet is required pursuant to ZR § 23-45; two side yards at least fifteen feet are required pursuant to ZR § 23-464; and, because the proposed building will contain a school for children below grade 7, off-street loading facilities are required to be so situated and arranged to provide head-in and head-out movement of vehicles on two separate streets, have a minimum dimension of 12 feet and be screened from adjacent zoning lots by a four foot buffer of shrubbery at least four feet high at the time of planting pursuant to ZR § 113-22(a); and

WHEREAS, the proposed conversion will result in a building having 6,341 square feet of floor area (3.15 FAR), 8.5 percent open space, 91.5 percent lot coverage, no front yard, one side yard measuring 4'-2.5" and the provision of an eight foot by 74 foot no-parking zone for pick-ups and drop-offs along the Seton Place frontage of the subject site; and

WHEREAS, the applicant states that the proposed conversion will enable the school to expand and house approximately 100 nursery through fourth grade students; and

WHEREAS, upon its conversion, the cellar of the building will contain a warm-up kitchen, bathroom, refrigerated trash area and a lunchroom that, during times of inclement weather, will serve as an alternative play area; the first floor will contain two offices, one classroom with toilets for pre-school and nursery students and one classrooms with toilets for kindergarten students; the second floor will contain one classroom for first grade, one classroom for second grade, bathrooms, an additional office and a library; the third floor will contain one classroom for third grade, one classroom for fourth grade, bathrooms, an

office and a therapist room; and the roof will feature a play area with a 10 foot high fence around the perimeter; and

WHEREAS, the proposed conversion will increase the degrees of non-compliance of the existing building with regards to floor area, floor area ratio, open space, lot coverage and front yards, and will create new non-compliances with regards to side yards and off-street loading conditions; accordingly, the applicant seeks the subject relief; and

WHEREAS, the Board acknowledges that the Bais Chaya Esther School, as an educational institution, is entitled to deference under the law of the State of New York as to zoning and its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), an educational or religious institution's application is to be granted unless it can be shown to have an adverse effect on the health, safety or welfare of the community and general concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such application; and

WHEREAS, based on the above, the Board finds that Bais Chaya Esther School's programmatic needs create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

WHEREAS, because Bais Chaya is a non-profit institution and the variance is needed to further its not-for-profit mission, the finding set forth in ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

WHEREAS, Bais Chaya represents that, pursuant to ZR § 72-21(c), the subject variance, if granted, will not substantially impair the appropriate use or development of adjacent properties and will not be detrimental to the public welfare; specifically, the applicant states that the subject proposal does not substantially alter the bulk or height of the existing building, which is consistent with those surrounding it, and notes that schools are permitted in the zoning district as-of-right; and

WHEREAS, with regards to the operations of the school, the applicant notes that deliveries will arrive at the site between 6:00 a.m. and 7:00 a.m., prior to the morning rush hour, that the 100 students will arrive at the site on two buses that will arrive at 8:55 a.m. and two additional buses that will arrive at 9:55 a.m. and that students will be escorted off the bus by teachers and staff, that nursery and first grade students will depart the site on two buses at 2:45 p.m. and the second through fourth graders will depart the site on two buses at 4:30 p.m., prior to the evening rush hour; and

WHEREAS, the applicant states that an application has been filed with the New York City Department of Transportation ("DOT") for a 74 foot long no-parking zone (between the hours of 8 a.m. and 5 p.m. only) in front of the premises along its Seton Place frontage and that such zone will accommodate two buses, which will utilize the zone for

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pickups and drop offs; the applicant further submits that the elimination of four on-street parking spaces for the school will not adversely affect the surrounding area because the area is well served by public transportation and the Community Board did not raise any concerns regarding the loss of parking; and

WHEREAS, by letter dated July 11, 2016, DOT School Safety states that as long as there is a door on the driver's side of the school bus, DOT should not have a problem with the loading zone being on Seton, which runs one-way southbound, rather than Webster; DOT School Safety additionally states that, because the proposed school will have less than 250 students, it does not fall under School Safety's jurisdiction, but requests that the applicant reach out to the DOT Brooklyn Borough Engineer for a final assessment to determine if a school loading zone is warranted and on which street it should be located; and

WHEREAS, with regards to the rooftop play area, the applicant avers that the area will be used only between 12:30 p.m. and 1:30 p.m. on school days; and

WHEREAS, the applicant represents that the school buses will be parked offsite when not in use and provided the Board with a copy of an executed lease for two bus parking spaces at 709 Chester Street for an initial term expiring September 1, 2037, that allows for automatic renewals for five successive one-year terms; and

WHEREAS, in light of the foregoing, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents, and the Board finds, that the hardship claimed as ground for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant submits that the subject proposal is the minimum variance necessary to afford relief and, in support of that contention, submitted two lesser variance scenarios: (1) locating the required egress stairs within the building, rather than on the exterior, which would require a waiver of ZR § 113-22 only and (2) locating a single exterior enclosed egress stair in the side yard and providing a 66 foot wide corridor for access, which would require all of the waivers requested in the subject application with the exception of a waiver of ZR § 23-45 (front yards); and

WHEREAS, both lesser variance scenarios result in the reduction or elimination of vital classroom and programming spaces and dedicate a disproportionate amount of floor space to circulation; and

WHEREAS, at the Board's request, the applicant sought three Construction Code Determinations from DOB to permit egress through rear classrooms located on the second and third floors, eliminating the need for one of the two proposed exterior egress stairs in the side yards of the subject site, and all three requests were denied; and

WHEREAS, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 15BSA140K, dated June 3, 2016; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design; Natural Resources; Hazardous Materials; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by letter dated July 14, 2016, the New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis, reviewed the proposal for noise impacts and determined that the subject application would not result in potential significant adverse noise impacts; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located in an R5 zoning district and the Special Ocean Parkway District, the development of a three-story Use Group 3 school that does not comply with applicable bulk regulations pertaining to floor area, floor area ratio, open space, lot coverage, front yards, side yards and off-street loading regulations, contrary to ZR §§ 23-142, 23-45, 23-464 and 113-22, *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 5, 2017"-Twelve (12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 6,341 square feet of floor area (3.15 FAR), a minimum of 8.5 percent open space, a maximum of 91.5 percent lot coverage, no front yards and at least one side yard with a minimum width of 4'-2.5";

THAT windows at the exterior stairs shall not be enclosed, so long as such condition is approved by DOB and if DOB should require their enclosure, the windows at the exterior stairs shall be covered with perforated metal screens, as indicated on the plan detail as found on sheets No. 04 of 10 of the Board-approved plans;

THAT buses shall be parked off-site when not in use at

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709 Chester Street, Brooklyn;

THAT the relocation of off-site bus parking from 709 Chester Street shall require prior letter approval by the Board;

THAT upon the completion of construction, the applicant contact DOT Brooklyn Borough Engineer for a final assessment to determine if a school loading zone is warranted and on which street it should be located;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## 22-15-BZ

### CEQR #15-BSA-152K

APPLICANT – Simons & Wright LLC, for 219 26<sup>th</sup> Street, LLC, owner.

SUBJECT – Application February 5, 2015 – Variance (72-21) to proposed to construct a residential building on a small lot at premises, located in an M1-1D zoning district, contrary to (Section 42-00) not permitted as of right.

PREMISES AFFECTED – 219 26<sup>th</sup> Street, Block 655, Lot 55, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta .....1

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 9, 2015, acting on DOB Application No. 320968805, reads in pertinent part:

The proposed construction of a building with residential use is not permitted as-of-right in a M1-1D zoning district and is contrary to Section 42-00 (use) of the Zoning Resolution . . .

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an M1-1D zoning district, the development of a three-story plus cellar three unit residential building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this

application on September 27, 2016, after due notice by publication in *The City Record*, with continued hearings on January 10, 2017, and March 28, 2017, and then to decision on December 5, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and the surrounding neighborhood; and

WHEREAS, Community Board 7, Brooklyn, recommends approval of this application, stating that, though the Board is typically very protective of its manufacturing zones, Board Members believed that this site was appropriate for a variance because of its previous residential use and similar non-conforming properties on the block; and

WHEREAS, the Board was also in receipt of five form consents to the application and four form objections to the application; and

WHEREAS, the subject site is located on the north side of 26th Street, between Fourth Avenue and Fifth Avenue, in an M1-1D zoning district, in Brooklyn; and

WHEREAS, the site has approximately 26 feet of frontage along 26th Street, a depth of 60 feet at the west lot line and 63 feet at the east lot line, 1,603 square feet of lot area and is currently occupied by a two story plus basement residential building that has been vacant for at least two years; and

WHEREAS, the applicant originally proposed a three-story plus basement four unit residential building with 3,640 square feet of floor area, a floor area ratio (“FAR”) of 2.27, a building height of 35 feet, a rear yard varying in depth from 24’-1’ to 21’-8”, no side yards and a 3’-8” deep front yard; and

WHEREAS, in response to the Board’s comments, the applicant revised the application and now proposes to redevelop the site with a three-story plus cellar three unit residential building with 3,120 square feet of floor area (1.95 FAR), a height of 30 feet and a rear yard that measures approximately 20’-5” at the west lot line and 22’-11” at the east lot line; and

WHEREAS, pursuant to ZR § 42-00, residential use is not permitted within an M1-1D zoning district, therefore, the applicant sees the subject relief; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the small size and shallow depth of the site are unique physical conditions that create a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations; and

WHEREAS, in support of this contention, the applicant submitted a study of sites located within 1,000 feet of subject site and an M1-1 zoning district (the “Study Area”) concluding that, of the 313 sites in the Study Area, four lots (one percent) have 2,000 square feet or less of lot area, a depth of 65 feet or less and are not occupied by either an existing non-conforming residential use or a conforming manufacturing, industrial or commercial building; and

WHEREAS, upon learning that the subject site was previously held in common ownership with Lot 56, located

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immediately to the west of the subject site and having a depth of 58 feet at its west lot line and 60 feet at the lot line it shares with the subject site, the Board requested an alternative analysis to establish that the sale of Lot 56 did not create the hardship herein complained of; and

WHEREAS, in response, the applicant submitted an alternative analysis of the Study Area, considering lots having 3,100 square feet or less of lot area (Lots 55 and 56, combined, have a total lot area of 3,035 square feet) and again concluding that there are only four lots (one percent) having 3,100 square feet or less of lot area and a depth of 65 feet or less that are not occupied by either an existing non-conforming residential use or a conforming manufacturing, industrial or commercial building; and

WHEREAS, all four of those lots are under common ownership with and used in connection with one or more adjacent lots, thereby distinguishing them from the subject site, which has not been held in common ownership with any adjoining lot since at least 1985, when Lot 56 was sold to the owner of Lot 57, located immediately to its west; and

WHEREAS, accordingly, the Board finds that the small size and shallowness of the subject site are unique physical conditions that create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, in satisfaction of the (b) finding, the applicant submits that there is no reasonable possibility that a conforming development at the subject site will bring a reasonable return and, in support of that contention, submitted a financial analysis for (1) a one story industrial building across Lots 55 and 56 having 3,082 square feet of floor area; (2) a one-story industrial building on the subject lot only, having 1,603 square feet of floor area; (3) a three-story residential building with 2,639 square feet of floor area and three one-bedroom units (the "Lesser Variance"); and (4) the subject proposal, which was evaluated assuming three two-bedroom units; and

WHEREAS, the Lesser Variance was developed to be consistent with the bulk parameters set forth in ZR § 43-61, which apply to any development authorized by the City Planning Commission pursuant to ZR § 42-47 (Residential Uses in M1-1D through M1-5D Districts); and

WHEREAS, the financial analyses submitted with the application conclude that only the subject proposal would generate a reasonable return, approximately 0.5 percent; and

WHEREAS, upon review of the applicant's submissions, the Board finds that, in accordance with ZR § 72-21(b), due to the site's unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant states that the subject proposal will not substantially impair the appropriate use or development of adjacent properties and will not be detrimental to the public welfare in accordance with ZR § 72-21(c); specifically, the applicant submits that the site has historically been utilized as residential, that the existing building on the site, which will be demolished to

accommodate the subject proposal, is residential, that residential buildings exist to the east, west and rear of the subject site on the subject block, and that the opposite side of 26th Street (Block 658) is also substantially residential in character; and

WHEREAS, with regards to height, the applicant notes the reduction in the height of the proposed building from 35 feet to 30 feet, which is the same height as the existing residential building on the premises; and

WHEREAS, accordingly, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents, and the Board finds, that the hardship claimed as grounds for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant submits that the subject proposal is the minimum variance necessary to afford relief because it is the only scenario that provides a reasonable return; and

WHEREAS, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 15BSA152K, received November 14, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by letter dated August 9, 2017, the New York City Department of Environmental Protection ("DEP") states that, based on the results of the noise analysis performed as per the City Environmental Quality Technical Manual, it was determined that the proposed project would not result in any potential for significant adverse impacts in regards to noise; and

WHEREAS, by letter dated September 27, 2017, upon review of the September 2017 Revised Remedial Action Plan ("RAP"), DEP recommended that, upon completion of the project, a Professional Engineer certified Remedial Closure Report indicating that all remedial requirements have been properly implemented be submitted for review and approval; and

WHEREAS, by letter dated October 23, 2017, DEP concludes that, based on its review of a revised Air Toxic Analysis report, the proposed project would not result in any



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significant adverse air quality impact; and

WHEREAS, by a report dated June 16, 2015, the New York City Landmarks Preservation Commission states that the subject site is of neither architectural nor archaeological significance; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located in an M1-1D zoning district, the development of a three-story plus cellar residential building with three two-bedroom units, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received December 21, 2016”—Nine (9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 3,120 square feet of floor area (1.95 FAR), a maximum height of 30 feet and a maximum of three two-bedroom dwelling units; and

THAT upon completion of the project, a Professional Engineer certified Remedial Closure Report indicating that all remedial requirements have been properly implemented be submitted for review and approval by DEP;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## 2017-60-BZ

### CEQR #17-BSA-101M

APPLICANT – Law Office of Fredrick A. Becker, for Premier 644 Greenwich LLC, owner; Bright Horizons Children’s Center LLC, lessee.

SUBJECT – Application March 9, 2017 – Special Permit (§73-19) to allow for a Day Care Center (UG 3) (*Bright Horizons Child Care Center*) to be located on the first (1st) floor of an existing building contrary to ZR §42-00. M1-5 zoning district.

PREMISES AFFECTED – 111 Barrow Street, Block 603, Lot 37, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative: .....0

#### THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 7, 2017, acting on Alteration Application No. 123021247, reads in pertinent part:

“Community Facility Use (Use Group 3) Day Care Center is not permitted in M1-5 District as indicated in Section ZR 42-00”; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, in an M1-5 zoning district, the operation of a school, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on October 17, 2017, after due notice by publication in *The City Record*, and then to decision on December 5, 2017; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Barrow Street and Greenwich Street, in an M1-5 zoning district, in Manhattan; and

WHEREAS, the site has approximately 104 feet of frontage along Barrow Street, 100 feet of frontage along Greenwich Street, 10,130 square feet of lot area and is occupied by an eight-story, with cellar, mixed-use residential and community-facility building; and

WHEREAS, the applicant proposes to convert the first floor for use as a childcare center (the “School”) and thus seeks a special permit to allow the operation of a school in the subject zoning district, where schools are not permitted as of right; and

WHEREAS, as a preliminary matter, the applicant represents that the School meets the definition of “school” in ZR § 12-10 and states that the School will meet New York State licensing and related requirements; and

WHEREAS, reviewing the record, the Board finds that the School meets the “school” definition in ZR § 12-10 and

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that a special permit under ZR § 73-19 is accordingly available for such proposed use; and

WHEREAS, under ZR § 73-19(a), the applicant states that, within the neighborhood to be served by the School there is no practical possibility of obtaining a site of adequate size located in a district wherein it is permitted as of right, because appropriate sites in such districts are occupied by substantial improvements; and

WHEREAS, the applicant analyzed the School's programmatic needs, concluding that the School will educate approximately 96 children, ranging in age from infants to preschool age, that that accordingly there will be a need for three infant rooms with eight children in each, two toddler rooms with ten children in each, two pre-school rooms with 20 children in each and one additional room for twelve children, that there will be a full-time staff of 18 individuals, that the School will need a location that provides adequate egress with an accessible location at the ground floor level and that the School needs at least 7,560 square feet of floor area to meet its programmatic needs; and

WHEREAS, the applicant represents that the School has conducted a search for more than two years, considering 42 commercial sites, which all presented difficulties in terms of costs and lack of available space on the ground floor; and

WHEREAS, the applicant submits that the subject site will adequately meet the School's programmatic needs with sufficient floor area, egress, accessibility, outdoor recreation available nearby and feasible costs; and

WHEREAS, the Board makes the necessary finding under ZR § 73-19(a); and

WHEREAS, consistent with ZR § 73-19(b), the applicant represents that the School is located within 400 feet of the boundary of a district where the School is permitted as of right; and

WHEREAS, specifically, the applicant notes that the northern side of Barrow Street is within a C6-2 zoning district, that diagonally across Greenwich Street to the north is an R6 zoning district and that there is a C1-6A zoning district one-half block west; and

WHEREAS, the Board makes the required finding under ZR § 73-19(b); and

WHEREAS, the applicant states that, under ZR § 73-19(c), the School will achieve an adequate separation from noise, traffic and other adverse effects of the surrounding non-residence districts through the use of sound-attenuating exterior wall and window construction or by the provision of adequate open areas along the subject site's lot lines; and

WHEREAS, the applicant represents that the surrounding area contains a mix of residential and commercial uses with no particular heavy industry within the vicinity and no excessive noise or noxious fumes; and

WHEREAS, the Board finds that the requirements of ZR § 73-19(c) are met; and

WHEREAS, the applicant states that, under ZR § 73-19(d), traffic through Barrow Street and Greenwich Street can be controlled so as to protect children going to and from the School; and

WHEREAS, by letter dated November 6, 2017, the New York City Department of Transportation ("DOT") states that the School is not subject to DOT jurisdiction but that, once the School is ready to begin operations, the applicant may elect to coordinate with DOT to determine whether a loading zone is warranted; and

WHEREAS, in addition, the applicant submits that all of the students will arrive and depart accompanied by adults and that the School will supervise arrivals and departures to prevent vehicular hazards; and

WHEREAS, the Board makes the necessary finding under ZR § 73-19(d); and

WHEREAS, the applicant represents that the School will have a beneficial effect on the community and that there is adequate on-site storage for infant equipment and supplies and that the School will not have any adverse effects on the neighborhood; 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 finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 17BSA101M, dated August 16, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts; and

WHEREAS, by letter dated September 20, 2017, the New York City Department of Environmental Protection ("DEP") states that the project would not result in significant noise impacts and that the existing window-wall attenuation would be sufficient to maintain an interior noise level below 45 dBA; and

WHEREAS, by correspondence dated October 10, 2017, the New York City Department of City Planning states that the project as proposed will not substantially hinder the achievement of any Waterfront Revitalization Program ("WRP") policy and is consistent with the WRP policies; and

WHEREAS, by letter dated October 24, 2017, DEP

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states that, based on prior on-site or surrounding area land uses, indoor air sampling shall be required for the on-site structure, that outdoor air samples should be collected simultaneously with indoor air samples to evaluate the potential influence, if any, of outdoor air on the indoor air sampled, that an Investigative Protocol/Work Plan summarizing the proposed indoor and outdoor air sampling activities shall be submitted to DEP for review and approval, that the Work Plan shall include a site map depicting the proposed indoor and outdoor air sampling locations, that the sampling shall be conducted in accordance with New York State Department of Health (“NYSDOH”) October 2006 Guidance for Evaluating Soil Vapor Intrusion in the State of New York, that the indoor and outdoor air samples shall be collected and analyzed by a NYSDOH Environmental Laboratory Approval Program certified laboratory for the presence of volatile organic compounds by United States Environmental Protection Agency Method TO-15 and that an Investigative Health and Safety Plan (“HASP”) shall also be submitted to DEP for review and approval; and

WHEREAS, DEP further states in the letter dated October 24, 2017, that ACM and LBP may be present at the subject site, that these materials shall be properly removed or managed prior to the start of any construction activities and disposed of in accordance with all federal, state and local regulations, that the Phase II Work Plan and HASP shall be submitted to DEP for review and approval prior to the start of any fieldwork; and

WHEREAS, by letter dated November 30, 2017, DEP recommends that the first floor be properly sealed such that there would be minimal transfer of vapors from the basement into the first floor, that the heating, ventilating and air conditioning system be operated to ensure frequent air exchange on the first floor, that the phone number of the Alternate Site Health and Safety Officer be included in the CHASP and that, at the completion of renovation and construction activities, an indoor air survey using a photoionization detector shall be conducted with the results of the survey submitted to DEP for review and approval; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board has determined that the evidence in the record supports the necessary findings under ZR §§ 73-19 and 73-03 and that the applicant had substantiated a basis to warrant exercise of discretion to grant.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *issue* 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 1997, as amended, and make each and every one of the required findings under ZR §§ 73-19 and 73-03 to *permit*, in an M1-5 zoning

district, the operation of a school, contrary to ZR § 42-00; *on condition* that all work, site conditions and operation of the site shall substantially conform to drawings filed with this application marked “Received August 2, 2017”- Four (4) sheets; and *on further condition*:

THAT at the completion of renovation and construction activities, an indoor air survey using a photoionization detector shall be conducted and the results of the survey shall be submitted to DEP for review and approval;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by December 5, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## 179-15-BZ

### CEQR #16-BSA-016K

APPLICANT – Moshe M. Friedman, P.E., for 127 Taaffe LLC, owner.

SUBJECT – Application August 10, 2015 – Variance (§72-21) to permit the development of a four-story, multifamily residential building (UG2) contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 129 Taaffe Place, Block 1897, Lot 6, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 12, 2015, acting on DOB Application No. 320624794 reads in pertinent part:

ZR 42-00: Proposed residential use in M1-1 district is not permitted; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an M1-1 zoning district, the development of a four-story plus cellar Use Group 2 multifamily residential building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this

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application on March 21, 2017, after due notice by publication in *The City Record*, with continued hearings on June 27, 2017, September 26, 2017, and then to decision on December 5, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, the Board was in receipt of two letters of consent to the application; and

WHEREAS, Community Board 3, Brooklyn, waived its recommendation on this application; and

WHEREAS, the subject site is located on the west side of Taaffe Place, between Park Avenue and Myrtle Avenue, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 33 feet of frontage along Taaffe Place, a depth of 75 feet, 2,500 square feet of lot area and is currently vacant; and

WHEREAS, the applicant proposes to develop the site with a four-story plus cellar eight-unit Use Group 2 residential building; and

WHEREAS, pursuant to ZR § 42-00, residential use is not permitted within an M1-1 zoning district and, thus, the applicant seeks the subject relief; and

WHEREAS, the applicant represents that the propose building will contain 5,971 square feet of floor area, a floor area ratio ("FAR") of 2.39, a 30 foot rear yard and a height of 40 feet; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the small size, narrow width and shallowness of the site are unique conditions that create a practical difficulty and unnecessary hardship in developing the site in conformance with the underlying district regulations; and

WHEREAS, based on a study of the 214 lots within 1,000 feet of the subject site within an M1-1 or M1-2 zoning district provided by the applicant (the "Study Area"), 5 lots (2 percent) contain 2,500 square feet or less of lot area, a depth of less than 75 feet, a width of less than 33 feet and are not developed with non-conforming residential uses; and

WHEREAS, of those 5 lots, 2 are utilized for industrial or manufacturing uses in connection with adjacent lots, 1 is utilized as a commercial parking lot in connection with an adjacent lot and 1 is developed with a commercial use, leaving 1 lot (1 percent), which is currently vacant, similarly plagued as the subject site; and

WHEREAS, the applicant notes that 105 lots within the Study Area (49 percent) are developed with non-conforming residential uses; and

WHEREAS, accordingly, the Board finds that the small size narrow width and shallowness of the subject site are unique physical conditions that create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, in satisfaction of the (b) finding, the applicant submits that there is no reasonable possibility that a conforming development at the subject site will bring a reasonable return and, in support of that contention, submitted a financial analysis for (1) a one story commercial building (the "AOR Development") and (2) the subject

proposal; and

WHEREAS, the financial analyses submitted with the application conclude that only the subject proposal would generate a reasonable return, approximately 1 percent; and

WHEREAS, upon review of the applicant's submissions, the Board finds that, in accordance with ZR § 72-21(b), that due to the site's unique physical conditions, there is no reasonable possibility that a development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the subject proposal will not substantially impair the appropriate use or development of adjacent properties and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); specifically, the applicant avers that the subject site has historically been developed with residential uses, that the subject block is primarily residential in character with only 1 conforming manufacturing use out of the total eighteen lots on the block located within an M1-1 zoning district with frontages on Taaffe Place, that the subject site is located approximately 118 feet immediately south of a New York City public school located on the same block and directly across Taaffe Place from a city park containing playgrounds and ball courts that runs the entire length of the block between Myrtle Avenue and Park Avenue that is located in an M1-1 zoning district; and

WHEREAS, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant represents that the Board finds that the hardship claimed as grounds for the variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the applicant submits that the subject proposal is the minimum variance necessary to afford relief because it is the only scenario that provides a reasonable return; and

WHEREAS, accordingly, the Board finds that the subject proposal is the minimum necessary to afford the owner relief; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 16BSA016K, dated January 26, 2017; 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; Open Space; Shadows; Historic and Cultural Resources; Urban Design and Visual Resources; Natural Resources; Hazardous Materials; Water and Sewer Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

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WHEREAS, by letter dated March 6, 2017, the New York City Department of Environmental Protection (“DEP”) states that it reviewed the January 2017 Remedial Action Plan (“RAP”) and the January 2017 Construction Health and Safety Plan (“CHASP”) and requested that the RAP incorporate a minimum of two (2) feet of clean fill/top soil that is imported from an approved facility/source and graded across for all landscaped/grass covered areas of the site not capped with concrete/asphalt, and upon the completion of clean fill/top soil investigation activities, the consultant submit a detailed clean soil report to DEP for review and approval prior to importation and placement on-site that includes, at a minimum, an executive summary, narrative of field activities, laboratory data and comparison of soil analytical results; and

WHEREAS, DEP additionally requested that, at the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure Report indicating that all remedial requirements have been properly implemented be submitted to DEP for review and approval for the proposed project; and

WHEREAS, by letter dated August 17, 2017, DEP states that, based on its review of the air quality section of the EAS and subsequent Air Quality report and supported materials, the proposed project would not result in any potential for significant adverse impacts in regards to air quality; and

WHEREAS, by a report dated June 9, 2015, the New York City Landmarks Preservation Commission states that the subject site is of neither architectural nor archaeological significance; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore, it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site located in an M1-1 zoning district, the development of a four-story plus cellar, eight unit Use Group 2 residential building, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received November 15, 2017”-Fifteen (15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 5,971 square feet of residential floor area (2.39 FAR) and a maximum of 8 dwelling units;

THAT upon completion of clean fill/top soil investigation activities, the applicant shall submit a detailed clean soil report to DEP for review and approval prior to importation and placement on-site that includes, at a minimum, an executive

summary, narrative of field activities, laboratory data and comparison of soil analytical results; and

THAT upon completion of remediation activities, a Professional Engineer certified Remedial Closure Report, indicating that all remedial requirements have been properly implemented be submitted to DEP for review and approval;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## 2017-102-BZ

### CEQR #17-BSA-113K

APPLICANT – Sheldon Lobel, P.C., for Abraham Chehebar, owner.

SUBJECT – Application April 5, 2017 – Special Permit (§73-622) to permit the enlargement of a single-family residence, contrary to floor area requirements (ZR §23-41); perimeter wall height (ZR §23-631); proposed front yard setback (ZR §23-45); and side yards (ZR §23-461). R2X (Special Ocean Parkway District).

PREMISES AFFECTED – 2015 East 5<sup>th</sup> Street, Block 7108, Lot 116, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta .....4

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 2, 2017, acting on Alteration Application No. 321460717, reads in pertinent part:

Proposed plans are contrary to ZR23-142 in that the proposed FAR exceeds the maximum permitted.

Proposed plans are contrary to ZR23-631 in that the proposed perimeter wall height exceeds the maximum permitted.

Proposed plans are contrary [t]o ZR23-461 in that the proposed side yard are . . . opposed to the required setbacks; and

WHEREAS, this is an application under ZR §§ 73-622

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and 73-03 to permit, in an R2X zoning district in the Special Ocean Parkway District, the enlargement of an existing residence that does not comply with zoning regulations for floor area ratio ("FAR"), perimeter wall height and side yards, contrary to ZR §§ 23-142, 23-631 and 23-461; and

WHEREAS, a public hearing was held on this application on September 26, 2017, after due notice by publication in *The City Record*, and then to decision on December 5, 2017; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 5th Street, between Avenue S and Avenue T, in an R2X zoning district in the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along East 5th Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by a three-story, with cellar, detached residence; 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 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; and
- (c) within Community District 10 in the Borough of Brooklyn, after October 27, 2016, only the following applications, Board of Standards and Appeals Calendar numbers 2016-4218-BZ, 234-15-BZ and 2016-4163-BZ, may be granted a special permit pursuant to this Section. In addition, the provisions of Section 73-70 (LAPSE of PERMIT) and paragraph (f) of Section 73-03 (General Findings Required for All Special Permit Uses and Modifications), shall not apply to such applications and such special permit shall automatically lapse and shall not be renewed if substantial construction, in compliance with the approved plans for which the special permit was granted, has not been completed within two years from the effective date of issuance of such special permit.

Such *enlargement* may create a new *non-compliance*, or increase the amount or degree of any existing *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 23-631, 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; and

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 detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing residence by increasing floor area from 3,400 square feet (0.85 FAR) to 4,582 square feet (1.1 FAR), maintaining the existing perimeter wall height of 21'-9" and maintaining the non-complying side yards with a width of 7'-5" to the north and 3'-5" to the south; and

WHEREAS, the applicant represents that, in the subject zoning district, floor area may not exceed 3,400 square feet (0.85 FAR) under ZR § 23-142, perimeter wall height may not exceed 21 feet under ZR § 23-631 and side yards must total 10 feet in width, each with a minimum width of two feet, under ZR § 23-461; and

WHEREAS, with respect to perimeter wall height, the applicant represents that the buildings adjacent to the subject

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site have existing, non-complying perimeter wall heights of 22'-8" and 22'-4"; and

WHEREAS, the applicant represents 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; and

WHEREAS, in support of this contention, the applicant submitted an FAR study concluding that 22 residences within a 400-foot radius have FARs greater than 0.85, 15 of which have FARs that exceed 1.0, ranging from 0.85 FAR to 1.59 FAR; and

WHEREAS, the applicant further submitted a streetscape study demonstrating that the proposed perimeter wall height is within the character of neighboring residences, all but one of which along the streetscape have perimeter heights taller than that proposed by the applicant; and

WHEREAS, the applicant also provided a photographic study illustrating the built character of the neighborhood and historic Sanborn maps indicating that the subject building has had the same footprint since 1930 with the existing side and front yards; and

WHEREAS, based upon its review of the record and inspections of the site and surrounding neighborhood, the Board finds that the proposed 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; and

WHEREAS, the applicant represents that the proposed enlargement of the existing building will be modest; and

WHEREAS, in response to questions from the Board at hearing, the applicant reduced the floor area of the proposed building to better coincide with other buildings on the subject block and corrected the calculations for perimeter wall height; 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 modification of bulk regulations is outweighed by the advantages to be derived by the community and finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed modification of bulk regulations will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA113K, dated April 5, 2017; and

WHEREAS, based upon its review of the record, the Board finds that the evidence supports the necessary findings under ZR § 73-622 and 73-03 and that the applicant has substantiated a basis for exercise of discretion to grant.

*Therefore it is Resolved*, that the Board of Standards

and Appeals does hereby *issue* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and make each and every one of the required findings under ZR § 73-622 and 73-03 to *permit*, in an R2X zoning district in the Special Ocean Parkway District, the enlargement of an existing residence that does not comply with zoning regulations for floor area ratio, perimeter wall height and side yards, contrary to ZR §§ 23-142, 23-631 and 23-461; *on condition* that all work and site conditions shall substantially conform to the drawings filed with this application marked "Received November 16, 2017"-Two (2) sheets and "December 5, 2017"-Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: floor area shall not exceed 4,582 square feet (1.1 FAR), perimeter wall height shall not exceed 21'-9", side yards shall have minimum widths of 7'-5" to the north and 3'-5" to the south;

THAT all existing exterior walls and wall joists indicated to remain undisturbed on the Board-approved plans shall remain or the special permit is void;

THAT the above conditions shall be noted on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by December 5, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## **128-15-BZ thru 130-15-BZ**

APPLICANT – Law Office of Steven Simicich, for John Massamillo, owner.

SUBJECT – Application May 29, 2015 – Variance (§72-21) to allow for the construction on a three family attached residential building (Use Group 2). R2/SHPD zoning district.

PREMISES AFFECTED – 680, 682 and 684 Van Duzer Street, Block 613, Lot(s) 95, 96 and 97, Borough of Staten Island.

## **COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M., for continued hearing.

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## 234-15-BZ

APPLICANT – Sarah Tadros Awad, for Nawal Tosson, owner.

SUBJECT – Application October 7, 2015 – Special Permit (§73-622) to permit the legalization of an enlargement and the conversion to a two family home of an existing single-family, semi-detached residential building contrary to floor area ZR 23-141 and perimeter wall height 23-631(b). R4-1 zoning district.

PREMISES AFFECTED – 1223 67<sup>th</sup> Street, Block 5760, Lot 70, Borough of Brooklyn.

### COMMUNITY BOARD #10BK

**ACTION OF THE BOARD** – Laid over to February 27, 2018, at 10 A.M., for adjourned hearing.

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## 275-15-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly S. Friedman, Esq., for Marymount School of New York, owner.

SUBJECT – Application December 22, 2015 – Variance (§72-21) proposed construction of a 12-story community facility building for the Upper Middle School and Upper School divisions of the Marymount School of New York contrary to underlying bulk regulations. R7-2 zoning district.

PREMISES AFFECTED – 115 East 97<sup>th</sup> Street aka 116 East 98<sup>th</sup> Street, Block 1625, Lot 7, Borough of Manhattan.

### COMMUNITY BOARD #11M

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M., for continued hearing.

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## 2016-4271-BZ

APPLICANT – Eric Palatnik, P.C., for 93 Amherst Street LLC, owner.

SUBJECT – Application October 21, 2016 – Special Permit (§73-622) for the enlargement of an existing one family home contrary to floor area, open space and lot coverage (ZR 23-141) and side yard (ZR 23-461). R3-1 zoning district.

PREMISES AFFECTED – 201 Hampton Avenue, Block 8727, Lot 30, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M., for adjourned hearing.

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## 2016-4340-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Flushing Point Holding, LLC, owner.

SUBJECT – Application November 23, 2016 – Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C4-2 zoning district.

PREMISES AFFECTED – 131-02 40<sup>th</sup> Road, Block 5066, Lot(s) 110-150, Borough of Queens.

### COMMUNITY BOARD #7Q

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M. for deferred decision.

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## 2017-190-BZ

APPLICANT – Fox Rothschild LLP, for Catherine Sheridan Housing Development Fund Company, Inc., owner.

SUBJECT – Application May 25, 2017 – Variance (§72-21) to permit the development of a 7-story building containing 92 affordable independent residences for seniors and a ground floor senior center contrary to ZR §§23-155 & 24-11 (maximum permitted FAR); ZR §24-33 (permitted obstruction in the required rear yards) and ZR §23-622 (maximum height and setbacks). R6B zoning district.

PREMISES AFFECTED – 23-11 31<sup>st</sup> Road, Block 569, Lot 17, Borough of Queens.

### COMMUNITY BOARD #1Q

**ACTION OF THE BOARD** – Laid over to January 30, 2018, at 10 A.M., for adjourned hearing.

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## REGULAR MEETING

TUESDAY AFTERNOON, DECEMBER 5, 2017

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta.

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## ZONING CALENDAR

### 2017-297-BZ

#### CEQR #18-BSA-057K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations, for Kerry Timmins, owner.

SUBJECT – Application November 9, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4-1 zoning district.

PREMISES AFFECTED – 19 Stanton Road, between Gunnison Court and Losee Terrace, Block 8800, Lot 94, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R4-1 zoning district, the reconstruction of a single-family detached residence in compliance with flood-resistant construction



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standards that does not comply with the zoning requirements for front yards, side yards, rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 64-A351, 23-461(a), 64-A352, 23-47, 64-A353, 23-142, 64-A311; and

WHEREAS, a public hearing was held on this application on December 5, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuild residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the west side of Stanton Road, between Losee Terrace and Gunnison Court, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage along Stanton Road, 55 feet of depth, 1,320 square feet of lot area and is occupied by a single-family detached residence; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-418-A, the Board granted a waiver of General City Law ("GCL") § 36 permitting the elevation or reconstruction of a single-family residence that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, inter alia, upon the reconstructed residence having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the residence being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the residence where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest windowsill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction of a two-story single-family detached residence with 13 feet of open space along the east lot line, 4 feet of open space along the south lot line, 8 feet of open space along the west lot line, 4 feet of open space along the north lot line, 575 square feet of open space and 56.5 percent lot coverage, contrary to

the zoning requirements for front yards, side yards, rear yards, open space and lot coverage; and

WHEREAS, at the subject site, front-yard, side-yard, rear-yard, open-space and lot-coverage requirements are set forth in ZR §§ 23-45, 64-A351, 23-461(a), 64-A352, 23-47, 64-A353, 23-142, 64-A311; and

WHEREAS, the subject site does not front a "street," as defined in ZR § 12-10, and is accessed, instead, by a private pathway, allowing ingress and egress to the surrounding public streets; and

WHEREAS, consequently the subject site lacks a "front lot line," a "front yard," a "rear lot line," a "rear yard" and "side yards," as those terms are defined in the same section and, therefore, proposes open space, in lieu of yards, along its lot lines and seeks waivers of the applicable yard regulations; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Sections 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modification of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with regulations for lot size, front

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yards, rear yards, side yards, open space and lot coverage, creates practical difficulties in complying with flood-resistant construction standards without the modification of the yard, open-space and lot-coverage requirements and that waiving the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA057K, dated November 9, 2017.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to *permit*, in an R4-1 zoning district, the reconstruction of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards, rear yards, open space and lot coverage, contrary to ZR §§ 23-45, 64-A351, 23-461(a), 64-A352, 23-47, 64-A353, 23-142, 64-A311; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received November 9, 2017"-Four (4) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a minimum of 13 feet of open space along the east lot line, a minimum of 4 feet of open space along the south lot line, a minimum of 8 feet of open space along the west lot line, a minimum of 4 feet of open space along the north lot line, with exterior balconies, eaves, gutters and stairs permitted in the required open space, a minimum of 575 square feet of open space and a maximum of 56.5 percent lot coverage, as illustrated on the Board-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11

of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by December 5, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## 2017-302-BZ

### CEQR #18-BSA-062Q

APPLICANT – NYC Mayor's Office of Housing Recovery Operations, for Kenneth Rudden, owner.

SUBJECT – Application November 9, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R4 zoning district.

PREMISES AFFECTED – 174A & 176A Beach 111<sup>th</sup> Street, Rockaway Park, westerly of intersection of Beach 111<sup>th</sup> Street and Ocean Promende, Block 16183, Lot 62, Borough of Queens.

### COMMUNITY BOARD #14Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R4 zoning district, the development of two two-family detached residences in compliance with flood-resistant construction standards that does not comply with the zoning requirements for minimum required distance between buildings, contrary to ZR § 23-711; and

WHEREAS, a public hearing was held on this application on December 5, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of

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the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City's effort to rebuild residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side of Beach 111 Street, between Rockaway Beach Boulevard and Ocean Promenade, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 60 feet of frontage along Stanton Road, 100 feet of depth, 6,000 square feet of lot area and was formerly occupied by six single-family detached residences prior to Superstorm Sandy; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the development of two two-family detached residences with a distance of 11'-10" between the buildings, contrary to minimum required distance between buildings; and

WHEREAS, at the subject site, the requirement for minimum distance between buildings is set forth in ZR § 23-711; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Sections 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

(a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant*

*construction standards*;

- (b) that any modification of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area; and

WHEREAS, in accordance with ZR § 64-92(a), the need to develop the two-family residences creates practical difficulties in complying with flood-resistant construction standards without the modification of the requirement for minimum distance between buildings and that waiving the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify the maximum permitted height in the underlying district; thus, the finding pursuant to ZR § 64-92(b) is inapplicable in this case; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA062Q, dated November 20, 2017.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure *and* issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to *permit*, in an R4 zoning district, the development of two two-family detached residences in compliance with flood-resistant construction standards that does not comply with the zoning requirements for minimum required distance between buildings, contrary to ZR § 23-711; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received November 20, 2017"-Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the subject buildings

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shall be as follows: a minimum distance of 11'-10" shall be provided between the subject buildings, as illustrated on the Board-approved plans;

THAT each building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT each building shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of each building where the foundation is not closed shall have a floor assembly that provides a two-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by December 5, 2021;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by DOB and all other relevant agencies by December 5, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 5, 2017.

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## **2016-4468-BZ**

APPLICANT – Bryan Cave LLP, for 27 East 61<sup>st</sup> Street, LLC, owner.

SUBJECT – Application December 19, 2016 – Variance (§72-21) to permit the conversion and horizontal enlargement of an existing six-story mixed use building into a six-story commercial (UG 6) building contrary to ZR §33-122 (Maximum Permitted Floor Area). C5-1 (Madison Avenue Preservation District).

PREMISES AFFECTED – 27 East 61<sup>st</sup> Street, Block 1376, Lot 24, Borough of Manhattan.

## **COMMUNITY BOARD #8M**

**ACTION OF THE BOARD** – Laid over to March 6, 2018, at 10 A.M., for continued hearing.

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*Carlo Costanza, Executive Director*

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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 102, No. 51

December 20, 2017

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### DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

VACANT

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**2017-311-BZ**

211 East 8 Road, Located at the corner of intersection of East 8 Road and Lanark Road, Block 15458, Lot(s) 0008, Borough of **Queens, Community Board: 4**. Special Permit (§64-92 & 64-A71) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district. R3-A district.

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**2017-312-BZ**

18 Webers Court, Located between Bragg Street and Emmons Avenue, Block 08815, Lot(s) 0138, Borough of **Brooklyn, Community Board: 15**. Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R2 zoning district. R-5/C2-2 district.

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**2017-313-BZ**

853 Kent Avenue, Located at the east side of Kent Avenue distant 225' northerly from the intersection of Kent Avenue and Myrtle Avenue, Block 01898, Lot(s) 0007, Borough of **Brooklyn, Community Board: 3**. Variance (§72-21) to permit the development of a 2-family dwelling contrary to ZR §42-10. M1-1 zoning district. M1-1 district.

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**2017-314-BZ**

1571 McDonald Avenue, Located on the midblock lot on McDonald Avenue between Avenue N and Avenue M, Block 06564, Lot(s) 0060, Borough of **Brooklyn, Community Board: 12**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment contrary to ZR §32-10. C2-3/R5 (Special Ocean Parkway District) R5/C2-3 district.

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**2017-315-BZ**

2030 Eastchester Road, Located between Seminole Street and Wilkinson Avenue, Block 04218, Lot(s) 0009, Borough of **Bronx, Community Board: 11**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Dolphin Fitness Club) located on the first floor and mezzanine area of the subject building contrary to ZR §42-10. M1-1 zoning district. M1-1 district.

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**2017-316-A**

95 Androvette Street, Located on the northeast corner of intersection of Androvette Street and Kreisler Street, Block 07407, Lot(s) 0072, Borough of **Staten Island, Community Board: 3**. Proposed development of a one-story and mezzanine warehouse building (UG 16B) not fronting on a mapped street contrary to General City Law §36. M1-1 (Special Richmond District) M1-1(SRD) district.

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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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## REGULAR MEETING JANUARY 30, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 30, 2018, 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

#### 217-96-BZ

APPLICANT – Eric Palatnik, P.C., for Silverbell Investment Co., Inc., owner; Enterprise Rent-A-Car, lessee. SUBJECT – Application October 27, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a car rental facility (*Enterprise Rent-A-Car*) (Use Group 8) which expired on October 7, 2017. C1-2 (R2) zoning district.

PREMISES AFFECTED – 165-01 Northern Boulevard, Block 5340, Lot 8, Borough of Queens.

#### COMMUNITY BOARD #7Q

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#### 143-01-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Thomas R. Birchard, owner.

SUBJECT – Application February 21, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the legalization of a veterinary clinic (Use Group 6B) located at the cellar level contrary to Z.R. §22-00 which expired on November 12, 2007 and to permit the legalization of the enlargement of the use into the front, eastern unit on the first floor; Extension of Time to Obtain a Certificate of Occupancy which expired on November 12, 2003; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 348 East 9<sup>th</sup> Street, Block 450, Lot 28, Borough of Manhattan.

#### COMMUNITY BOARD #3M

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## REGULAR MEETING JANUARY 30, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 30, 2018, 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

#### 2016-4217-BZ

APPLICANT – Eric Palatnik, P.C., for Bartow Holdings, LLC, owner.

SUBJECT – Application June 13, 2016– Re-Instatement (§11-411) of a variance which permitted the operation of an Automotive Service Station with accessory uses (UG 16B), which expired on September 29, 2008; Amendment (§11-412) to permit structural alterations to the building; Amendment to permit Automotive Laundry; Waiver of the Rules. R3A zoning district.

PREMISES AFFECTED – 1665 Bartow Avenue, Block 4787, Lot 28, Borough of Bronx.

#### COMMUNITY BOARD #12BX

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#### 2017-39-BZ

APPLICANT – Mango & Lacoviello, LLP, for UBA 90 Franklin LLC, owner; Tracy Anderson Method, lessee.

SUBJECT – Application February 8, 2017 – Special Permit (§73-36) to permit the legalization of the operation of a Physical Culture Establishment (*The Tracy Anderson Method*) to be operated within the cellar and ground floor with mezzanine of an existing building contrary to ZR §32-10. C6-2A (Tribeca East Historic District).

PREMISES AFFECTED – 271 Church Street, Block 175, Block 7504, Borough of Manhattan.

#### COMMUNITY BOARD #1M

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*Carlo Costanza, Executive Director*



# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, DECEMBER 12, 2017  
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.

**SPECIAL ORDER CALENDAR**

**374-71-BZ**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 205-11 Northern Boulevard LLC, owner.

SUBJECT – Application May 7, 2014 – Extension of Term of a previously granted Variance (72-21) for the continued operation of an automobile showroom with open display of new and used cars (UG16) with accessory customer and employee parking in a previously unused vacant portion of the premises which expired on July 18, 2011. C2-2 (R3-2) zoning district.

PREMISES AFFECTED – 205-11 Northern Boulevard, Block 06269, Lot 20, Borough of Queens.

**COMMUNITY BOARD #11Q**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT –**

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

**THE RESOLUTION –**

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a variance, previously granted by the Board, which expired July 18, 2011; and

WHEREAS, a public hearing was held on this application on May 3, 2016, after due notice by publication in *The City Record*, with continued hearings on August 23, 2016, and October 17, 2017, and then to decision on December 12, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown, former Vice-Chair Hinkson and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, Queens, recommends disapproval of this application, citing concerns with maintenance of the site, the presence of debris, the absence of bollards, parking on the sidewalk and blocking traffic; and

WHEREAS, New York State Senator Tony Avella submitted testimony in opposition to this application; and

WHEREAS, Auburndale Improvement Association, Inc. submitted testimony submitted testimony apprising the Board of site conditions and provided evidence regarding the applicant’s compliance with conditions and safeguards required by the Board; and

WHEREAS, certain residents of the neighborhood appeared in opposition, citing concerns with maintenance of

the site and business operations; and

WHEREAS, the subject site is located on the northwest corner of Northern Boulevard and the Clearview Expressway, with additional frontage on 205th Street, partially in an R3-2 zoning district and partially in an R3-2 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 120 feet of frontage along Northern Boulevard, 240 feet of frontage along the Clearview Expressway, 80 feet of frontage along 205th Street, 16,283 square feet of lot area and is occupied by an automobile showroom with open display of new and used cars and an accessory parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 15, 1975, when, under the subject calendar number, the Board granted a variance to permit the discontinuance of an automotive service station, the extension of sales and display of new and used cars and the expansion of the accessory parking area into the residence district on condition that the variance be for a term of five (5) years, expiring July 15, 1980, that there be no further variance considered within the residence district and that parking be restricted to employees only; and

WHEREAS, on February 15, 1977, under the subject calendar number, the Board amended the variance to add that the lubricatorium and auto repairs in Use Group 16 may be omitted and auto showroom in Use Group 9 may be substituted therefore and corrected the term of years to be for five (5) years from the date of the amended resolution, expiring February 15, 1982, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on July 13, 1982, under the subject calendar number, the Board granted an extension of term for five (5) years, expiring February 15, 1987, on condition that no cars shall be parked illegally on the sidewalk area on Northern Boulevard or on Clearview Expressway and that a new certificate of occupancy be obtained within one (1) year, by July 13, 1983; and

WHEREAS, on November 17, 1987, under the subject calendar number, the Board granted an extension of term for five (5) years, expiring February 15, 1992, for the automobile showroom and offices and denied an extension of term of the variance for that portion of the lot designated for employee parking on condition that the lot formerly designated for employee parking remain vacant, fenced and locked, unless the lot is used or developed for a conforming use, that the entire site be maintained free and clear of debris and graffiti, that no cars be parked on the sidewalk areas adjacent to the site, that there be no security dogs used on the site, that all dumpsters and refuse containers be kept closed and located on the site, that all of these conditions appear on the certificate of occupancy and that a new certificate of occupancy be obtained within one (1) year, by November 17, 1988; and

WHEREAS, on December 7, 1993, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring February 15, 2002, on condition that the curb cut and gate leading to the vacant portion of the lot be removed and maintained in compliance with the proposed

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drawings; and

WHEREAS, on July 18, 2006, under the subject calendar number, the Board granted an extension of term of the variance for five (5) years, expiring July 18, 2011, and amended the variance to permit the restoration of the previously approved accessory parking use to be limited to employee and customer parking on condition that a maximum of 22 automobiles be parked within the sale and display lot, that a maximum of 16 automobiles be parked within the accessory parking lot, that the use of the accessory parking lot be limited to employees and customers, that the accessory parking lot be locked and empty during non-business hours, that all exterior lighting shall be directed away from residences, that 3'-0" tall bollards be installed and maintained along the Northern Boulevard frontage of the site, that a 3'-0" tall wrought iron fence be installed and maintained along the two corners of the site and that the above conditions be listed on the certificate of occupancy; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term; and

WHEREAS, in addition, the applicant requests a waiver of the Board's Rules of Practice and Procedure to permit the filing for an extension of term more than two years after the expiration of the term; and

WHEREAS, in response to community concerns, the Board notes at the outset that an applicant's failure to comply with any of the Board's conditions and safeguards constitutes a violation of the Zoning Resolution that may result in the revocation of a building permit or certificate of occupancy or other appropriate enforcement action by the Department of Buildings; and

WHEREAS, in response to questions from the Board, the applicant submits that site improvements have been completed, including installation of an opaque acoustic fence, installation of new plantings, striping of the parking lot, a reduction in the number of spaces on site, replacement of the dumpster, installation of acoustic screens for HVAC equipment and removal of excess banners; and

WHEREAS, the applicant further represents that test driving of vehicles only occurs along Northern Boulevard, not in residential side streets, that inventory other than show models is stored off site, that preparation of vehicles for delivery occurs off site and that no car repairs occur at the subject site; and

WHEREAS, in response to community concerns, at hearing, the Board noted potential open issues involving broken asphalt and missing bollards; and

WHEREAS, the applicant speculated that bollards may have temporarily been removed during operations but noted that a condition that the bollards remain in place would be an appropriate condition should this application be granted, and the applicant further stated that it was unclear which asphalt was in disrepair but noted that some asphalt had been broken up to provide for landscaping at the site; and

WHEREAS, the Board finds that general conditions that asphalt and sidewalks be maintained would be

appropriate safeguards, given the amount of work that has already been performed to improve the site over the course of this application; and

WHEREAS, however, the Board notes that, because of the problematic history of the subject site, the term of this grant has been limited and that any future failure to comply with the Board's conditions shall be considered prior to any further extension of term; and

WHEREAS, nothing herein shall be understood to prevent any and all appropriate enforcement action by the Department of Buildings against the subject site should any non-compliance occur prior to the expiration of term; and

WHEREAS, based upon its review of the record and personal inspections of the site, the Board finds that the requested extension of term is appropriate with certain conditions and safeguards as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and does hereby *reopen* and *amend* the resolution, dated July 15, 1975, so that as amended this portion of the resolution shall read: "to *grant* an extension of term for ten (10) years from the expiration of the last term, expiring July 18, 2021; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked 'Received December 11, 2017'-Two (2) sheets; and *on further conditions*:

THAT the landscaping, fencing and 100-percent opaque acoustic fencing conditions along the residential lot lines shall be maintained in accordance with the Board-approved plans;

THAT the acoustic screening around the HVAC system shall be maintained in accordance with the Board-approved plans;

THAT the asphalt paving, sidewalks and striping shall be maintained and replaced as necessary;

THAT there shall be a daily cleaning of debris in and around the property;

THAT the site shall be maintained free of graffiti at all times;

THAT trash shall be stored exclusively in the dumpster area shown on the Board-approved plans;

THAT dumpsters shall be emptied three times per week;

THAT landscaping materials shall be replaced and trimmed as necessary to provide a dense screen at least six (6) feet high;

THAT the gate to the parking area shall be locked, except during business hours;

THAT there shall be no storage of cars for sale or car repair permitted on site;

THAT vehicle preparation prior to sale shall occur off site;

THAT cars shall be available for pickup by purchasers for no more than seven (7) hours;

THAT no overnight car storage shall be permitted;

THAT only 20 display cars shall be permitted on site;

THAT 16 parking spaces accessed by Clearview Expressway shall be permitted for employee and visitor

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parking only;

THAT business hours shall be limited to Monday to Thursday, 9:00 a.m. to 9:00 p.m., Friday and Saturday, 9:00 a.m. to 7:00 p.m., and Sunday, 11:00 a.m. to 5:00 p.m.;

THAT bollards shall be in place at all times except to remove or install cars;

THAT no business shall be conducted on the sidewalk;

THAT no illegal parking on the sidewalk;

THAT no test drives shall be permitted on residential side streets;

THAT all test drives may proceed on Northern Boulevard;

THAT besides the 20 display cars stored on site, no inventory shall be parked on Northern Boulevard;

THAT there shall be employed a site manager to police the site and ensure compliance with the Board's conditions and safeguards;

THAT the site manager shall provide and post a telephone number for complaints from neighbors;

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 certificate of occupancy shall be obtained within one (1) year, by December 12, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted."

Adopted by the Board of Standards and Appeals, December 12, 2017.

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## 36-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 65-75 Owners Corp., owner; World Gym, Inc., lessee.

SUBJECT – Application December 5, 2014 – Extension of Term and Waiver (§72-01): to extend the term of a previous grant permitting a physical culture establishment (*World Gym*) within an existing cellar and one-story commercial building. C1-2/R3-1 zoning district.

PREMISES AFFECTED – 65-75 Woodhaven Boulevard aka 85-01 66<sup>th</sup> Avenue, Block 3139, Lot 1, Borough of Queens.

## COMMUNITY BOARD #6Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure and an extension of term of a variance, previously granted by the Board, which expired September 16, 2002; and

WHEREAS, a public hearing was held on this application on April 25, 2017, after due notice by publication in *The City Record*, with a continued hearing on June 20, 2017, and then to decision on December 12, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is located on the northeast corner of Woodhaven Boulevard and 66th Avenue, in an R3-1 (C1-2) zoning district, in Queens; and

WHEREAS, the site has approximately 143 feet of frontage along Woodhaven Boulevard, 41 feet of depth, 5,683 square feet of lot area and is occupied by a one-story, with cellar, commercial building originally designed and built as a conforming establishment for the sale of athletic equipment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 16, 1997, when, under the subject calendar number, the Board granted a variance to permit a physical culture establishment ("PCE") for a term of five (5) years, expiring September 16, 2002, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board, that the hours of operation be limited to Monday through Saturday, 6:00 a.m. to 11:00 p.m., and Sunday, 8:00 a.m. to 8:00 p.m., that the operator posts a sign, conspicuously displayed in the PCE, instructing patrons to park on Woodhaven Boulevard and not on the residential side streets, that the above conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained within one (1) year, by September 16, 1998; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term; and

WHEREAS, in addition, the applicant requests a waiver of the Board's Rules of Practice and Procedure to permit the late filing of this application; and

WHEREAS, the applicant represents that the facility remains in operation with no changes to the hours of operation and with 10,742 square feet of floor space as follows: 5,440 square feet of floor space in the cellar and 5,279 square feet of floor area on the first floor; and

WHEREAS, in response to questions from the Board, the applicant provided additional information regarding accessibility, elevator maintenance, installation of the sprinkler system and parking instructions and clarified that no massage services are provided in the PCE; and

WHEREAS, the Board notes that, because of the period of time that the PCE has operated without a variance,

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the extension of term granted herein has been significantly reduced; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated September 16, 1997, so that as amended this portion of the resolution shall read: “to *grant* an extension of term for twenty-four (24) months from the date of this grant, expiring December 12, 2019; *on condition* that all work, site conditions and operation of the site shall substantially conform to drawings filed with this application marked ‘Received June 2, 2017’- seven (7) sheets; and *on further condition*:

THAT the term of the variance shall be limited to twenty-four (24) months from the date of this grant, expiring December 12, 2019;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT the hours of operation shall be limited to Monday through Saturday, 6:00 a.m. to 11:00 p.m., and Sunday, 8:00 a.m. to 8:00 p.m.;

THAT the operator shall post a sign, conspicuously displayed in the PCE, instructing patrons to park on Woodhaven Boulevard and not on the residential side streets;

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be installed in the entire PCE space, as indicated on the Board-approved plans, within twenty-four (24) months, by December 12, 2019;

THAT the PCE shall remain fully sprinklered, as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

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 certificate of occupancy shall be obtained within twenty-four (24) months, by December 12, 2019;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 12, 2017.

## 223-07-BZ

APPLICANT – Bryan Cave LLP, for Bliss World LLC, owner.

SUBJECT – Application February 17, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Bliss World*) on the third floor in an existing commercial building which expires on June 15, 2017. C5-3 Special Midtown District.

PREMISES AFFECTED – 12 West 57<sup>th</sup> Street, Block 1272, Lot 47, Borough of Manhattan.

## COMMUNITY BOARD #5M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of a term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on June 15, 2017; and

WHEREAS, a public hearing was held on this application on December 12, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 5, Manhattan, waived its recommendation for this application; and

WHEREAS, the subject site is located on the south side of West 57<sup>th</sup> Street, between Avenue of the Americas and Fifth Avenue, in a C5-3 zoning district and the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 72 feet of frontage along West 57<sup>th</sup> Street, a depth of 100 feet, 7,230 square feet of floor area and is occupied by a ten-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 8, 2008, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR §§ 73-36 and 73-03, legalizing a physical culture establishment on the third floor of the subject building on condition that the term of the special permit expires on June 15, 2017, that there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board, all massages be performed by New York State licensed massage therapists, the aforementioned conditions appear on the certificate of occupancy and fire safety

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measures are installed and/or maintained as shown on the Board-approved plans; and

WHEREAS, the previous term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, Bliss Spa, as previously approved by the Board; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term and the Board finds that the circumstances warranting the original grant still obtain; and

WHEREAS, accordingly, the Board finds that a ten (10) year extension of the term of the special permit 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 January 8, 2008, 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, expiring June 15, 2027, *on condition*

THAT the term of this grant shall expire on June 15, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT 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 shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all 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, December 12, 2017.

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## 169-09-BZ

APPLICANT – Akerman, LLP, for St. George Gardens LLC, owner.

SUBJECT – Application August 9, 2017 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the development of a multi-family residential building, contrary to floor area (§23-145), rear yard (§23-47), height and setback (§23-633), rear setback (§23-663), minimum distance between windows and lot lines (§23-861), and maximum number of dwelling units (§23-22) regulations which expired on August 23, 2015; Waiver of the Rules. R8 zoning district.

PREMISES AFFECTED – 186 Saint George’s Crescent, Block 3313, Lot 12, Borough of Bronx.

## COMMUNITY BOARD #1BX

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of time to complete construction, which expired August 23, 2015; and

WHEREAS, a public hearing was held on this application on December 12, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of Saint Georges Crescent, between East 206th Street and Van Cortland Avenue East, in an R8 zoning district, in the Bronx; and

WHEREAS, the site has approximately 71 feet of frontage along Saint Georges Crescent, depths varying from 39’-11” to 117’-6”, 7,016 square feet of lot area and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 23, 2011, when, under the subject calendar number, the Board granted a variance to permit a ten-story residential building with 56 dwelling units, which does not comply with the underlying zoning regulations regarding the maximum permitted floor area ratio (“FAR”), minimum rear yard depth, minimum street wall setback, minimum rear yard line setback and minimum distance between legally required windows and side lot lines on condition that the following shall be the bulk parameters of the building: a maximum floor area of 46,750 sq. ft. (6.66 FAR), a base height of 77’-0”, a total height of 96’-10”, no rear yard along a portion of the northern rear lot line, a minimum front setback of 10’-0” above the base height of 77’-0”, no setback along the northern rear lot line, a minimum distance of 20’-4” between the windows located along the southeast side of the building and the southeastern lot line, and 56 dwelling units, as illustrated on the BSA-

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approved plans; that prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from the New York City Landmarks Preservation Commission (“LPC”) a Notice to Proceed; and that prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from LPC a Notice of Satisfaction; and

WHEREAS, the time to complete construction having expired, the applicant seeks an extension of time; and

WHEREAS, in addition, the applicant requests a waiver of the Board’s Rules of Practice and Procedure to permit the late filing of this application; and

WHEREAS, by letter dated October 28, 2014, and in accordance with the Restrictive Declaration, executed by St. George’s Crescent, LLC and recorded on July 13, 2011, against the subject site, LPC issued a Notice to Proceed with Archaeological Monitoring and Construction stating that portions of the site will be archaeologically monitored during construction; and

WHEREAS, based upon its review of the record, the Board finds that an extension of time to complete construction is appropriate with certain conditions as set forth below.

*Therefore it is Resolved*, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated August 23, 2011, so that as amended this portion of the resolution shall read: “to *grant* an extension of time to complete construction for four (4) years, expiring December 12, 2021; *on condition* that all work and site conditions shall substantially conform to the Board-approved plans; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 46,750 sq. ft. (6.66 FAR), a base height of 77’-0”, a total height of 96’-10”, no rear yard along a portion of the northern rear lot line, a minimum front setback of 10’-0” above the base height of 77’-0”, no setback along the northern rear lot line, a minimum distance of 20’-4” between the windows located along the southeast side of the building and the southeastern lot line, and 56 dwelling units, as illustrated on the Board-approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from the New York City Landmarks Preservation Commission (“LPC”) a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from LPC a Notice of Satisfaction;

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 certificate of occupancy shall be obtained within four (4) years, by December 12, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 12, 2017.

## 634-84-BZ

APPLICANT – Law Office of Lyra J. Altman, for Kol Israel Congregation and Center, owner.

SUBJECT – Application June 3, 2016 – Amendment of a previously approved Variance (§72-21) which permitted the erection of a two (2) story and cellar community facility (UG 4) building which provided less than the required front yard and required parking. The amendment seeks to permit the enlargement of the synagogue (*Kol Israel Congregation & Center*) contrary to floor area, lot coverage, open space and accessory off-street parking. R2 zoning district.

PREMISES AFFECTED – 2501-2509 Avenue K aka 3211 Bedford Avenue, Block 7607, Lot(s) 6 & 8, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to March 20, 2017, at 10 A.M., for continued hearing.

## 737-86-BZ

APPLICANT – Rampulla Associates Architects, LLP, for AGA, LLC., owner.

SUBJECT – Application June 30, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the enlargement of an existing retail store (UG 6) which expired on June 2, 2017; R3-1 (Special Richmond District).

PREMISES AFFECTED – 3304 Amboy Road, Block 4964, Lot 1, Borough of Staten Island.

## COMMUNITY BOARD # 3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative: .....0

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M. for decision, hearing closed.

# MINUTES

## 62-96-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 200 Madison Owner LLC, owner; TSI East 36 LLC dba New York Sports Club, lessee.

SUBJECT – Application April 12, 2017 – Extension of Term of a previously granted Special Permit (§73-36) for the operation of a physical culture establishment (*New York Sports Club*) which expired on February 4, 2017; Waiver of the Rules. C5-2 zoning district.

PREMISES AFFECTED – 200 Madison Avenue, Block 865, Lot 14, Borough of Manhattan.

### COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative: .....0

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M. for decision, hearing closed.

## 21-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aquila Realty Company, Inc., owner; Hutch Restaurant Associates LP dba Burger Brother, lessee.

SUBJECT – Application October 13, 2015 – Extension of Term & Amendment (73-243) request an extension of the term of a previously granted special permit that legalized an eating and drinking establishment with a drive-through at the subject premises and an Amendment to approved hours of operation. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roebling Avenue aka 1590 Hutchinson River Parkway, Southeasterly corner of Roebling Avenue and Hutchinson River Parkway, Block 5386, Lot 1, Borough of Bronx.

### COMMUNITY BOARD #10BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative: .....0

**ACTION OF THE BOARD** – Laid over to February 13, 2018, at 10 A.M. for decision, hearing closed.

## APPEALS CALENDAR

## 266-07-A

APPLICANT – Law Office of Lyra J. Altman, for 1610 Avenue S LLC, owner.

SUBJECT – Application August 15, 2016 – Extension of time to complete construction and obtain a certificate of occupancy of a previously granted common law vested rights application, which expired on July 15, 2016. R4-1 zoning district.

PREMISES AFFECTED – 1602-1610 Avenue S aka 1901-1911 East 16<sup>th</sup> Street, Block 7295, Lot 3, Borough of Brooklyn.

### COMMUNITY BOARD # 15BK

**ACTION OF THE BOARD** – Application withdrawn without prejudice.

Adopted by the Board of Standards and Appeals, December 12, 2017.

## 235-15-A & 259-15-A

APPLICANT – Sheldon Lobel, P.C., for Richard Roel, owner.

SUBJECT – Applications October 7, 2015 & November 18, 2015 – Proposed construction of building that does not provide adequate frontage on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R2A zoning district.

PREMISES AFFECTED – 8 Cornell Lane, Block 8129, Lot 156, Borough of Queens.

### COMMUNITY BOARD #11Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3  
Negative: .....0  
Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 8, 2015, acting on Application Nos. 401973575 and 402027374 reads in pertinent part:

Proposed/existing building does not satisfy the frontage or mapped street access requirements of Section 36 of the General City Law or Section 27-291 of the Administrative Code of the City of New York, referred to the BSA; and

WHEREAS, a public hearing was held on this application on March 7, 2017, after due notice by publication in *The City Record*, with a continued hearings on October 3, 2017, and to decision on December 12, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject lot is located on the west side of Cornell Lane approximately 290 feet northwest from the intersection with Northern Boulevard, in an R2A zoning district, in Queens; and

WHEREAS, the site has approximately 78 feet of frontage along Cornell Lane, a depth of 86 feet at the northern lot line and 96 feet at the southern lot line, 7,615 square feet of lot area and is occupied by a two-story plus cellar residence and accessory garage; and

WHEREAS, the applicant seeks the subject relief to legalize a one-story enlargement to second story of the residence and 484 square foot detached garage fronting Cornell Lane, which is not duly placed on the official map of the City of New York; and

WHEREAS, the applicant submits that the structures on the site comply with all zoning regulations applicable in the underlying zoning district; and

WHEREAS, Cornell Lane has a width of approximately

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13 feet and is accessible from Northern Boulevard, a mapped street paved to a width of approximately 80 feet; and

WHEREAS, Cornell Lane does not have sidewalks and parking on either side of the street is prohibited due to its narrowness; and

WHEREAS, the Fire Department states that it has no objection to the application and grants a waiver of a Section 503.2.10 of the New York City Fire Code—requiring that buildings fronting on a fire apparatus access road with an unobstructed width of less than 34 feet be fully sprinklered—on condition that the applicant secure and install a street sign in accordance with Section 505.2 of the New York City Fire Code in a conspicuous location identifying Cornell Lane at the intersection of Northern Boulevard and Cornell Lane; the Fire Department further clarifies that no hydrant is required on Cornell Lane because such installation would further reduce the usable roadway and inhibit fire operations; and

WHEREAS, the applicant represents that there are nine single- and two-family residences with frontage only on Cornell Lane, three of which have previously obtained General City Law waivers from the Board, and, in the absence of a Homeowners Agreement obliging residents of Cornell Lane to maintain the street and their properties in good condition, the Board conditioned the subject relief on the recordation of a restrictive declaration against the subject property requiring, among other things, the maintenance of the subject street frontage; and

WHEREAS, the Board has determined that the applicant has submitted adequate evidence to warrant approval of the application subject to certain conditions set forth herein.

*Therefore it is Resolved*, that the decision of the DOB dated September 8, 2015, acting on DOB Application Nos. 401973575 and 402027374, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received September 14, 2017”-Two (2) sheet(s); that the proposal will comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT prior to an issuance of a certificate of occupancy, including a temporary certificate of occupancy, a restrictive declaration shall be recorded in the Office of the City Register in Queens County substantially conforming to the form and substance of the following:

DECLARATION made this \_\_\_ day of \_\_\_\_\_ 20\_\_ by Richard Roel, hereinafter referred to as the “Declarant,” located at 8 Cornell Lane, Queens, New York.

WHEREAS, the Declarant is the owner of certain land located in the City and State of New York, Borough of Queens, designated as Block 8129, Lot 156, as depicted on the Tax Map of the City of New York, hereinafter referred to as the “Subject Premises,” more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part

hereof;

WHEREAS, the Declarant has requested the New York City Board of Standards and Appeals (the “BSA”) act upon BSA Cal. Nos. 235-15-A & 259-15-A to legalize a building enlargement for a two-story residence that does not front on a final mapped street, contrary to Article III, Section 36 of the General City Law (“GCL”) filed under DOB Application Nos. 401973575 and 402027374; and WHEREAS, the BSA required Declarant to execute and file this restrictive declaration prior to obtaining a Certificate of Occupancy for the Subject Premises. NOW, THEREFORE, in consideration of BSA approval to legalize the enlargement, contrary to GCL § 36, Declarant does hereby declare that Declarant and his successors and/or assigns shall be legally responsible for operating and maintaining the Subject Premises in compliance with the following restrictions:

1. Declarant shall maintain the Subject Premises as illustrated on the BSA approved plans;
2. Declarant shall maintain the portion of Cornell Lane that fronts the Subject Premises in good repair and in a clean condition;
3. Declarant shall clean the street frontage of the Subject Premises so that any tree branches, snow and ice are promptly cleared;
4. This declaration may not be modified, amended or terminated without the prior written consent of the BSA;
5. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
6. Failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the BSA; and
7. This declaration shall be recorded at the city register’s office against the Subject Premises and title of the declaration shall be recorded on each temporary and permanent Certificate of Occupancy hereafter issued to any building located on the Subject Premises and in any deed for the conveyance thereof.

THAT a certificate of occupancy shall be obtained within four (4) years, by December 12, 2021;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by DOB;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.



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Adopted by the Board of Standards and Appeals,  
December 12, 2017.

## ZONING CALENDAR

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**238-15-A thru 243-15-A**

APPLICANT – Jeffrey Geary, for Ed Sze, owner.  
SUBJECT – Application October 8, 2015 – Proposed construction of buildings that do not front on a legally mapped street pursuant to Section 36 Article 3 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – 102-04, 08, 12, 16, 20, 24 Dunton Court, Block 14240, Lot(s) 1306, 1307, 1308, 1309, 1310, 1311, Borough of Queens.

**COMMUNITY BOARD #14Q**

**ACTION OF THE BOARD** – Laid over to March 20, 2018, at 10 A.M., for continued hearing.

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**2016-4296-A thru 2016-4298-A**

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Galaxy Construction Services, Corp., owners.

SUBJECT – Application November 3, 2016 – Proposed enlargement of an existing one-family home which is within the unbuilt portion of the mapped street contrary to General City Law 35. C3A zoning district.

PREMISES AFFECTED – 3236, 3238 Schley Avenue and 580 Clarence Avenue, Block 5490, Lot(s) 7, 110, 111, Borough of Bronx.

**COMMUNITY BOARD #10BX**

**ACTION OF THE BOARD** – Laid over to February 27, 2018, at 10 A.M., for continued hearing.

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**2016-4329-A**

APPLICANT – Richard G. Leland, for Baychester Retail III LLC, owner.

SUBJECT – Application November 10, 2016 – Administrative appeal challenging the Department of Buildings' final determination dated October 25, 2016, to permit the installation of 54 individual signs at the subject property. C7 zoning district.

PREMISES AFFECTED – 2001 Bartow Avenue, Block 5141, Lot 101, Borough of Bronx.

**COMMUNITY BOARD #10BX**

**ACTION OF THE BOARD** – Laid over to February 27, 2018, at 10 A.M., for continued hearing.

**263-14-BZ**

**CEQR #15-BSA-092K**

APPLICANT – Eric Palatnik, P.C., for Viktoriya Midyany, owner.

SUBJECT – Application October 24, 2014 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR 23-141(b); side yards (ZR 23-461) and less than the required rear yard (ZR 23-47). R3-1 zoning district.

PREMISES AFFECTED – 1601 Oriental Boulevard, Block 8757, Lot 23, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: .....0

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 13, 2016, acting on DOB Application No. 320916648 reads in pertinent part:

1. ZR 23-142: Floor area is contrary to zoning regulations;
2. ZR 23-142: Proposed lot coverage is contrary to zoning regulations;
3. ZR 23-142: Proposed open space is contrary to zoning regulations;
4. ZR 23-45(a): Proposed front yard is contrary to zoning regulations;
5. ZR 23-461: Proposed side yard is contrary to zoning regulations; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an R3-1 zoning district, the enlargement of an existing single family home that does not comply with floor area, lot coverage, open space, front yard and side yard regulations, contrary to ZR §§ 23-142, 23-45(a) and 23-461; and

WHEREAS, a public hearing was held on this application on January 31, 2017, after due notice by publication in *The City Record*, with continued hearings on March 21, 2017 and July 25, 2017, and then to decision on December 12, 2017; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez performed inspections of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Oriental Boulevard and Norfolk Street, in an R3-1 zoning district and a Zone AE Special Flood Hazard Area, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Oriental Boulevard, 200 feet of frontage

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along Norfolk Street, 2,500 square feet of lot area and is occupied by a one-story detached single-family residence; and

WHEREAS, the applicant proposes a two-story horizontal enlargement and a one-story vertical enlargement resulting in a residence with 2,397 square feet of floor area, a floor area ratio (“FAR”) of 0.95, 42 percent lot coverage, 1,454 square feet of open space, two front yards measuring 1’-1” and 15 feet and two side yards measuring 4’-6” and 31’-2”;

WHEREAS, at the subject site, a maximum FAR of 0.50 (1,250 square feet) is permitted, the maximum lot coverage permitted is 35 percent and a minimum of 1,625 square feet of open space is required pursuant to ZR § 23-142; two front yards at least 10 feet and 15 feet in depth are required pursuant to ZR § 23-45(a); and two sides yards of at least 5 feet and 20 feet are required pursuant to ZR § 23-461; and

WHEREAS, accordingly, the applicant seeks the requested relief; and

WHEREAS, the applicant states, pursuant to ZR § 72-21(a), that the narrowness of the lot, its corner location and the orientation of the existing detached residence on the lot are unique physical conditions that create practical difficulty and unnecessary hardship in developing the site in compliance with the underlying district regulations; and

WHEREAS, in support of this assertion, the applicant submitted a uniqueness study of corner lots located within 1,000 feet of the subject site in an R3-1 zoning district (the “Uniqueness Study Area”) demonstrating that, of the 22 other corner lots in the Uniqueness Study Area (not including the subject site), 5 corner lots (or 23 percent) have a width of less than 30 feet, 2 lots (or 9 percent) have a width of 25 feet, like the subject site and one of those lots obtained relief from the Board to permit the enlargement of the existing residence; and

WHEREAS, in addition, the applicant submits that the existing residence (which has 883 square feet of floor area, 36 percent lot coverage, 64 percent lot coverage, front yards measuring 25’-1” and 1’-1” and side yards measuring 4’-6” and 31’-2”) was constructed at the site in its current location and orientation in or around 1925 and prior to the 1961 Zoning Resolution, which rendered the building non-compliant with regards to minimum lot width, minimum lot area, front yard and side yard regulations, and that the existing building cannot be vertically enlarged without, at a minimum, increasing the degree of these existing non-compliances; further, the applicant asserts that an as-of-right residence at the subject site would be only 10 feet wide and too narrow to be uninhabitable; and

WHEREAS, in light of the foregoing, the Board finds that the narrowness of the lot, its corner location and orientation of the existing detached residence create unnecessary hardship and practical difficulty in developing the site in strict compliance with the underlying bulk provisions of the Zoning Resolution; and

WHEREAS, the Board has determined that because of the subject lot’s unique physical conditions, there is no

reasonable possibility that compliance with applicable zoning regulations will result in a habitable home, in satisfaction of ZR § 72-21(b); and

WHEREAS, the applicant states that the subject proposal will not alter the essential character of the neighborhood and, in support of that contention, submitted a study of the floor area ratios of single- or two-family residences within a 400 foot radius of the subject site and in an R3-1 zoning district (the “Neighborhood Study Area”) demonstrating that, of the 90 other residences in the Neighborhood Study Area, 77 (or 86 percent) have FARs of more than 0.50 and 19 (21 percent) have FARs between 0.90 and 1.15, including two residences located directly across Norfolk Street from the subject site; the applicant provided a lot coverage study demonstrating that 61 (68 percent) of residences in the Neighborhood Study Area have a lot coverage of greater than 35 percent and 43 (48 percent) of residences have lot coverage of between 41 percent and 59 percent; and

WHEREAS, the applicant additionally prepared a study of the side yard conditions on the subject block demonstrating that, of the two other corner lots on the same block located within an R3-1 zoning district, neither provides side yards compliant with ZR § 23-461 and, among the 54 interior lots occupied by residences—which, pursuant to ZR § 23-461, must provide two side yards, each at least 5 feet wide and having a total width of at least 13 feet—none have two side yards measuring a total of at least 13 feet, 43 (or 77 percent) are located on a side lot line and, thus, have only one side yard, and 31 (57 percent) have one side yard of at least 5 feet wide; and

WHEREAS, accordingly, the Board finds that the subject proposal will not alter the essential character of the neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare in satisfaction with ZR § 72-21(c); and

WHEREAS, the applicant submits, and the Board finds, that, per ZR § 72-21(d), the hardship was not created by the owner or a predecessor in title; and

WHEREAS, the applicant submits, and the Board finds, that the subject proposal is the minimum necessary to afford the owner relief pursuant to ZR § 72-21(e); and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 15BSA092K, dated October 24, 2014; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 to permit, within an R3-1 zoning district, the enlargement of an existing single family home that does not comply with floor area, lot coverage, open space, front yards

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and side yards, contrary to ZR §§ 23-142, 23-45(a) and 23-461; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received November 28, 2017 – Fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the site: a maximum FAR of 0.95 (2,397 square feet of floor area), a maximum of 42 percent lot coverage, at least 1,454 square feet of open space, two front yards measuring at least 1’-1” and 15 feet and two side yards of at least 4’-6” and 31’-2”, as reflected on the BSA-approved plans;

THAT mitigation elements required pursuant to ZR § 64-61 shall be provided as determined by DOB;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT a certificate of occupancy shall be obtained within four (4) years;

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 shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 12, 2017.

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## **1-96-BZ**

APPLICANT – New York City Board of Standards and Appeals.

SUBJECT – Application August 2, 2016 – Amendment for an extension of an existing school building to add 3<sup>rd</sup> and 4<sup>th</sup> floors. R5 zoning district.

PREMISES AFFECTED – 600 McDonald Avenue, southwest corner of Avenue “C”, Block 5369, Lot 6, Borough of Brooklyn.

## **COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to March 6, 2018, at 10 A.M., for continued hearing.

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## **56-02-BZ**

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Application June 21, 2016 – Compliance Hearing of a previously approved Variance (§72-21) which permitted the construction of a four-story plus cellar school, which created non-compliances with respect to floor area ratio, lot coverage, side, front and rear yards, and which is contrary to ZR §24-11, §24-34, §24-35, §24-36 and §24-521. R5 zoning district.

PREMISES AFFECTED – 317 Dahill Road, Block 5369, Lot(s) 82, 83, 84 and 85 (tentative Lot 82), Borough of Brooklyn.

## **COMMUNITY BOARD #12BK**

**ACTION OF THE BOARD** – Laid over to March 6, 2018, at 10 A.M., for continued hearing.

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## **31-14-BZ**

APPLICANT – Moshe M. Friedman, PE, for Bnos Square of Williamsburg, owner.

SUBJECT – Application February 11, 2014 – Special Permit (§73-19) to allow a conversion of an existing Synagogue (*Bnos Square of Williamsburg*) building (Use Group 4 to (Use Group 3). M1-2 zoning district.

PREMISES AFFECTED – 165 Spencer Street, 32’6” Northerly from the corner of the northerly side of Willoughby Avenue and easterly side of Spencer Street, Block 1751, Lot 3, Borough of Brooklyn.

## **COMMUNITY BOARD #3BK**

**ACTION OF THE BOARD** – Laid over to April 17, 2018, at 10 A.M., for deferred decision.

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## **215-14-BZ/214-14-A**

APPLICANT – Sheldon Lobel, P.C., for Fernando Fernandez, owner.

SUBJECT – Application September 3, 2014 – Variance (§72-21) to permit four-three-story three family semi-detached residential building at the existing premises in an R5 zoning district, also building in the bed of mapped street pursuant to GCL 35. R5 zoning district.

PREMISES AFFECTED – 50-11 & 50-15 103<sup>rd</sup> Street, 103-10 & 103-16 Alstyn Avenue, Block 1930, Lot 50, Borough of Queens.

## **COMMUNITY BOARD #4Q**

**ACTION OF THE BOARD** – Laid over to March 20, 2018, at 10 A.M., for adjourned hearing.

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## **20-15-BZ**

APPLICANT – Alexander Levkovich, for Steven Israel, owner; Mishkan Yerushalayim, lessee.

SUBJECT – Application February 5, 2015 – Variance (§72-21) to permit the construction of a Use Group 4A house of worship community facility at the premises contrary to floor area ratio, open space, lot coverage, wall height, front yard, side yards, rear yard, sky exposure plane, and parking regulations. R4 (OP) zoning district.

PREMISES AFFECTED – 461 Avenue X, Block 7180, Lot 75, Borough of Brooklyn.

## **COMMUNITY BOARD #15BK**

**ACTION OF THE BOARD** – Laid over to February 27, 2018, at 10 A.M., for continued hearing.

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## 2016-4138-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 323 Sixth LLC, owner; IFC Center, lessee.

SUBJECT – Application March 16, 2016 – Variance (§72-21) for an enlargement of an existing motion picture theater (*IFC Center*) contrary to both use and bulk requirements. C1-5/R7-2 & R6 zoning district.

PREMISES AFFECTED – 323-27 Avenue of the Americas, Block 589, Lot(s) 19, 30, 31, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Laid over to March 27, 2018, at 10 A.M., for continued hearing.

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## 2016-4169-BZ

APPLICANT – Sheldon Lobel, P.C., for 230 Boerum LLC, owner.

SUBJECT – Application April 15, 2016 – Variance (§72-21) to permit the construction of a residential building contrary to ZR §§42-00 & 42-10. M1-1 zoning district.

PREMISES AFFECTED – 230 Boerum Street, Block 3082, Lot 19, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

**ACTION OF THE BOARD** – Laid over to March 20, 2018, at 10 A.M., for continued hearing.

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## 2016-4295-BZ

APPLICANT – Law Office of Lyra J. Altman, for Beverly Paneth and Michael Paneth, owners.

SUBJECT – Application November 1, 2016 – Special Permit (73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (ZR 23-141); side yard requirements (ZR 23-461 & ZR 23-48) and less than the minimum rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1074 East 24<sup>th</sup> Street, Block 7605, Lot 76, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M., for adjourned hearing.

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## 2017-67-BZ

APPLICANT – Salim Abraham Jr., for Safanaya Matatov, owner.

SUBJECT – Application March 21, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-141); perimeter wall height (ZR §23-631) and side yards (ZR §23-461). R3-2 zoning district.

PREMISES AFFECTED – 2714 Avenue R, Block 6833, Lot 7, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

**ACTION OF THE BOARD** – Laid over to January 9, 2018, at 10 A.M. for decision, hearing closed.

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## REGULAR MEETING

TUESDAY AFTERNOON, DECEMBER 12, 2017

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.

## ZONING CALENDAR

### 2017-208-BZ

#### CEQR #17-BSA-141M

APPLICANT – Law Office of Jay Goldstein, for Perry Weitz, owner.

SUBJECT – Application June 9, 2017 – Special Permit (§73-36) to permit the operation of physical culture establishment (*Rumble Fitness*) on a portion of the cellar and first floor an existing building contrary to ZR §32-10. M1-5B NoHo Historic District.

PREMISES AFFECTED – 700 Broadway, Block 545, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #2M

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative: .....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 12, 2017, acting on Alteration Application No. 123085589, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ (Fitness Studio) is not permitted As-Of-Right per section ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an M1-5B zoning district, the operation of a physical culture establishment (“PCE”), contrary to ZR §§ 32-10; and

WHEREAS, a public hearing was held on this application on December 12, 2017, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 2, Manhattan, has no objection to this application; and

WHEREAS, the subject site is located on the northeast corner of Broadway and East 4th Street, in an M1-5B zoning district, in the NoHo Historic District, in Manhattan; and

WHEREAS, the site has approximately 73 feet of frontage along Broadway, 135 feet of frontage along East 4th Street, 9,920 square feet of lot area and is occupied by an eight-story, with cellar and sub-cellar, commercial

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building; and

WHEREAS, ZR § 73-36(a) provides that in C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2 or M3 Districts, and in certain special districts as specified in the provisions of such special district, the Board may permit physical culture or health establishments as defined in Section 12-10 for a term not to exceed ten years, provided that the following findings are made:

- (1) that such *use* is so located as not to impair the essential character or the future use or development of the surrounding area; and
- (2) that such *use* contains:
  - (i) one or more of the following regulation size sports facilities: handball courts, basketball courts, squash courts, paddleball courts, racketball [*sic*] courts, tennis courts; or
  - (ii) a swimming pool of a minimum 1,500 square feet; or
  - (iii) facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics or martial arts; or
  - (iv) facilities for practice of massage by New York State licensed masseurs or masseuses.

Therapeutic or relaxation services may be provided only as accessory to programmed facilities as described in paragraphs (a)(2)(i) through (a)(2)(iv) of this Section.; and

WHEREAS, ZR § 73-36(b) sets forth additional findings that must be made where a physical culture or health establishment is located on the roof of a commercial building or the commercial portion of a mixed building in certain commercial districts; and

WHEREAS, because no portion of the subject PCE is located on the roof of a commercial building or the commercial portion of a mixed building, the additional findings set forth in ZR § 73-36(b) need not be made or addressed; and

WHEREAS, ZR § 73-36(c) provides that no special permit shall be issued unless:

- (1) the Board shall have referred the application to the Department of Investigation for a background check of the owner, operator and all principals having an interest in any application filed under a partnership or corporate name and shall have received a report from the Department of Investigation which the Board shall determine to be satisfactory; and
- (2) the Board, in any resolution granting a special permit, shall have specified how each of the findings required by this Section are made.; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-03; and

WHEREAS, the Board notes that pursuant to ZR § 73-04 and 73-36(b)(4), it has prescribed certain conditions and safeguards to the subject special permit in order to minimize the adverse effects of the special permit upon other property and community at large; the Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies; 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 subject PCE occupies 6,288 square feet of floor space as follows: 3,100 square feet of floor space in the cellar, including locker rooms, a seating area, glove storage, a trainer room, trash storage and an office, and 3,188 square feet of floor area on the first floor, used for an entry area, reception, retail space, a fitness studio and audiovisual closet; and

WHEREAS, the PCE has been in operation as Rumble Fitness since August 2017; and

WHEREAS, the facility operates Monday through Friday, 5:30 a.m. to 10:00 p.m., and Saturday and Sunday, 6:30 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the mixed residential and commercial uses and character of the surrounding area, that the majority of its patrons are drawn from the immediate area and, therefore, walk to the premises or arrive by public transportation; and

WHEREAS, as to sound attenuation, the applicant submits that the studio is isolated from the adjacent structure with sheetrock and BATT insulation with isolated mat flooring and sealed penetrations at studio ceilings and partitions and that partitions have an STC rating of 60 and that flooring has an STC rating of 64; and

WHEREAS, accordingly, the Board finds that the PCE use is so located as to not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, with regards to the use of the premises, the applicant states that the PCE provides facilities for classes, instruction and programs for physical improvement, specifically yoga; and

WHEREAS, the Board finds that the PCE use is consistent with those eligible, pursuant to ZR § 73-36(a)(2), for the issuance of the special permit; 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 applicant submitted evidence that the PCE is fully sprinklered and that an approved fire alarm—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in

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the entire PCE space; and

WHEREAS, on May 19, 2017, the New York City Landmarks Preservation Commission (“LPC”) issued a Certificate of No Effect approving alterations in conjunction with the subject application; 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 finds no adverse effect on the privacy, quiet, light and air in the neighborhood; and

WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA141M, dated September 1, 2017; and

WHEREAS, based upon its review of the record, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant had substantiated a basis to warrant exercise of discretion to grant; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated at the subject site without the special permit.

*Therefore it is Resolved*, that the Board of Standards and Appeals *issues* a Type II determination under 6 NYCRR Part 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-36 and 73-03 to *permit*, in an M1-5B zoning district, the operation of a physical culture establishment (“PCE”), contrary to ZR §§ 32-10; *on condition* that all work, site conditions and operations at the site shall substantially conform to drawings filed with this application marked “Received June 9, 2017”-Four (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring August 1, 2027;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT minimum 3’-0” wide exit pathways shall be provided leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and connection of the interior fire alarm to an FDNY-approved central station—shall be maintained in the entire PCE space and the PCE shall be fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed in the PCE

as indicated on the Board-approved plans;

THAT Local Law 58/87 shall be complied with as approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by December 12, 2018;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 12, 2017.

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## 2017-311-BZ

### CEQR #18-BSA-069Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (HRO)

SUBJECT – Application December 7, 2017 – Special Permit (§64-92 & 64-A71) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R3-1 zoning district.

PREMISES AFFECTED – 211 East 8<sup>th</sup> Road, Block 15458, Lot 8, Borough of Queens.

### COMMUNITY BOARD #4Q

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR §§ 64-92 and 64-A71, to permit, in an R3A zoning district and the Special Coastal Risk District, the reconstruction of a two-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards and residential use, contrary to ZR §§ 64-A354 and 137-21; and

WHEREAS, a public hearing was held on this application on December 12, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to

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rebuild residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner's Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the northwest corner of East 8 Road and Lanark Road, in an R3A zoning district and the Special Coastal Risk District, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage along East 8 Road, 100 feet of frontage along Lanark Road, 2,500 square feet of lot area and is occupied by a two-family detached residence; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 2016, when, under BSA Cal. No. 2016-3325-A, the Board granted a waiver of General City Law ("GCL") § 35 permitting the elevation or reconstruction of a residence that lies within the bed of a mapped street; and

WHEREAS, the waiver was conditioned, inter alia, upon the reconstructed residence having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the residence being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the residence where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest windowsill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the reconstruction of a two-story two-family detached residence with front yard with a depth of 3 feet along Lanark Road, contrary to the zoning requirements for front yards; and

WHEREAS, at the subject site, zoning requirements for front yards are set forth in ZR § 64-A354; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments and enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Sections 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70

(SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

- (a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;
- (b) that any modification of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards and that waiving the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal does not include a request to modify bulk regulations pertaining to height, so ZR § 64-92 is inapplicable; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, in addition, the applicant seeks a special permit under ZR § 64-A71 to establish the non-conformance of two or more dwelling units existing at the subject site on October 28, 2012, to permit the vertical elevation or reconstruction of up to two dwelling units at the subject site; and

WHEREAS, the applicant submits that there were two dwelling units at the subject site on October 28, 2012; and

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WHEREAS, in support of this contention, the applicant provided evidence in the form of a flood insurance policy, utility bills, tax records and affidavits; and

WHEREAS, the Board credits the evidence in the record and finds that there were two dwelling units at the subject site on October 28, 2012; and

WHEREAS, accordingly, the Board finds that the evidence in the record supports establishing the non-conformance of two dwelling units at the subject site and that that the applicant has substantiated a basis to warrant exercise of discretion to grant under ZR § 64-A71; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA069Q, dated December 7, 2011.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure *and* issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR §§ 64-92 and 64-A71 to *permit*, in an R3A zoning district and the Special Coastal Risk District, the reconstruction of a two-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards and residential use, contrary to ZR §§ 64-A354 and 137-21; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received December 7, 2017”-Six (6) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard with a depth of 3 feet along Lanark Road, as illustrated on the Board-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by December 12, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the

Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 12, 2017.

## 2017-312-BZ

### CEQR #18-BSA-070K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operations (HRO)

SUBJECT – Application December 7, 2017 – Special Permit (§64-92) to waive bulk regulations for the replacement of homes damaged/destroyed by Hurricane Sandy, on properties which are registered in the NYC Build it Back Program. R2 zoning district.

PREMISES AFFECTED – 18 Webers Court, Block 8815, Lot 138, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative: .....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure and a special permit, pursuant to ZR § 64-92, to permit, in an R5 (C2-2) zoning district in the Special Sheepshead Bay District, the development of a single-family detached residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side yards, height of ridge lines and waterfront yards, contrary to ZR §§ 23-461, 62-332, 64-A353 and 64-A36; and

WHEREAS, a public hearing was held on this application on December 12, 2017, and then to decision on the same date; and

WHEREAS, this application is brought on behalf of the property owner by the Build It Back Program, which was created to assist New York City residents affected by Superstorm Sandy; and

WHEREAS, in furtherance of the City’s effort to rebuild residences impacted by Superstorm Sandy expeditiously and effectively, the Board, pursuant to 2 RCNY § 1-14.2, waives the following of its Rules of Practice and Procedure: (1) 2 RCNY § 1-05.1 (Objection Issued by the Department of Buildings); (2) 2 RCNY § 1-05.3 (Filing Period); (3) 2 RCNY § 1-05.4 (Application Referral); (4) 2 RCNY § 1-05.6 (Hearing Notice); (5) 2 RCNY § 1-05.7 (List of Affected Property Owners); (6) 2 RCNY § 1-09.4 (Owner’s Authorization); and (7) 2 RCNY § 1-10.7 (Proof of Service for Application Referral and Hearing Notice); and

WHEREAS, the Board notes that the subject application is exempt from fees pursuant to 2 RCNY § 1-09.2 and NYC Admin. Code § 25-202(6); and

WHEREAS, the subject site is located on the east side



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of Webers Court, between Emmons Avenue and Sheepshead Bay, in an R5 (C2-2) zoning district in the Special Sheepshead Bay District, in Brooklyn; and

WHEREAS, the site has approximately 46 feet of frontage along Webers Court, 28 feet of depth, 1,645 square feet of lot area and is occupied by a single-family semi-detached residence; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 22, 2016, when, under BSA Cal. No. 2016-446-A, the Board granted a waiver of General City Law (“GCL”) § 36 permitting the elevation or reconstruction of a single-family residence that does not front on a mapped street; and

WHEREAS, the waiver was conditioned, inter alia, upon the reconstructed residence having a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code; the residence being provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code; the underside of the exterior of the residence where the foundation is not closed having a floor assembly that provides a 2-hour fire resistance rating; and the height from grade plane to the highest windowsill leading to a habitable space not exceeding 32 feet; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the development of a two-story single-family detached residence with a side yard with a depth of 11 inches to the north, a zero lot line condition to the east, a ridge line with a height of 25’-2” and a waterfront yard with a depth of 3’11”, contrary to the zoning requirements for side yards, height of ridge lines and waterfront yards; and

WHEREAS, at the subject site, zoning requirements for side yards, height of ridge lines and waterfront yards are set forth in ZR §§ 23-461, 62-332, 64-A353 and 64-A36; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings* in compliance with *flood-resistant construction standards* and for *developments* and *enlargements* in compliance with *flood-resistant construction standards*, the Board of Standards and Appeals may permit modification of Section 64-60 (DESIGN REQUIREMENTS), the *bulk* regulations of Sections 64-30, 64-40 (SPECIAL BULK REGULATIONS FOR BUILDINGS EXISTING ON OCTOBER 28, 2012) and 64-70 (SPECIAL REGULATIONS FOR NON-CONFORMING USES AND NON-COMPLYING BUILDINGS), as well as all other applicable *bulk* regulations of the Zoning Resolution, except *floor area ratio* regulations, provided the following findings are made:

(a) that there would be a practical difficulty in complying with *flood-resistant construction standards* without such modifications, and that such modifications are the minimum

necessary to allow for an appropriate *building* in compliance with *flood-resistant construction standards*;

- (b) that any modification of *bulk* regulations related to height is limited to no more than 10 feet in height or 10 percent of permitted height as measured from *flood-resistant construction elevation*, whichever is less; and
- (c) the proposed modifications will not alter the essential character of the neighborhood in which the *building* is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with *flood-resistant construction standards*.

The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence, which, as it exists, is non-compliant with yard regulations, creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for side yards, height of ridge lines and waterfront yards and that waiving the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes and the Board finds that the proposal includes a request to modify the maximum permitted height of a ridge line from 25 feet to 25’-2”;

WHEREAS, the Board finds that, under ZR § 64-92(b), the proposed modification of bulk regulations related to height by 2 inches is less than 10 feet in height or 10 percent of permitted height, whichever is greater; and

WHEREAS, the applicant states that, pursuant to ZR § 64-92(c), the proposal will not alter the essential character of the neighborhood in which the residence is located, nor impair the future use or development of the surrounding area in consideration of the neighborhood’s potential development in accordance with flood-resistant construction standards; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed reconstruction satisfies all of the relevant requirements of ZR § 64-92; and

WHEREAS, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5; and

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 18BSA070K, dated December 7, 2017.

*Therefore, it is Resolved*, that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure and issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a) and 5-02(b)(2) of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 64-92 to *permit*, in an R5 (C2-2) zoning district in the Special Sheepshead Bay District, the development of a single-family detached residence in compliance with flood-resistant construction

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standards that does not comply with the zoning requirements for side yards, height of ridge lines and waterfront yards, contrary to ZR §§ 23-461, 62-332, 64-A353 and 64-A36; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received December 7, 2017”-Four (4) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a side yard with a minimum depth of 11 inches to the north, a zero lot line condition to the east, a ridge line with a maximum height of 25’-2” and a waterfront yard with a minimum depth of 3’11”, with obstructions permitted in the required yards, as illustrated on the Board-approved plans;

THAT the building shall have a fire sprinkler system in accordance with Chapter 9 and Appendix Q of the New York City Building Code;

THAT the residence shall be provided with interconnected smoke and carbon monoxide alarms, designed and installed in accordance with Section 907.2.11 of the New York City Building Code;

THAT the underside of the exterior of the residence where the foundation is not closed shall have a floor assembly that provides a 2-hour fire resistance rating;

THAT the height from grade plane to the highest windowsill leading to a habitable space may not exceed 32 feet;

THAT this approval shall be limited to the Build It Back program;

THAT all DOB and related agency application(s) filed in connection with the authorize use and/or bulk shall be signed off by DOB and all other relevant agencies by December 12, 2021;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 12, 2017.

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## 2017-215-BZ

APPLICANT – Eric Palatnik, P.C., for 900 Third Avenue L.P., owner; MJM Boxing 3 LLC, lessee.

SUBJECT – Application December 12, 2017 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Title Boxing Club*) located on a portion of the first and cellar floors of an existing thirty-six (36) story commercial use building contrary to ZR §32-10. C6-6 Special Midtown District.

PREMISES AFFECTED – 900 3<sup>rd</sup> Avenue, Block 1309, Lot 32, Borough of Manhattan.

## COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4  
Negative: .....0

**ACTION OF THE BOARD** – Laid over to January 23, 2018, at 10 A.M. for decision, hearing closed.

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*Carlo Costanza, Executive Director*

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## \*CORRECTION

This resolution adopted on October 22, 2013, under Calendar No. 133-13-BZ and printed in Volume 98, Bulletin Nos. 42-43, is hereby corrected to read as follows:

### 133-13-BZ

#### CEQR #13-BSA-137X

APPLICANT – Sheldon Lobel, PC, for Evangelical Church Letting Christ Be known, Inc., owner.

SUBJECT – Application May 10, 2013 – Variance (§72-21) to permit the construction of a new two-story community facility (UG 4A house of worship) (*Evangelical Church*) building is contrary to rear yard (§24-33(b) & §24-36), side yard (§24-35(a)) and front yard (§25-34) zoning requirements. R4 zoning district.

PREMISES AFFECTED – 1915 Bartow Avenue, northwest corner of Bartow Avenue and Grace Avenue, Block 4799, Lot 16, Borough of Bronx.

#### COMMUNITY BOARD #12BX

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 30, 2013, acting on Department of Buildings (“DOB”) Application No. 220201412, reads in pertinent part:

ZR Section 24-33(b) – the proposed building within the rear yard is contrary to the cited section in that it exceeds the height limitation for permitted obstructions;

ZR Section 24-35(a) – the proposed side yard is contrary to the cited section in that ten percent of the aggregate street walls is required (15 feet) [however] per the proposed plan, eight feet is indicated;

ZR Section 24-36 – the proposed rear yard does not comply with the minimum 30 feet required [because] the interior lot portion of the site is not eligible for the shallow lot provision, per ZR Section 24-37(a);

ZR Section 24-34 – proposed front yard is contrary to the stated section in that [a depth of] 15 feet [is required but] only ten feet [is provided]; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, the construction of a two-story house of worship (Use Group 4A) that does not comply with the zoning regulations for rear yard, side yard, front yard, and permitted obstructions in rear yard, contrary to ZR §§ 24-33, 24-34, 24-35, and 24-36; and

WHEREAS, a public hearing was held on this application on September 17, 2013, after due notice by publication in the *City Record*, and then to decision on October

22, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, this application is brought on behalf of Evangelical Church Letting Christ Be Known (the “Church”), a not-for-profit institution; and

WHEREAS, Community Board 12, Bronx, recommends disapproval of this application, citing concerns about traffic and parking; and

WHEREAS, Councilmember Andy King testified in opposition to the proposal, citing concerns about traffic; and

WHEREAS, certain members of the surrounding community testified in opposition to the application, citing concerns about traffic and the requested yard waivers’ impacts on adjacent properties; and

WHEREAS, certain members of the surrounding community testified in support of the application; and

WHEREAS, the subject site is an irregular corner lot located on the northwest corner of the intersection of Grace Avenue and Bartow Avenue, within an R4 zoning district; and

WHEREAS, the site has approximately 100 feet of frontage along Bartow Avenue, approximately 322 feet of frontage along Grace Avenue, and a lot area of approximately 22,989 sq. ft.; and

WHEREAS, the applicant notes that the site has been vacant since at least 1983; and

WHEREAS, the applicant proposes to construct a two-story house of worship (Use Group 4A) with 12,388 sq. ft. of floor area (0.54 FAR) to accommodate the programmatic needs of the Church, which has been in existence for approximately 16 years; and

WHEREAS, the applicant represents that the proposed building will create the following non-compliances on the zoning lot: (1) the building will obstruct the rear yard for two stories and a height of 31’-0” (the maximum permitted height of this community facility building within the rear yard in this district is one story and 23’-0”, per ZR § 24-33(b)); (2) a rear yard with a depth of 8’-8” (a rear yard with a minimum depth of 30’-0” is required for the interior lot portion of the site, per ZR § 24-36); (3) two side yards with depths of 24’-2” and 10’-0” (the requirement, which is based on the width of the street wall, is two side yards with minimum depths of 15’-0”, per ZR § 24-35(a)); and (4) a front yard depth of 10’-0” (a front yard depth of 15’-0” is required, per ZR § 24-34); and

WHEREAS, the applicant represents that, since its founding, the Church has leased space at 2111 Starling Avenue, Bronx, a two-story building with approximately 3,976 sq. ft. of floor area; however, that building accommodates neither the Church’s current membership of 350 members, nor its projected growth; and

WHEREAS, the applicant states that the proposed building will include the following: (1) in the cellar, a community room, electrical and mechanical rooms, a cafeteria and serving area, and men’s and women’s restrooms; (2) on the first story, a lobby, a temple, a restroom, dressing area, and a pastor’s office; and (3) on the second story, two offices, a coat closet, storage, children’s chapel, and men’s and women’s

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restrooms; and

WHEREAS, the applicant notes that the community room will be used primarily to provide light meals to congregants after worship services; however, no catered affairs (such as wedding receptions) will be held at the Church; the applicant also states that the Church anticipates a capacity of approximately 300 congregants in the temple on the first story and approximately 100 congregants in the chapel on the second story; and

WHEREAS, the applicant represents that the irregular shape of the site—in particular its jagged western boundary—is a unique physical condition inherent to the zoning lot, which creates practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations, per ZR § 72-21(a); and

WHEREAS, the applicant states that the jaggedness of the western boundary gives rise to no fewer than 13 adjoining rear and side lot lines (none of which is parallel to either Grace Avenue or Bartow Avenue) which results in an as-of-right footprint of only 5,653 sq. ft.; in contrast, a standard, rectangular lot with the site's lot area (22,989 sq. ft.) would yield an as-of-right footprint of 12,500 sq. ft.; the applicant notes that the proposed footprint is approximately 6,194 sq. ft., less than half the size that would be accommodated on a rectangular lot; and

WHEREAS, the applicant notes that although the site is adjacent to a lot with a similarly jagged boundary line, the adjacent lot is significantly larger and therefore would provide greater flexibility in development; further, while there are other lots with jagged lot lines within a 400-foot radius of the site, only the site and the immediately adjacent lot are vacant; and

WHEREAS, the applicant states that the following are the programmatic needs of the Church, which necessitate the requested waivers: (1) the increasing size of the congregation; and (2) the Church's expansive mission, which, includes spiritual outreach and creating support groups for local youth; and

WHEREAS, as to the increasing size of the congregation, the applicant states that the Church has 350 regular members and anticipates that it will have approximately 385 regular members when construction at the site is completed; and

WHEREAS, the applicant represents that the Church's existing facility cannot accommodate the Church's current membership and that an as-of-right building would be similarly inadequate; in particular, based on the as-of-right plans submitted by the applicant, the floor area of the building would decrease from the proposed 12,388 sq. ft. (0.54 FAR) to 9,184 sq. ft. (0.39); further, in the as-of-right scenario, the capacity of the temple on the first story is decreased from 300 congregants to 214 congregants and the capacity of the chapel on the second story is decreased from 100 congregants to 54 congregants; and

WHEREAS, as to the expansive mission of the Church, the applicant represents that an as-of-right facility would not provide the worship, classroom or community outreach space it requires to fulfill its wide-ranging spiritual and pedagogical objectives; and

WHEREAS, further, the Board acknowledges that the Church, as a religious institution, is entitled to significant deference under the law of the State of New York as to zoning and as to its ability to rely upon programmatic needs in support of the subject variance application; and

WHEREAS, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the irregular lot shape in combination with the programmatic needs of the Church create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Church 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 represents that the neighborhood is characterized by its diversity: buildings range in height from one to five stories, and residential, commercial, and manufacturing uses are found within a 400-foot radius of the site; and

WHEREAS, the applicant notes that other nearby uses include a park, a large parking lot for a shopping center, gasoline stations, and the New England Thruway (Interstate 95); and

WHEREAS, the applicant notes that the proposed use is permitted as-of-right and that the proposal complies with the regulations regarding building height, setback, sky exposure plane, lot coverage, and parking; and

WHEREAS, the applicant also notes that at 0.54 FAR, the proposal is 27 percent of the maximum permitted floor area ratio for a community facility in the district (2.0 FAR); and

WHEREAS, as to the adjacent uses, the applicant notes that the site immediately to the west is vacant and significantly larger than the subject site; as such, it can be developed with as-of-right yards that will provide additional separation from the proposed building; further, the site immediately to the north is occupied by a three-story residential building, which will be, because of the odd shape of the side lot line, more than 35 feet from the proposed house of worship; therefore, the requested yard waivers will not impact the adjacent uses; and

WHEREAS, the applicant represents that, contrary to Community Board 12's assertions, the proposal will not adversely impact parking or traffic within the neighborhood; and

WHEREAS, specifically, the applicant states that

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although the Church expects the majority of congregants to walk or utilize public transportation, the proposal provides 22 off-street parking spaces, which is one more than the required 21 spaces; in addition, the applicant represents that there are a total of 18 on-street parking spaces available along Bartow Avenue and Grace Avenue; and

WHEREAS, as to traffic, the applicant states that it conducted a study of neighborhood traffic patterns and reconfigured the proposed entrances and site circulation in order to minimize congestion; the applicant also notes that services and worship activities will occur on weekday evenings and Sundays; as such, the Church's traffic will not conflict with school-related traffic; and

WHEREAS, finally, in response to Community Board 12's characterization of the proposal as inconsistent with recent down-zonings in the area, the applicant notes that the site has been zoned R4 since 1961; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of the Church could occur on the existing lot; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, in accordance with ZR § 72-21(d); the applicant notes that the site was formed by the combination of historic tax lots 16, 20, 26, and 29, which were originally jagged and irregularly shaped; and

WHEREAS, in addition, the Board finds that the requested relief is the minimum necessary, per ZR § 72-21(e); and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR §72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 13BSA173X, dated May 9, 2013; and

WHEREAS, the EAS documents that the proposed project 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

*Therefore it is resolved*, that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an R4 zoning district, the construction of a two-story house of worship (Use Group 4A) that does not comply with the zoning regulations for rear yard, side yard, front yard, and permitted obstructions in rear yard, contrary to ZR §§ 24-33, 24-34, 24-35, and 24-36; *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 September 3, 2013"– Ten (10) sheets; and *on further condition*;

THAT the following shall be the bulk parameters of the building: a maximum of 12,388 sq. ft. of floor area (0.54 FAR), a maximum building height of 31'-0", a rear yard depth of 8'-8", two side yards with depths of 24'-2" and 10'-0", and a front yard depth of 10'-0", as indicated on the BSA-approved plans;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 22, 2013.

**\*The resolution has been Amended** to correct the CEQR No. which read: **CEQR#13-BSA-173X** now reads: **CEQR#13-BSA-137X. Corrected in Bulletin No. 51, Vol. 102, dated December 20, 2017.**

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## CORRECTION

This resolution adopted on February 4, 2014, under Calendar No. 154-13-BZ and printed in Volume 99, Bulletin No. 6, is hereby corrected to read as follows:

### 154-13-BZ

#### CEQR #13-BSA-139K

APPLICANT – Sheldon Lobel, P.C., for Ralph Avenue Associates, LLC, owner.

SUBJECT – Application May 14, 2013 – Variance (§72-21) to allow the construction of a retail building (UG 6), contrary to use regulations (§22-10). R5 zoning district.

PREMISES AFFECTED – 1054-1064 Bergen Avenue, bounded by Bergen Avenue to the north, Avenue K to the east, East 73rd Street to the south, and Ralph Avenue to the west, Block 8341, Lot (Tentative lot 135), Borough of Brooklyn.

#### COMMUNITY BOARD #18BK

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:..... 0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”), dated May 10, 2013, acting on DOB Application No. 320688029, reads, in pertinent part:

Proposed commercial building cannot be built in R5 zone, per Section 22-00; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R5 zoning district, the construction of a one-story commercial building (Use Group 6), contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on October 29, 2013, after due notice by publication in the *City Record*, with continued hearings on December 10, 2013 and January 14, 2014, and then to decision on February 4, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site includes all of Block 8341, which comprises Lots 100, 113, 118, 120, 121, and 125 and is bounded by Ralph Avenue, East 73rd Street, Bergen Avenue, and Avenue K; and

WHEREAS, the site, which is wholly within an R5 zoning district, has 237.76 feet of frontage along Ralph Avenue, 567.51 feet of frontage along East 73rd Street, 696.15 feet of frontage along Bergen Avenue, 200 feet of frontage along Avenue K, and a lot area of 127,535 sq. ft.; in addition, a sewer easement encumbers a portion of the site for the full

length of Ralph Avenue; and

WHEREAS, the site is occupied by six, three-story residential buildings with a total of 159,418 sq. ft. of floor area (1.25 FAR) and 144 dwelling units (affordable housing), and 167 parking spaces (the “Development”); 51 of the parking spaces are driveway spaces appurtenant to the buildings, 51 are within the buildings, and 65 are provided for-pay in an at-grade v-shaped parking lot in portions of Lots 118 and 121 along Ralph Avenue and Bergen Avenue (the “Parking Lot”); and

WHEREAS, the applicant represents that, in connection with this application, a new tax lot, Lot 135, will be formed within the site from the northwest portions of Lots 118 and 112; Lot 135 will have 162.16 feet of frontage along Bergen Avenue, 170.43 feet along Ralph Avenue, and approximately 16,500 sq. ft. of tax lot area; and

WHEREAS, the applicant states that the Development was completed around 2006 and included a partial build-out of three mapped but unbuilt public roadways (Bergen Avenue, Avenue K, and East 73rd Street); and

WHEREAS, the applicant notes that the Development was financed through the New York City Housing Development Corporation’s (“HDC”) New Housing Opportunities Program (“NewHOP”), with a required debt-service-coverage-ratio (“DSCR”) of 1.20, and in order to satisfy the DSCR for the site, the Development’s revenue stream included revenue from the Parking Lot; however, in 2011, the City widened Bergen Avenue and installed 70 angled, unmetered parking spaces; and

WHEREAS, accordingly, the applicant represents that revenue from the Parking Lot has sharply declined, the applicant’s ability to cover the 1.20 DSCR is in jeopardy, and, absent the requested relief, an affordable housing project is in danger of mortgage default; and

WHEREAS, therefore, in order to offset the lost revenue from the Parking Lot and to appropriately account for the unique hardships inherent in the original development of the site, the applicant proposes to construct on Lot 135 a one-story commercial building (Use Group 6) with 5,162 sq. ft. of floor area (0.04 FAR) and an accessory parking lot with 18 spaces; and

WHEREAS, because Use Group 6 is not permitted within the subject R5 zoning district, the applicant seeks a use variance; and

WHEREAS, the applicant states that, per ZR § 72-21(a), the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the lack of adjacent sewer lines; (2) the existence of a sewer easement, which prohibits construction on the westernmost portion of the site; (3) the requirement to construct abutting public roadways; and (4) the historic use of a portion of the site for a dumping ground; and

WHEREAS, the applicant states that when the Development was constructed, the site lacked adjacent sewer lines along Bergen Avenue and East 73rd Street, and the nearest connectible sanitary sewer ran down Ralph Avenue, along the western portion of the site; as such, the developer had to construct an on-site private sewer line running the full length of Block 8341, as well as a pumping station with sewage

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grinders and an emergency generator, and 69 drywells for storm water management, at significant cost; and

WHEREAS, the applicant states that the costs associated with the construction of the sanitary and storm sewer systems were further increased by the existence of a 120-inch sewer main running parallel to Ralph Avenue and a related sewer easement, which extends for a depth of 60 feet into the site; such easement also constrained where the residential buildings could be located, making two of the six buildings further from the main than would have been required if there were no easement; and

WHEREAS, the applicant asserts that the site was also uniquely burdened by having to build out portions of mapped but unbuilt Bergen Avenue, Avenue K, and East 73rd Street; and

WHEREAS, finally, the applicant contends that illegal dumping at the site prior to the construction of the Development was a unique physical condition that created an unnecessary hardship in developing the site; in particular, when the site was originally acquired, it was an abandoned construction site with in-place foundations filled with dirt, debris, and garbage; accordingly, the site required considerable soil excavation and removal as well as special removal and disposal of the landfill-type garbage that had accumulated at the site; such operations increased construction costs beyond that which would have been typical for a similarly-sized project; and

WHEREAS, the Board finds that the site's lack of adjacent sewers, encumbrance by a sewer easement, lack of built-out abutting public roadways, and historic use as a dumping ground created an unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant asserts that, per ZR § 72-21(b), there is no reasonable possibility that the development of the site in conformance with the Zoning Resolution will bring a reasonable return; and

WHEREAS, in particular, the applicant states that because the site was developed through HDC financing and the NewHOP program, it must adhere to the 1.20 DSCR while providing affordable housing at the site; as originally conceived, the Development's revenue—including the Parking Lot revenue—was sufficient to cover the DSCR; however, with the decline of the Parking Lot revenue due to the availability of free parking spaces along Bergen Avenue, the applicant states that it can no longer offset the premium costs for developing the site; and

WHEREAS, the applicant explored the feasibility of constructing an additional residential building on a portion of Lot 121, east of the sewer easement; in addition to requiring a variance for floor area (the site is already at the maximum permitted FAR of 1.25), a new residential building on the site would have too few units to satisfy NewHOP requirements; and

WHEREAS, therefore, the applicant states that only the proposal will generate the amount of revenue necessary to maintain the 1.20 DSCR and avoid a mortgage default; and

WHEREAS, in support of this statement, the applicant

submitted a financial analysis, which studied the Development's DSCR in light of the declining revenues of the Parking Lot and the projected revenues of the proposed commercial building; and

WHEREAS, the applicant concluded that the proposal will allow the Development to maintain the required DSCR, which in light of the unique financing of the Development, is tantamount to providing a positive rate of return; and

WHEREAS, at hearing, the Board directed the applicant to provide detailed information regarding: (1) the structure of its financing; and (2) its construction costs associated with the site's unique conditions; and

WHEREAS, in response, the applicant provided an itemized and annotated timeline of the Development's costs and financing, and a copy of its builder's pavement plan (depicting the extent of the roadway construction) and its site drainage plan (depicting the sanitary and storm sewer systems); and

WHEREAS, based upon its review of the applicant's financial analysis, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare, in accordance with ZR § 72-21(c); and

WHEREAS, the applicant states that the immediate area is characterized by a mix of low- to medium-density residential and commercial uses with some manufacturing/industrial uses, including a large water treatment facility across Bergen Avenue; and

WHEREAS, in support of this statement, the applicant submitted a land use map and photographs depicting the mixed-use nature of the neighborhood; based on the map, the proposed commercial building will be immediately adjacent to either parking areas or commercial (across Ralph Avenue) or industrial uses (across Bergen Avenue); and

WHEREAS, as to bulk, the applicant states that the proposed commercial building is smaller or comparable to other buildings (both residential and commercial) located along Ralph Avenue; and

WHEREAS, in addition, the applicant asserts that the bulk of the building is modest in comparison to what is permitted in the C2-2 district mapped directly across Ralph Avenue from the site; specifically, if the proposed building on Lot 135 were considered to be on its own zoning lot, as noted above, its lot area would be 16,031 sq. ft. and its FAR would be 0.32, which represents less than one-third of the 1.0 FAR permitted in a C2-2 district; and

WHEREAS, likewise, the applicant states that the proposed wall height of 18 feet is 12 feet less than the maximum permitted wall height (30 feet) in the C2-2 district; also, while there are no yard regulations for a commercial building in an R5 district, the building has a

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yard facing Bergen Avenue with a width of approximately five feet and a yard facing Ralph Avenue with a width of approximately 57 feet; further, there is a 40-foot separation between the proposed building and the nearest dwelling; and

WHEREAS, as to parking, the proposal would allocate 18 parking spaces for the commercial portion of the site and maintain 123 parking spaces for the residences, which is in accordance with ZR § 25-23 and would be in accordance with ZR § 36-21, if the commercial use were permitted; further, as noted above, Bergen Avenue has 70 angled parking spaces directly abutting the site; and

WHEREAS, therefore, the applicant asserts that the proposal is compatible with the surrounding neighborhood in terms of use and bulk, and will have no impact on parking; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of a one-story commercial building and parking lot will not impact nearby conforming uses; and

WHEREAS, accordingly, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that, consistent with ZR § 72-21(d), the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the site's unique physical conditions; and

WHEREAS, finally, the Board finds that the proposal is the minimum variance necessary to afford relief, as set forth in ZR § 72-21(e); and

WHEREAS, accordingly, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an unlisted Action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.13-BSA-139K, dated May 13, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved*, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6

NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an R5 zoning district, the construction of a one-story commercial building (Use Group 6), contrary to ZR § 22-00, *on condition* that any and all work will substantially conform to drawings filed with this application marked "Received September 18, 2013"– (6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the proposed building: one story; a maximum of 5,162 sq. ft. of floor area (0.04 FAR); side yards with minimum depths of five feet and 57 feet; a maximum wall height of 18 feet; and accessory parking for 18 automobiles;

THAT no fewer than 141 parking spaces (123 accessory to residences and 18 accessory to the commercial building) will be provided at the site;

THAT signage will comply with C1 regulations;

THAT the above conditions will appear on the certificate of occupancy;

THAT substantial construction will be completed in accordance with ZR § 72-23;

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, February 4, 2014.

**\*The resolution has been revised to correct the CEQR No. which read: CEQR #13-BSA-138K now reads: CEQR #13-BSA-139K. Corrected in Bulletin No. 51, Vol. 102, dated December 20, 2017.**